



AGENDA REPORT

Meeting Date: November 5, 2008

Item Number: D-1

To: Honorable Mayor & City Council

From: Jonathan Lait, City Planner
Larry Sakurai, Principal Planner

Subject: AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS REGARDING THE APPLICABILITY OF PARKING AND LOADING STANDARDS TO CERTAIN NONCONFORMING COMMERCIAL STRUCTURES LOCATED IN THE C-3T-2 ZONE ON OLYMPIC BOULEVARD BETWEEN REXFORD DRIVE AND ROBERTSON BOULEVARD, AND DECLARING THE URGENCY THEREOF

Attachments:

1. Urgency Ordinance
2. Informational Notes from the October 15 City Council/Planning Commission Liaison Meeting
3. October 7 Agenda Report
4. Courtesy Notice

RECOMMENDATION

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

BACKGROUND

On October 7, the City Council considered a staff-initiated urgency ordinance. The intent of the ordinance was to balance the adaptive reuse of existing commercial buildings with the need to protect residential neighborhoods from commercial intrusions. The City Council received public testimony from the business community, which objected to the broad scope of the ordinance and limited public notice, and questioned whether the urgency ordinance was the appropriate mechanism to address the concerns.

The City Council continued the public hearing and directed staff to meet with the Chamber of Commerce and to schedule a City Council and Planning Commission Liaison Committee meeting; the later was held October 15. Staff met with the Chamber of Commerce's Government Affairs Committee on October 29. The Committee expressed concerns regarding the proposed regulations and indicated that it would suggest other possible options at the November 5 meeting.

Following the City Council meeting, staff has had an opportunity to further refine the ordinance. The ordinance attached to this report addresses many concerns that were raised at the first hearing and is strategically focused on specific areas of the City that are believed to be at greatest risk from the threat of commercial intrusions into residential areas and quality of life disruptions.

DISCUSSION

The purpose of the urgency ordinance is to immediately establish safeguards to protect residential neighborhoods from commercial uses that do not provide adequate on-site parking and loading facilities. This typically occurs when new, higher intensity land uses are introduced into buildings that previously contained lower intensity land uses and limited on-site parking resources. The problem is compounded by two sections of the City's Zoning Code that relate to parking standards and how the City regulates non-conforming uses and buildings.

Zoning Code Amendments Needed

The City's Zoning Code has not been comprehensively updated in decades. As a result, some of its provisions are at odds with current policy objectives. One of these objectives is that commercial land uses provide adequate parking to meet its anticipated employee and customer parking needs. On-site parking ensures patrons are not encroaching into residential streets or circling the block several times looking for limited on-street parking spaces.

The City's parking regulations chapter inappropriately treats disparate land uses the same in terms of how much parking may be required.

<i>Land Use</i>	<i>Parking Requirement</i>	<i>ITE Trip Rates*</i>
Home Improvement Store	1 space/350 sq. ft.	29.80
Automobile Service Center	1 space/350 sq. ft.	15.86
General Office	1 space/350 sq. ft.	11.01
Discount Retailer	1 space/350 sq. ft.	49.21
<p>* The Institute of Transportation Engineers (ITE) compiles empirical studies nationwide into a publication called <i>Trip Generation</i>. ITE's publications are an industrial standard, widely utilized by transportation professionals. The rates reflect one day's volume per 1,000 sq. ft. of floor area.</p>		

As illustrated in the above chart, a discount retailer generates substantially more trips and, therefore, has the potential to cause more traffic impact and require significantly more on-site parking than other uses shown in the chart. However, today's Code treats all of these land uses

the same and does not require additional parking when changing from a lower intensity land use (automobile service center) to a higher intensity land use (discount retailer). Moreover, the City is precluded in some instances from requiring additional on-site parking to meet the anticipated need due to another section of the code concerning legal nonconforming buildings and uses.

