



## AGENDA REPORT

**Meeting Date:** October 7, 2008

**Item Number:** E-1

**To:** Honorable Mayor & City Council

**From:** Anne Browning McIntosh, AICP, Interim Director of Community of Development

**Subject:** An Interim Ordinance of the City of Beverly Hills Regarding the Applicability of Parking and Loading Standards to Certain Nonconforming Commercial Structures, and Declaring the Urgency Thereof

**Attachments:** 1. Urgency Interim Ordinance

---

### RECOMMENDATION

Staff recommends that the City Council adopt the subject urgency interim ordinance.

### INTRODUCTION

Pertinent sections of the City's zoning code do not adequately address intensifications of certain land uses in the City. Land use intensification of commercial sites can occur when a previous business is replaced with another business that requires more parking spaces and/or results in substantial changes to operational conditions, increased floor area or other criteria. Improperly regulated, commercial land use intensification can result in intrusions into quiet residential neighborhoods that impact the availability of scarce on-street parking resources to the detriment of existing businesses and nearby residential areas. Two sections of the City's Zoning Code require study, and ultimately amendment, in order to more effectively address potential impacts caused by such intensification; these sections include the parking chapter and regulations governing nonconforming buildings and uses. In an effort to ensure appropriate protections for residential neighborhoods and local businesses, staff recommends adoption of the subject urgency interim ordinance to allow sufficient time to study the issues and prepare the necessary text amendments.

## DISCUSSION

Recent land uses studies associated with the General Plan update and applicant requests to convert existing buildings from lower intensity commercial land uses to higher intensity uses have highlighted the immediate need to correct sections of the City's Zoning Code. While it is anticipated that the City will initiate a comprehensive update to the existing zoning code next fiscal year, there exists an immediate threat to residential neighborhoods and commercial businesses that are located near properties that seek to intensify land uses without providing appropriate parking and loading.

Many commercial buildings located throughout the City were constructed at a time when the city had lower parking standards and less restrictive loading requirements. As a result, many buildings have few on-site parking spaces and inadequate space to accommodate deliveries. Additionally, the City's current parking regulations broadly group a variety of commercial land uses into one category and assign a parking ratio of one space for each 350 square feet of floor area. This approach does not recognize that certain commercial uses within the broad category will result in greater vehicle trip generation and, therefore, a greater demand for on-site parking, than other uses in the same category. For example, the existing code assigns the same parking requirement for antique furniture stores, hardware stores, automobile service centers and large retail stores, despite clear differences in trip generation and parking demand associated with these uses.

The City's non-conforming building and uses chapter of the Zoning Code permits reasonable reuse and development of structures that do not comply with current codes. However, it also permits an owner to replace a lower intensity commercial use with another higher intensity use without seeking discretionary approval, and without addressing potential parking and loading deficiencies. Reuse of a site with a more intense use with limited on-site parking and loading spaces are a particular concern in the City's commercial-residential transition area where commercial properties abut residential uses. Noise and circulation impacts from loading activities and parking on residential streets are significant concerns for area residents. Higher intensity uses also impact nearby business that may also have limited on-site parking for its employees and visitors, which increases the demand for limited on-street parking resources.

The business triangle has similar non-conforming buildings and uses, but the pedestrian nature of the area, availability of city parking structures, and fewer residential neighborhoods within the triangle generate fewer concerns and do not require immediate attention. The inherent differences between the business triangle and commercial areas that are closer to residential neighborhoods is further recognized in the prior establishment of the commercial-residential transition area, which is shown in the map below.

