



## CITY OF BEVERLY HILLS STAFF REPORT

**Meeting Date:** June 16, 2009  
**To:** Honorable Mayor & City Council  
**From:** Susan Healy Keene, AICP, Director of Community Development  
**Subject:** Consideration of a General Plan Amendment to Prohibit Common Interest Subdivision of Commercially Zoned Property  
**Attachments:** None

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### **INTRODUCTION**

This report identifies for the City Council a potential concern regarding the common interest, air space subdivision of commercial property and recommends a strategy to address associated concerns through a General Plan amendment that would proceed in advance of the stepped approach approved by the City Council last month.

### **BACKGROUND**

Common interest airspace subdivisions of real property are governed by local regulations and state law. The typical subdivision application filed in this city relates to residential condominium development. In multi-family zones, one property owner could subdivide their parcel such that there may be several individual owners with each having a legal interest in the property. Unlike apartment units, individual condominium unit owners can transfer their legal interest to another party. There is a benefit to having a mix of both residential condominiums and multi-family apartment buildings in a community in terms of establishing and promoting stable residential neighborhoods and providing a greater degree of housing diversity and affordability.

Less common are commercial condominiums. However, a few projects over the last several years received approval from the City Council through a combination of land use entitlements and development agreements, which is a contractual arrangement between the city and an entity with legal or equitable interest in property. Development agreements confer certain rights to a developer while also typically ensuring the city receives certain public benefits. Development agreements are not subject to the constitutional limitations on exactions that apply to development projects that not accompanied by a development agreement.

Two other projects in the City, one located at 8383 Wilshire Boulevard (the Flynt Building), and the other located at 8536 Wilshire Boulevard (medical office / retail building) were approved without accompanying development agreements. The Flynt Building, however, never exercised its approval, which has since expired. The commer-

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cial condominium building at 8536 Wilshire Boulevard was approved by the Planning Commission in October 2008.

### **DISCUSSION**

Recently, city staff has been contacted by property owner representatives interested in converting other existing commercial office buildings in the city into commercial condominiums. As with residential condominiums, commercial condominiums can generate significant profits for the subdivider. It may also benefit the city to some degree in that city may receive additional property tax revenue as individual units resale over time.

However, if more single owner commercial properties were to convert to common interest airspace subdivisions, the city could have less revenue in other areas. Specifically, the city currently collects a commercial rental tax when an owner leases his or her building, or portions of a building to a tenant. The city collects \$23.50 for every \$1000 collected by the owner, which represents approximately 18% of the city's annual revenue. The conversion of this space from rental to ownership will reduce the amount tax collected if the new owner occupies the space and does not lease it to another entity.

Additionally, commercial condominiums may also severely limit the city's ability to attract desired businesses, such as entertainment offices or other land uses preferred in the city. The availability of large blocks of Class A office space has lead to a number of high profile relocations out of the City and the conversion of other Class A office space to office condominiums may produce similar impacts in the future. It may also result in a less attractive building stock, property maintenance issues associated and increase the demand for code enforcement actions. Many of these negative effects are the result of challenges associated with multiple ownership properties.

In the past, when the city has sought to encourage certain businesses, opportunities existed to identify large commercial office space and seek agreements between the future tenant, the single property owner and in some cases the city itself. If the trend to convert more existing office space to multiple owner condominiums were to continue, it would be difficult to find available office space because different condominium owners in a building may be less willing, or unable due to existing lease agreements, to participate in any negotiation for one larger tenant that may extend into several ownership spaces. Should a space be identified, agreeing to terms and conditions, including financial considerations, would be more cumbersome than dealing with a single building owner and could likely discourage a future tenant.

With multiple owners of one building, it is significantly less likely that all owners would be willing to sell or upgrade the building at the same time. This tends to result in an older building stock that may be less attractive to certain land uses, and less able to evolve to the changing demands of the commercial real estate market, thus resulting in greater property maintenance and code enforcement related problems. Further, this could lead to underutilization of the City's commercial real estate inventory.

In light of the economic downturn, staff anticipates that there will be greater interest to convert more existing commercial buildings into subdivided ownership units. Should this occur and if more applications are filed, some of the identified impacts above may be realized and significantly affect the city's ability to attract certain businesses. Moreover, due to state-mandated criteria required to evaluate these applications, the city may find itself unable to deny certain projects without proactive action now by the City Council.

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In order to protect the city and preserve future land use flexibility, it is recommended that the City Council direct staff to begin the process of amending the General Plan to add policy language that would prevent future conversions of existing buildings to commercial condominiums and approval of new commercial condominium buildings until such time the issues associated with this type of development can be adequately addressed. It is anticipated that a more exhaustive examination of these issues can be considered in Step Two of the ongoing General Plan update, when the city explores various land use strategies that will guide future development over the next 20 years. However, staff believes time is of the essence with respect to the city's commercial condominium policy, and seeks direction to commence the process to add an appropriate policy immediately. A General Plan amendment adding such a policy would require noticed hearings before the Planning Commission and ultimately before the City Council.

### **FISCAL IMPACT**

The recommendation in this report does not have any immediate or significant budget or fiscal related impacts. However, the policy direction received from the City Council would result in fewer commercial condominium applications being submitted and potentially affect future income related to property tax generated by commercial condominium sales, if future condominium applications are received. However, not implementing the policy is expected to decrease the amount of revenue collected through the city's commercial rental tax, which represents about 18% of the city's overall revenue. A reduction to this revenue source may impact of city services. The exact reduction would be based on the number of commercial buildings that are approved for conversion, the number of ownership units created, and the extent to which those new units are leased to or owned by the business entities occupying the space.

Additionally, adoption of the general plan policy would enable the city to preserve and enhance its inventory of commercial and office space and maximize flexibility with which to attract the highest and best uses to the city providing even greater financial returns.

### **RECOMMENDATION**

It is recommended that the City Council direct staff to initiate a General Plan amendment to prohibit future commercial condominiums and conduct noticed public hearings before the Planning Commission and City Council.



Susan Healy Keene, AICP

Approved By