The nonconforming chapter of the Zoning Code appropriately allows for the continued use and reuse of existing buildings even though the structure may not meet all of today's zoning standards, such as setbacks, building height, or even the type of land uses permitted in the district. In Beverly Hills, the nonconformity can be maintained in perpetuity, whether or not the structure is in continuous use. In many other communities, the legal nonconforming status a structure is lost if it is vacant for an extended period of time.

In many other communities, reuse of buildings with non-conforming parking is generally permitted if additional parking is provided to meet the higher intensity use. The City of Beverly Hills has a similar provision when, for example, changing from a retail use to a restaurant. However, as illustrated in the chart above, the City also has a very broad category of commercial-related land uses that are currently grouped together and all have the same parking requirement. This allows an automobile service center to be replaced with a discount retailer, even though it is known to generate higher parking demands and even when there is insufficient on-site parking to accommodate the use. Moreover, the changes in land use described in this report do not require any discretionary review. Without discretionary review, the City is unable to require additional on-site parking.

One recent case acted on by the Planning Commission involved the conversion an automobile repair facility to a Staples office supply store. The project was presented to the Planning Commission because the applicant sought approval of an above grade parking structure; which required discretionary approval. The application was denied and no appeal filed. However, the conversion from auto to retail could occur today by simply eliminating the request for the parking structure. Today, a retail store could be established on the property through an administrative process (issuance of building permits) with a little or no increase in the number of on-site parking spaces.

Impacts to Residential Neighborhoods and Businesses Identified

As newer businesses occupy existing development with outdated parking facilities, the community often experiences the excess parking demand that the subject sites cannot accommodate. As a result, patrons and employees frequently park in the adjacent residential neighborhoods, whose street parking is already needed for the residents in the neighborhood. The neighborhood then sees activity that is not residential in character. Permit parking zones address the issue to some degree, but instituting parking zones and amending street parking restrictions is typically a cumbersome process that attempts to address issues that were not created by the neighborhood.

Most of the commercial development adjacent to residential neighborhoods was developed under an older loading standard, which often does not adequately address commercial deliveries. This means that commercial vehicles often park on the streets while making deliveries, and during peak delivery times, can utilize a considerable amount street parking. To some degree, the City's

commercial-residential transition standards control deliveries through prohibitions on deliveries during nighttime hours in areas next to residential areas. However, this means that deliveries can pose an impediment to traffic during the daytime when deliveries are allowed and become a greater nuisance to the neighborhood during the day.

Proposed Ordinance Protects Residential Neighborhoods, Provides Opportunity for Further Analysis

The purpose of the proposed ordinance is to safeguard residential neighborhoods while the City develops more comprehensive strategies to address this issue. Use of nonconforming sites would continue to be permitted under the ordinance, but the standards of the ordinance would provide the City with the means to balance commercial interests with concerns of residential impact in light of pending development activity, and to require sufficient parking for new uses.