## PROPOSED URGENCY INTERIM ORDINANCE

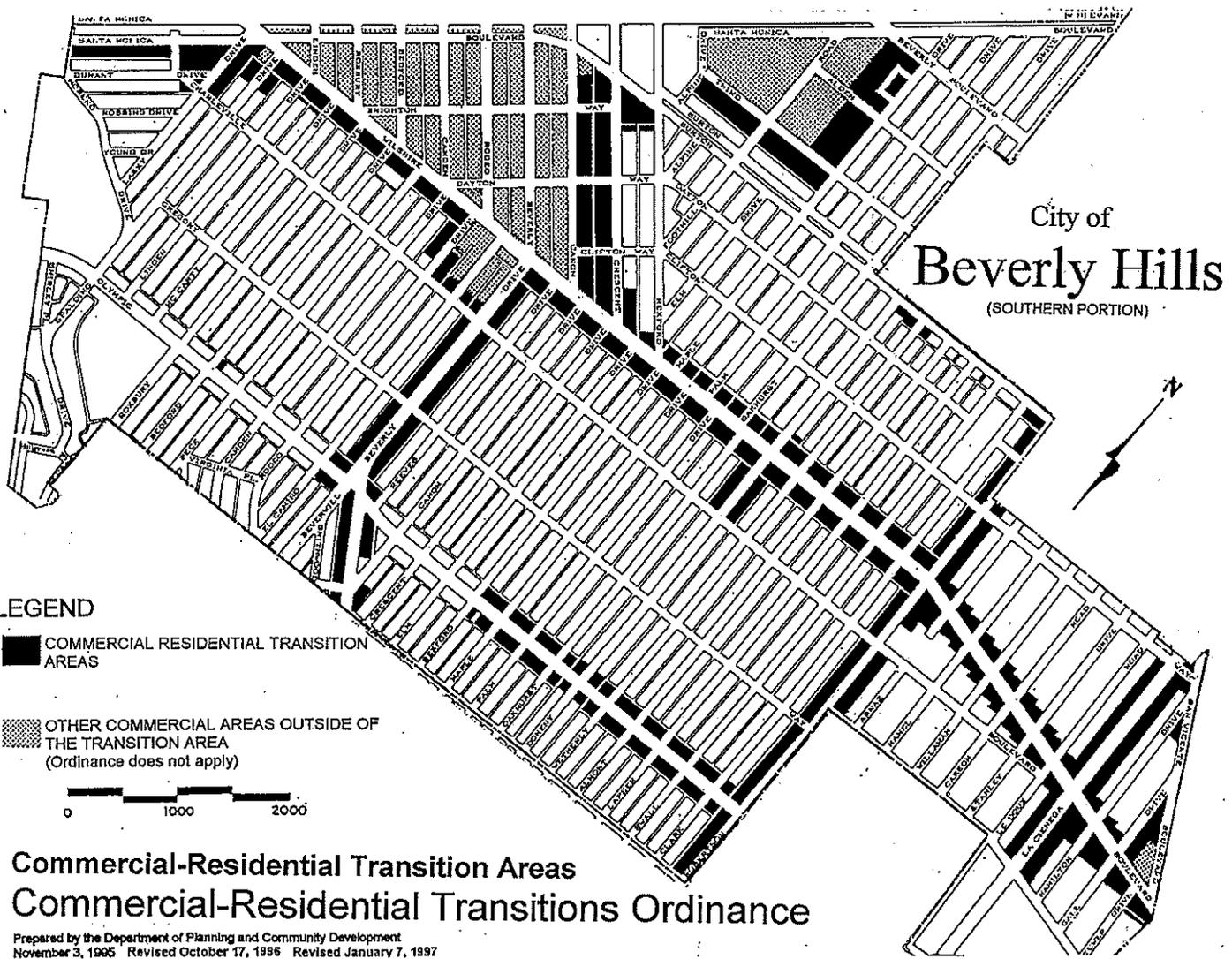
Section 65858 of the California Government Code allows a municipality to adopt an interim ordinance as an urgency measure prohibiting uses in conflict with a contemplated general plan, specific plan, or zoning proposal. In this case the City is considering a general plan update that seeks to protect residential neighborhoods from the encroachment of incompatible nonresidential uses and disruptive traffic to the extent possible, and encourages the use of zoning and design review to ensure that compatibility issues are fully addressed when nonresidential development is proposed near residential areas. Urgency ordinances can be enacted expeditiously without the regular hearing process, but only on a temporary 45-day basis, to protect public safety, health, or

welfare. An urgency ordinance requires a minimum 4/5ths approval of the City Council. Any subsequent extension beyond 45 days requires a regular public hearing process, and no interim ordinance can be extended beyond two years of the original adoption date. Extensions also require a 4/5ths vote for approval.

The subject urgency interim ordinance seeks to remedy an immediate concern in the Zoning Code that has the potential to disrupt residential neighborhoods and impact local businesses in the City's transitional zones. However, it also introduces a discretionary process that provides relief from the proposed standards under certain circumstances. Specifically, the interim ordinance:

- Defines and identifies situations where intensification of uses may impact residential neighborhoods and/or commercial businesses and requires, for changes in land use, that all parking spaces and loading zones be accommodated on-site, despite the building's legal non-conforming status;
- Allows the Planning Commission to review requests for relief from the proposed interim ordinance, subject to certain findings, and following a discretionary hearing process.