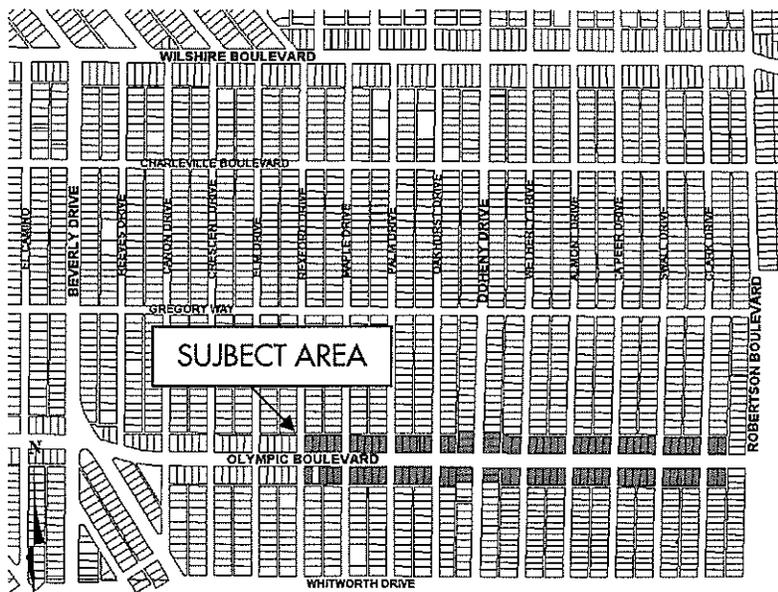
Need for Urgency Ordinance

There are at least two projects located on Olympic Boulevard that are proposed to be redeveloped. Both involve replacing a former, abandoned automobile sales / service use with higher intensity, retail land uses. Both have inadequate parking and loading facilities. Both are adjacent to residential neighborhoods. In the absence of the ordinance, both may be processed administratively. Other similar changes of use can occur where older automobile-oriented uses and vacancies exist. As a result, the neighboring residential areas can be impacted by spillover commercial parking demand competing with residents for scarce on-street parking resources.

Interim Ordinance Applicability and Requirements

As a result of testimony at the October 7 hearing and direction provided by the City Council, staff recommends changes to the ordinance as originally drafted. The changes have been incorporated into the revised ordinance, which is attached to this report. The changes include:

- A reduction in the scope of the area affected by the ordinance to the Olympic Boulevard corridor, where the issue is most evident. Both of the imminent cases described above are located in this motorist-oriented commercial strip.
- If a commercial structure in the affected area has not been in use for longer than 12 months, it would then be required to meet current parking and loading standards. This is an expansion from the six months previously proposed, due to marketing, leasing, and tenant



improvement considerations.

- The ordinance employs a three-tier use classification system as a means to determine when a use is being intensified. General office was moved from the lowest tier to the middle tier of intensity, in response to concerns regarding the ability of promoting pedestrian-oriented uses. The middle tier also includes most retail uses.
- The ordinance now specifically states that it applies to changes in uses that were not established as of November 5. Cases would be vested if, 1) the subject space or structure was in use as of November 5, or 2) a certificate of occupancy/tenancy was obtained prior to November 5, or 3) the subject space or structure was under construction with a valid building permit as of November 5.

As before, any project that is subject to the ordinance would be required to meet current parking and loading standards, but the ordinance also provides an applicant with the option of seeking Planning Commission approval if the proposal cannot meet these standards. Through this process, the Commission could explore alternatives to addressing parking and loading issues on a project-by-project basis.

City Council/Planning Commission Liaison Committee Meeting

On October 15, Mayor Brucker and Council Member Briskman met with Planning Commissioners Furie and Reims to discuss the ordinance and the issues surrounding the ordinance. Staff explained the recommended changes to the proposed regulations. The discussion focused on the need for the ordinance, and resulted in a change in the scope of applicability of the ordinance, and a summary of the discussion is attached hereto.

Next Steps

Pursuant to the California Government Code, the proposed urgency ordinance would be valid for only 45 days. If adopted, an extension beyond 45 days would be required after conducting a public hearing. This would be presented to the City Council on December 16, 2008 and the extension would extend the ordinance through November 3, 2009 (ten months and 15 days). An additional extension of up to one year could be granted before November 3, 2009.

Staff anticipates returning with a recommendation for appropriate permanent regulations prior to expiration of the urgency ordinance, if adopted.

Notification

A courtesy notice was sent to the Chamber of Commerce, community groups, and neighborhood organizations on October 28, 2008. A copy of the notice is attached.

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).

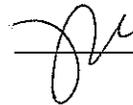
Alternatives/Options

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

FISCAL IMPACT

No direct fiscal impact is anticipated.

 Jonathan Lait, AICP

Approved By



ATTACHMENTS



URGENCY ORDINANCE

URGENCY ORDINANCE
OLYMPIIC NONCONFORMING STRUCTURES

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 IN THE C-3T-2 ZONE ON OLYMPIC BOULEVARD BETWEEN REXFORD DRIVE AND ROBERTSON BOULEVARD, 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 on Olympic Boulevard, 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 along Olympic Boulevard. 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 along Olympic Boulevard 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 area along Olympic Boulevard 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 subject 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 subject Commercial-Residential Transition Area along Olympic Boulevard 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 subject Commercial-

Residential Transition Area before the above referenced 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 along Olympic Boulevard. 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 “Olympic Commercial-Residential Transition Area” shall mean the area shown in Exhibit A of this ordinance.

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 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, general offices, 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 the Olympic Commercial-Residential Transition Area has not been in regular operation for a period of at least twelve (12) 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 the Olympic 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, 3rd Edition*; parking demand as indicated in *ULI Shared Parking, 2nd Edition*; and/or vehicle trips generated by the use as projected using the *ITE*

Trip Generation, 7th Edition; 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 8 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 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. This ordinance shall not apply to uses in regular operation on November 5, 2008. This ordinance shall not apply to businesses that received a certificate of tenancy or certificate of occupancy on or before November 5, 2008. The provisions of this ordinance shall not apply to structures and tenant space improvements under construction on November 5, 2008 with a valid building permit.

Section 11. 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 12. 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 13. 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 14. 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:

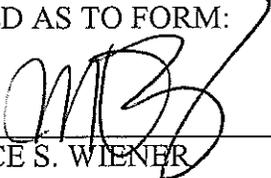
BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:

_____ (SEAL)

BYRON POPE
City Clerk

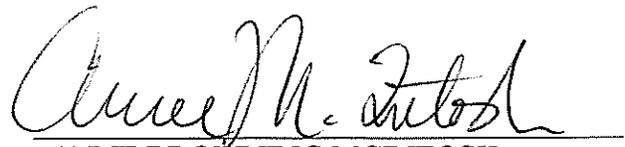
APPROVED AS TO FORM:



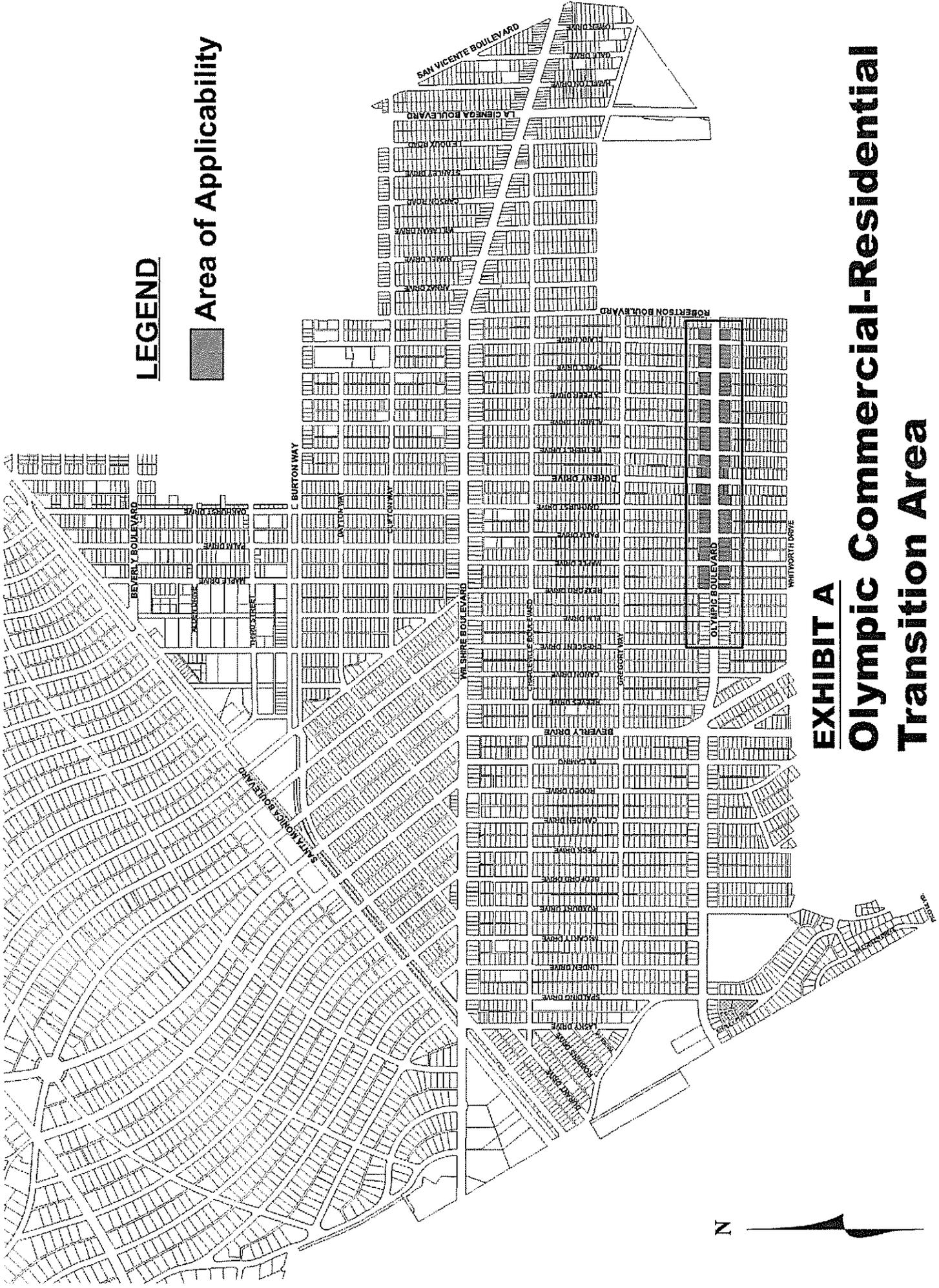
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