The ordinance targets changes to nonconforming uses generally in areas outside the pedestrian-oriented Business Triangle as these areas are usually in close proximity to the residential neighborhoods. Issues associated with the encroachment of business-related activity into residential neighborhoods substantially overlaps with those of the commercial/residential interface. The ordinance, therefore, proposes to utilize the areas addressed by the City's Commercial/Residential Transitions Ordinance. This area consists of the commercial properties located within 170 feet of residential zones (see map below).



## Commercial-Residential Transition Areas Commercial-Residential Transitions Ordinance

Prepared by the Department of Planning and Community Development  
November 3, 1995 Revised October 17, 1996 Revised January 7, 1997  
Amended by Ordinance 99-O-2324, effective March 19, 1999

The proposed ordinance would apply to changes in land use within the Commercial-Residential Transition Areas only when at least one of the following situations occurs:

1. The premises has been unoccupied for at least six months, and/or
2. A more intensive land use is proposed to occupy the premises.

With respect to the second criterion, the ordinance proposes to address the issue through three "intensity" tiers. A change from a lower tier to a higher tier would be considered the introduction of a more intensive land use. The tiers are as follows, from lowest to highest:

Tier 1: Warehousing, mini-warehouses (personal storage), furniture stores, car sales, and general offices.

Tier 2: Apparel stores, hardware stores, toy stores, discount stores, auto parts stores, general retail stores, medical offices, and health/fitness clubs.

Tier 3: Restaurants, supermarkets, drugstores, convenience markets, and video rental stores.

The above tiers are generally based on the Institute of Transportation Engineers data on trip generation and parking generation. As the uses cited above are not an entirely comprehensive list of possible uses in the commercial zones, the ordinance relies on the judgment of the Director of Community Development to interpret uses and classify based any supporting data, analysis, and the expertise of the City Engineer.

If a proposed use is determined to be a situation as defined above, it would then be required to satisfy two requirements:

1. Satisfy the current parking standards, and
2. Conform to current loading facility standards.

Properties developed since 1989 (establishment of the medical parking standard) will likely comply with current parking standards; however, the current loading standards have only been in effect since 2005.

Beyond the parking and loading requirements, the ordinance also provides some flexibility in applying the standards through the Development Plan Review process. The process provides the applicant and the Planning Commission a means to more specifically tailor the requirements to the unique characteristics of a project. The ordinance provides the Planning Commission discretion to modify the requirements consistent with the findings for approval of a DPR permit. Any adjustment would need to rely on evidence presented to the Planning Commission, such as parking and/or circulation analyses, and information provided through the public hearing process.

#### Notification

As an urgency measure, no public notice was given. However, the ordinance will be published and notice will be given prior to any extension of the ordinance. Pursuant to State law, the current ordinance will be in effect for no more than 45 days. Staff does not anticipate that 45 days will be sufficient to address these issues on a permanent basis. Therefore, staff intends to bring back a proposed extension of the urgency ordinance in November.

#### Environmental Assessment

The interim ordinance was deemed to be categorically exempt as an action authorized by local ordinance to assure the maintenance and protection of the environment and is also exempt because there is no possibility that the ordinance will have an adverse impact on the physical environment. (California Code of Regulations, Title 14, Chapter 3, §15061(b)(3) and §15308).

Alternatives/Options

In addition to the recommended action, the Council may wish to consider the following:

1. Add, delete, and/or amend provisions proposed in the ordinance
2. Reject the proposed urgency interim ordinance and maintain the status quo
3. Direct staff to proceed with a permanent zoning ordinance through the regular public hearing process

*N/A*

---

Finance Approval

Anne Browning McIntosh, AICP

---

Approved By



# **Attachment 1**

## Urgency Interim Ordinance

ORDINANCE NO. 08-O-\_\_\_\_\_

AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS REGARDING THE APPLICABILITY OF PARKING AND LOADING STANDARDS TO CERTAIN NONCONFORMING COMMERCIAL STRUCTURES, AND DECLARING THE URGENCY THEREOF

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. Legislative Findings.