A handwritten signature in black ink, reading "Anne M. McIntosh". The signature is written in a cursive style with a horizontal line underneath it.

ANNE BROWNING MCINTOSH
Interim Director of Community
Development



LEGEND

■ Area of Applicability

EXHIBIT A
Olympic Commercial-Residential
Transition Area





**DRAFT MEETING NOTES
CITY COUNCIL/PLANNING COMMISSION LIAISON MEETING
OCTOBER 15, 2008**

**URGENCY ORDINANCE
OLYMPIIC NONCONFORMING STRUCTURES**

Draft Minutes

City Council/Planning Commission Liaison Meeting

October 15, 2008

12:30 p.m.

Executive Conference Room A, City Hall

URGENCY ORDINANCE ON NONCONFORMING USES IN COMMERCIAL CORRIDORS

Attendees:

Barry Brucker, Mayor
Linda Briskman, Councilmember
Noah Furie, Chairman, Planning
Commission
Kathy Reims, Vice Chair, Planning
Commission

Roderick J. Wood, City Manager
Katie Lichtig, Assistant City Manager
Anne Browning-McIntosh, Acting
Community Development Director
Jonathan Lait, City Planner
Larry Sakurai, Principal Planner

Staff provided a brief presentation on the nonconforming use issue addressed by the proposed urgency ordinance. The discussion included two imminent cases which could be addressed by the ordinance, located at 8955 Olympic Boulevard and 9231 Olympic Boulevard. In absence of the ordinance, the two cases could introduce parking and loading impacts to the vicinity of the sites. The proposed regulations would impose current parking and loading standards to the projects and provide a means for the Planning Commission to address these issues where the standards cannot be met. Modifications to the proposed ordinance were suggested, including reducing the area of its applicability to Olympic Boulevard, extending the period of non-use (triggers applicability) from six months to 12 months, and adjustment to standards determining intensification ("tiers").

With respect to concerns raised during the October 7 hearing that the proposed regulations would place unfair financial burdens on existing development, it was noted that the proposed regulations were a means to encourage business practices of the highest order, providing a way to assure that parking and loading issues associated with new uses would be compatible to an area. The ordinance proactively addresses community concerns without prohibiting use of the subject properties.

It was suggested that the regulations be in place for a period of only six months; however, a longer time frame is needed to finalize General Plan policies and institute changes to the Zoning Code. Therefore, a longer effective period is needed for the interim measures, and the interim measures would ordinarily be replaced by some eventual, permanent form of regulation.

Informational Notes
City Council/Planning Commission Liaison Meeting
Meeting of October 15, 2008

A courtesy notice was to be provided to the Chamber of Commerce and to the community groups and neighborhood associations.



OCTOBER 7 AGENDA REPORT

URGENCY ORDINANCE
OLYMPIIC NONCONFORMING STRUCTURES



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

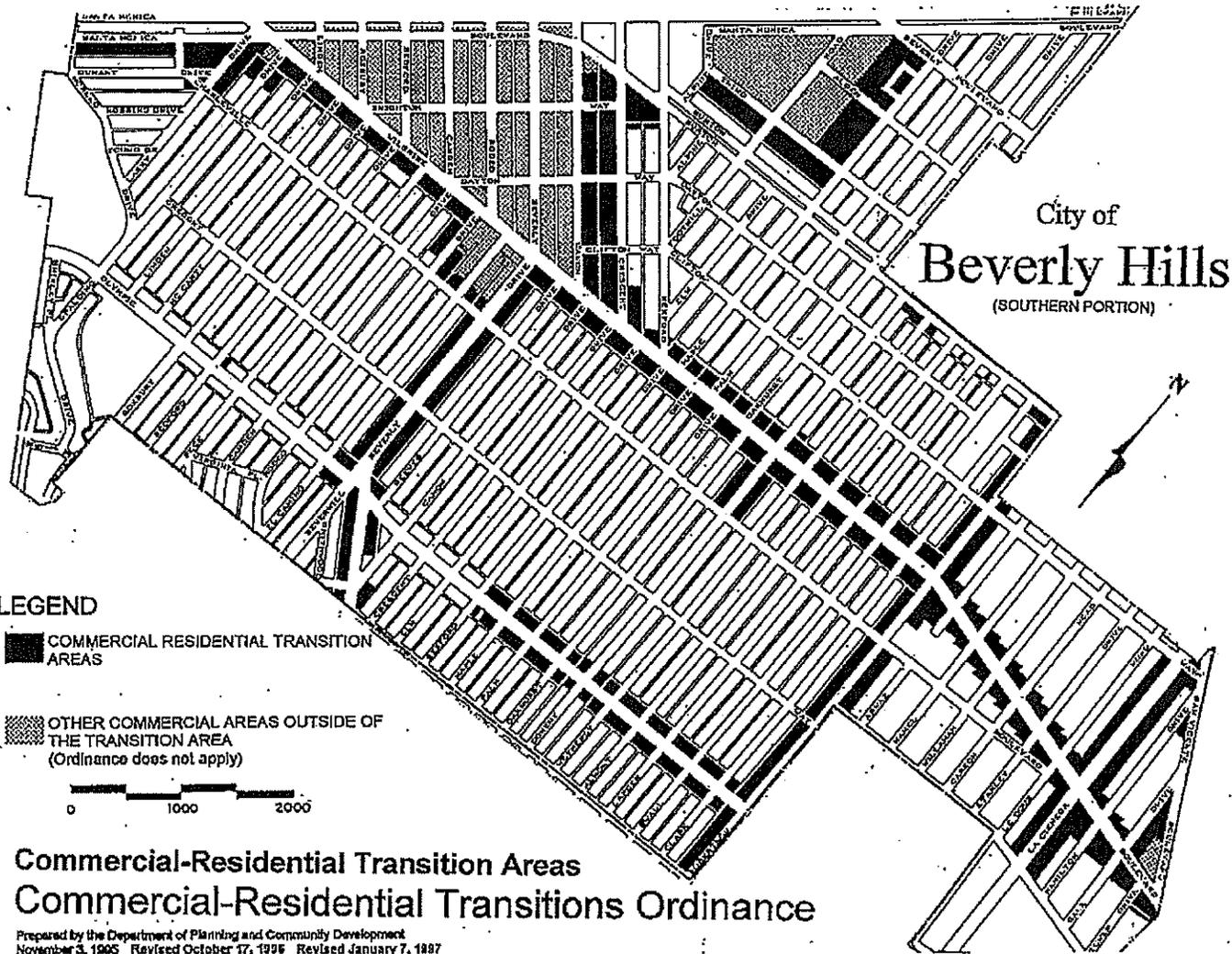
Section 65858 of the California Government Code allows a municipality to adopt an interim ordinance as an urgency measure prohibiting uses in conflict with a contemplated general plan, specific plan, or zoning proposal. In this case the City is considering a general plan update that seeks to protect 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