The Planning Commission of the City of Beverly Hills is currently considering a comprehensive update to the City' General Plan. Upon adoption of an updated General Plan, the City will thereafter consider an update to its Planning and Zoning ordinances to ensure consistency with the updated General Plan. One of the many updates that will be addressed is an update of the parking standards that are applied to new uses in nonconforming commercial structures, within the City's existing Commercial-Residential Transition Area, as shown on Exhibit A, attached hereto and incorporated herein by reference.

Presently, deficiencies in the parking and the loading facilities can result from changes in, or introduction of new, businesses in existing nonconforming buildings within the Commercial-Residential Transition Area. These deficiencies in parking, loading, or both, result in the intrusion of parking and other activity associated with commercial uses into nearby

residential areas. Such intrusion negatively impacts the character and enjoyment of these residential areas.

Therefore, it would be highly detrimental to the public welfare if, in the interim time necessary to complete the zoning ordinance update process , projects were established, commenced, or constructed that would have negative impacts in residential areas and evade regulations developed to address these issues in the future.

Section 2. Authority.

Pursuant to Government Code Section 65858, the City Council may adopt as an emergency measure, an interim ordinance that prohibits any uses that may be in conflict with a contemplated zoning proposal which a legislative body, Planning Commission, or Planning Department is considering or studying or intends to study within a reasonable period of time.

Section 3. Urgency Findings.

The City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Interim Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 65858 and take effect immediately upon adoption. As described in Section 1 of this Interim Ordinance, changes in use of nonconforming structures with insufficient parking and loading facilities within the Commercial-Residential Transition Area pose a significant threat to the residential character of residential neighborhoods adjacent to and near these structures. Specifically, the intrusion of commercial parking resulting from lack of sufficient on-site parking and displacement of parking to accommodate loading activities, negatively impacts the neighboring residential areas with respect to parking, noise and

traffic patterns. Additionally, inadequate parking and loading facilities for these structures places an increased burden on adjacent commercial streets and therefore adversely affects nearby commercial uses. The City is updating its General Plan with respect to the types of uses that may be appropriate along the commercial corridors adjacent to residential uses, and thereafter will update its Planning and Zoning ordinances with respect to, among other things, parking and loading standards and requirements and further controls, as deemed necessary, to avoid the harmful effects of intensification of commercial properties without adequate parking and loading facilities. The City Council finds that continued intensification of the Commercial-Residential Transition Area during the City's review and consideration of these issues will further erode the existing character of the City's residential neighborhoods and frustrate the purpose of any regulations ultimately adopted. To ensure that activity within the City's Commercial-Residential Transition Area during this period of study is consistent with the goals and objectives of protecting residential neighborhoods, the City Council finds it necessary to adopt interim regulations that both respect property rights and protect the public health, safety and general welfare. Absent the passage of this Interim Ordinance, inconsistent development within the City's Commercial-Residential Transition Area poses a current and immediate threat to the public health, safety, or general welfare and approval of additional entitlements for development inconsistent with the provisions of this Ordinance would frustrate the City's ability to protect the public health, safety and welfare by minimizing the adverse effects of intensified commercial uses. If this Ordinance does not become effective immediately, but instead becomes effective thirty (30) days after its second reading, there is a risk that further harm will be done to the City's residential neighborhoods and the Commercial-Residential Transition Area before the abovereferenced studies can be completed and any protections recommended by the studies can

be implemented. It is necessary that this Ordinance take effect immediately to prevent such harm to the residential neighborhoods adjacent to and near the City's Commercial-Residential Transition Area. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

Section 4.      Definitions.

For the purposes of this Ordinance, the following words and phrases shall have the meaning set forth below.

4.1      “Commercial-residential transition area” shall mean the area defined by Section 10-3-1951 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code.

4.2      “Intensification of Use” shall mean a change in use where the new use is listed in a higher tier on the list set forth below, than the previous use. Tier 2, for example, is a higher tier than Tier 1.

Tier 1 shall include: warehousing, mini-warehouses, furniture stores, car sales or service, surface parking, storage, general offices, and other similar uses as determined by the Director of Community Development.

Tier 2 shall include: apparel stores, hardware stores, toy stores, discount stores, , general retail stores, medical offices, health/fitness clubs, and other similar uses as determined by the Director of Community Development.

Tier 3 shall include: restaurants, supermarkets, drugstores, convenience markets, video rental stores, and other similar uses as determined by the Director of Community Development.