COURTESY NOTICE

URGENCY ORDINANCE
OLYMPIIC NONCONFORMING STRUCTURES

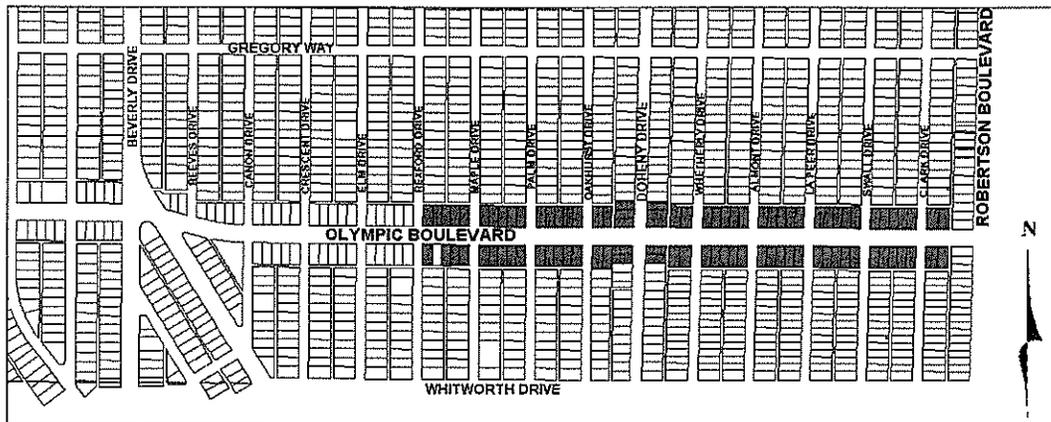


ANNOUNCEMENT

City Council Public Hearing

Urgency Ordinance: Nonconforming Commercial Uses Along Olympic Boulevard

On *Wednesday, November 5, 2008*, the City Council will consider an urgency ordinance that will apply to certain changes of use in existing nonconforming buildings* along Olympic Boulevard. If adopted, the ordinance would require some new businesses in older buildings to meet the City's current parking and loading standards. When a business cannot easily meet current standards, the applicant could seek accommodation through a Planning Commission public hearing process. The City Council could modify the proposed ordinance prior to adoption, or reject it in its entirety. The ordinance would take effect immediately upon adoption, and would remain in effect for only 45 days without further extension.



Affected Area

The City Council meeting will be held in the City Council Chambers at City Hall, 455 N. Rexford Drive, Beverly Hills, California 90210. The meeting will begin at 7:00 p.m.

For further information, please contact Larry Sakurai by email (LSakurai@beverlyhills.org), at 310.285.1123, or ask for him at the City's Permit Center at City Hall.

* Nonconforming buildings are buildings that do not conform to current zoning standards. In particular, the ordinance would apply to commercial properties that do not meet current parking and loading facility standards.