4.2 “Regular operation” shall mean a permitted or existing nonconforming use that is open for business to the general public during a use’s customary business hours.

Section 5. Nonconforming Uses.

Notwithstanding the provisions of Article 41 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code, if a commercial space or structure located in a commercial-residential transition area has not been in regular operation for a period of at least six (6) months, then any proposed use of the space or structure shall comply with the provisions of Sections 7 and 8 of this Ordinance or shall obtain approval from the Planning Commission pursuant to Section 9 of this Ordinance.

Section 6. Intensification in Use.

Proposals for Intensification of Use, as defined in Section 4 above, of a commercial space or structure located in a commercial-residential transition area shall comply with the provisions of Sections 7 and 8 of this Ordinance or shall obtain Planning Commission approval pursuant to Section 9 of this Ordinance.

In determining the tier in which a specific use belongs, the Director of Community Development may consider all relevant factors including, without limitation, parking demand as indicated in *ITE Parking Generation, 3<sup>rd</sup> Edition*; parking demand as indicated in *ULI*

*Shared Parking, 2<sup>nd</sup> Edition; and/or ITE Trip Generation, 7<sup>th</sup> Edition; vehicle trips generated by the use; the judgment of the City Engineer; and any data or evidence and supporting analysis provided by a registered engineer.*

Section 7. Parking Requirements.

Notwithstanding any provisions of the City of Beverly Hills Municipal Code to the contrary, including specifically Section 10-3-4102 of Chapter 3 of Title 10, if the application of this Section 7 is triggered by Section 5 or Section 6 of this Ordinance, then the proposed use of a nonconforming structure shall meet the parking requirements set forth in Sections 10-3-2729 and 10-3-2730 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code.

Section 8. Loading Facilities.

Notwithstanding any provisions of the City of Beverly Hills Municipal Code to the contrary, if the application of this Section 7 is triggered by Section 5 or Section 6 of this Ordinance, then the proposed use of a nonconforming structure shall meet the loading space requirements set forth in Sections 10-3-2741, 10-3-2742, and 10-3-2743 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code.

Section 9. Planning Commission Authority.

Notwithstanding the provisions of Sections 7 and 8, a project applicant may apply to the Planning Commission for an accommodation to the parking and/or loading standards required by Sections 7 and 8. The application shall be submitted and processed pursuant to the procedures established for the City's Development Plan Review process as set forth in Article

31 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code. The Planning Commission may establish parking requirements that differ from those requirements set forth in Section 10-3-2729 or Section 10-3-2730 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code if, in addition to the Development Plan Review findings of Section 10-3-3104, the Planning Commission determines that the use will generate a need for parking different than the amount or layout of parking required under Section 10-3-2730 or the Commission determines that the parking demand will be met by means other than those means specified in Section 10-3-2730; provided further, that the Planning Commission may not reduce the required parking to less than the amount of parking that can currently be accommodated on the subject site.

The Planning Commission may also establish loading requirements for nonconforming single-occupancy uses that are different than those requirements established in Sections 10-3-2740 through 10-3-2742 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code if the Planning Commission determines that the loading can be accommodated in a manner that achieves the Development Plan Review findings required under Section 10-3-3104 of the Municipal Code.

Section 10. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section

15061(b)(3) of Title 14 of the California Code of Regulations. Further, this Ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for protection of the environment because it will protect residential neighborhoods from impacts associated with intensification of commercial uses, and thus qualifies as a Class 8 exemption pursuant to Section 15308 of Title 14 of the California Code of Regulations.

Section 11.    Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be remain in full force and effect.

Section 12.    This Ordinance, being an Interim Ordinance adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare, containing a declaration of the facts constituting the urgency, and passed by a minimum four-fifths (4/5) vote of the City Council, shall take effect immediately upon its adoption and shall continue in effect for a period of not longer than forty-five (45) days; provided, however, that after notice pursuant to Section 65090 of the California Government Code and public hearing, the City Council may extend the effectiveness of this Interim Ordinance as provided in Government Code Section 65858.

Section 13.    Publication.

The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days

after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Adopted:

---

BARRY BRUCKER  
Mayor of the City of Beverly Hills,  
California

ATTEST:

---

(SEAL)

BYRON POPE  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



LAURENCE S. WIENER  
City Attorney

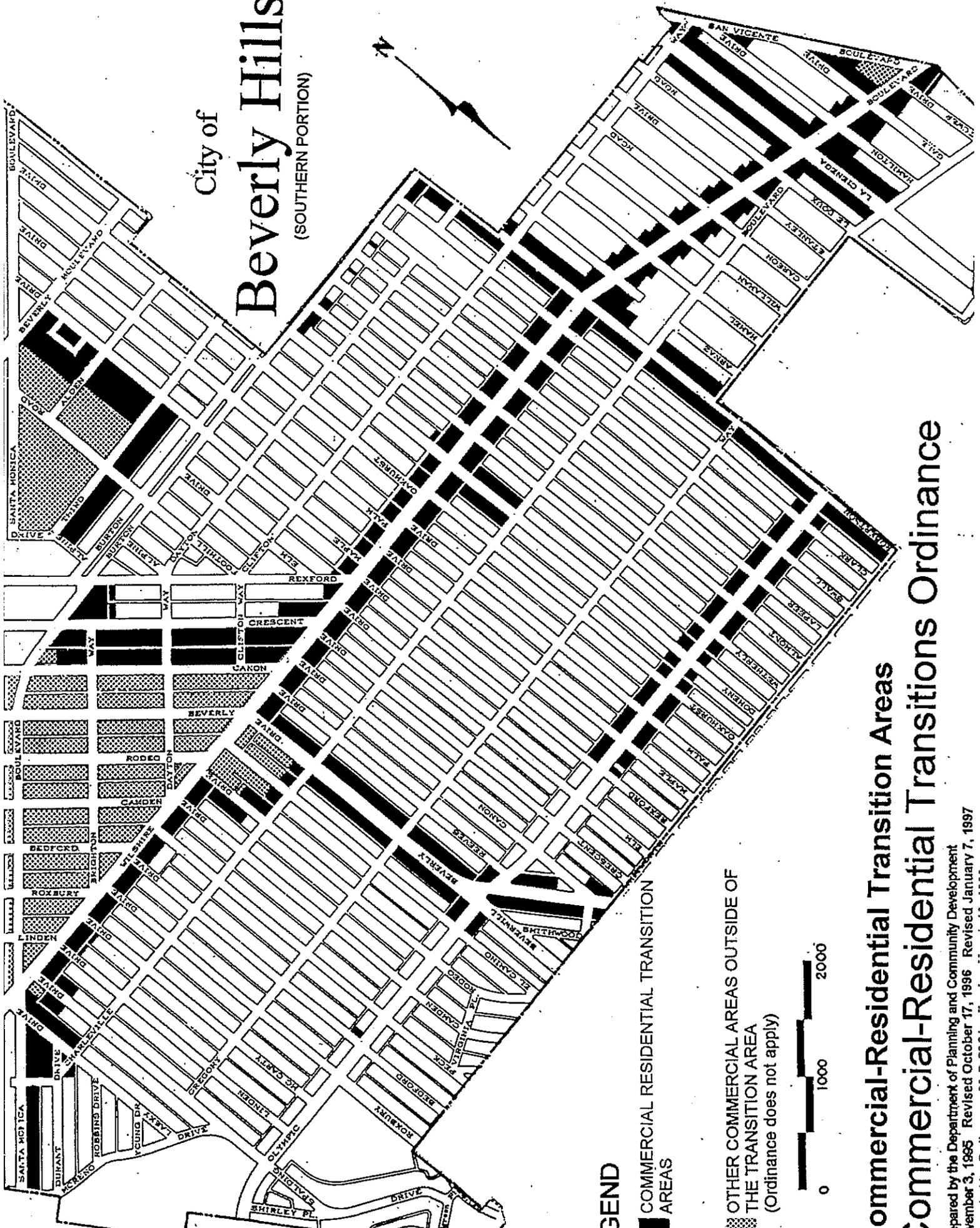
---

RODERICK J. WOOD  
City Manager



ANNE BROWNING MCINTOSH  
Interim Director of Community  
Development

# City of Beverly Hills (SOUTHERN PORTION)



**GEND**

■ COMMERCIAL RESIDENTIAL TRANSITION AREAS

▨ OTHER COMMERCIAL AREAS OUTSIDE OF THE TRANSITION AREA  
(Ordinance does not apply)



## Commercial-Residential Transition Areas Commercial-Residential Transitions Ordinance

Prepared by the Department of Planning and Community Development  
November 3, 1985 Revised October 17, 1996 Revised January 7, 1997