



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: November 17, 2009
To: Honorable Mayor & City Council
From: Jonathan Lait, AICP, City Planner
Michele McGrath, Senior Planner
Subject: Consideration of Changes to the General Plan and Municipal Code to Prohibit or Restrict Commercial Common Interest Development (CID) in the City

INTRODUCTION

At its June 16, 2009 meeting, the City Council directed staff to initiate a general plan amendment process to prohibit common interest subdivision in the City's commercial districts until the issue can be more adequately addressed as part of Step Two of the ongoing General Plan Update. The Planning Commission held two public hearings resulting in direction to staff to prepare draft General Plan language that would allow commercial CID with restrictions, so long as a public benefit is provided. The Planning Commission further directed preparation of a draft amendment to the Municipal Code regulating commercial CID. The Planning Commission's direction is informed by significant staff work that was prepared in response to Commission inquiries at public hearings. Based in part on this information and public testimony at the Planning Commission hearings, the Planning Commission direction is not consistent with the City Council's previous direction. Prior to initiating General Plan and Municipal Code amendments, staff is seeking City Council direction to proceed with the Planning Commission recommendation or to continue as previously directed by the City Council.

It is staff's intention to bring forward a General Plan Amendment regarding commercial CID on the same schedule as review of Step One of the General

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Plan Update, anticipated to be approved early next year. This will allow the City to consolidate the public notice of these General Plan Amendments and to use only one of the four general plan amendments that a city is allowed to adopt each year.

Staff is specifically seeking direction regarding:

- Returning to the City Council in December, 2009, with a General Plan Amendment prohibiting or restricting commercial CID;
- Drafting a Municipal Code amendment regulating commercial CID if the City Council concurs with the Planning Commission's approach to restrict rather than prohibit commercial CID.

BACKGROUND

The City Council's June, 2009 Study Session discussion of commercial CID was in response to concerns that commercial CID could limit opportunities to attract large tenants, present constraints in later improvement of such properties and reduce the City's tax base. On July 23, 2009, the Planning Commission took public testimony regarding the regulation of commercial CID and requested additional information from staff. On November 3, 2009, staff provided additional information to the Planning Commission which heard public testimony, discussed the issue and provided direction to staff.

DISCUSSION

At its November 3, 2009 meeting, the Planning Commission reviewed commercial CID. The staff report for that meeting (attached) maintained that allowing commercial CID could result in the loss of flexibility in the City's relatively small commercial areas (8.9 percent of total land area) with larger commercial space becoming unavailable to the types of business tenants the City wishes to attract and the potential loss of redevelopment opportunities for the City's commercial buildings. In addition, there could be the loss of business tax revenue to the City because commercial units that are owned rather than leased will result in the loss of business taxes from commercial leasing.

The Commission did not find compelling the arguments supporting a prohibition of commercial CID* and expressed concern that Step Two of the General Plan Update was still at least a couple of years away from completion. As a result, the Commission directed staff to return with a General Plan Amendment and comprehensive amendments to the City's existing CID ordinance. These amendments would require a commercial CID applicant to provide a public benefit (financial or other) to the City and explore opportunities to impose

* Staff recommended prohibition with the exception of historic buildings and mixed-use projects already approved with commercial CID such as the Montage and other projects.

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requirements regarding the following: flexibility in ownership area; meaningful upgrades to building systems, façade and infrastructure (i.e., technological upgrades); minimum and maximum building and unit sizes for commercial CID, location of commercial CID within the City and compatibility of uses within commercial CID, among other issues.

Planning Commissioners also discussed requiring a finding for each commercial CID that it would cause no negative fiscal impact to the City. Requests for a commercial CID would be evaluated by the Planning Commission, but ultimately approved by the City Council for its consideration of project public benefits.

General Plan Amendment

Following are examples of General Plan Amendment language with the final language to be determined by the City Council.

General Plan language pursuant to City Council direction:

LU 1.2 Commercial Common Interest Development. Prohibit common interest development on commercially zoned properties.

General Plan language pursuant to Planning Commission direction:

LU 1.2 Commercial Common Interest Development. Restrict common interest development on commercially zoned properties unless appropriate public benefits are provided. Consider incentives to allow existing commercial buildings listed on the California Register of Historic Resources to be converted to common interest developments.

Both examples above would be consistent with the current General Plan and the draft General Plan Update.

FISCAL IMPACT

Staff resources are available to work on policy projects such as the subject amendment. It is estimated that staff has spent approximately 180 hours to date and that an additional 90 hours would be required to implement the Planning Commission's recommendation. Implementing a prohibition of commercial CID would require considerably less staff time. While there is no direct financial impact to the City, the time spent on the subject project will defer completion of other priority projects previously directed to staff by the City Council; specifically, continued work on the subject commercial CID ordinance will forestall completion of the Hillside/Trousdale view preservation ordinance and extension of Design Review to the Hillside/Trousdale neighborhoods as previously directed earlier in the year.

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RECOMMENDATION

It is recommended that the City Council direct staff to proceed with a General Plan amendment to either prohibit or restrict commercial CID, as appropriate, and initiate the associated zoning code amendment to implement the General Plan policy.

Susan Healy Keene, AICP

Approved By





STAFF REPORT
CITY OF BEVERLY HILLS

For the Planning Commission
Meeting of November 3, 2009

TO: The Planning Commission

FROM: Michele McGrath, Senior Planner

SUBJECT: **General Plan Amendment and Zoning Code Amendment – Commercial Common Interest Developments (CID):** The Planning Commission will consider adding a policy to the General Plan and a Code amendment that would prohibit nonresidential common interest subdivisions (e.g. commercial condominiums and stock cooperatives).

EXECUTIVE SUMMARY

On July 23, 2009, the Planning Commission took public testimony regarding the regulation of commercial common interest developments (CID) and requested additional information. This report provides that information as well as additional context for the Planning Commission to discuss commercial CID with the goal of providing a recommendation to the City Council. This report will show that allowing commercial CID could result in the loss of flexibility in the City's relatively small commercial areas (8.9 percent of total land area) with larger commercial space becoming unavailable to the types of business tenants the City wishes to attract and the potential loss of redevelopment opportunities for the City's commercial buildings. In addition to this possible future impact, there could be the loss of business tax revenue resulting from conversion of existing buildings to commercial CID. Staff recommends the Planning Commission direct staff to prepare a resolution recommending that the City Council amend the General Plan to prohibit commercial common interest developments and to prepare a draft ordinance amending the Beverly Hills Municipal Code to prohibit commercial CID.

BACKGROUND

At its June 16, 2009 meeting, the City Council directed staff to initiate a general plan amendment process to prohibit common interest subdivision in the City's commercial districts until such time as the issues can be adequately addressed as part of Step Two of the ongoing General Plan Update (Attachment 1). The direction was in response to concerns that

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commercial common interest developments (CIDs) could limit opportunities to attract large tenants, present constraints in later improvement of such properties and reduce the City's tax base. On July 23, 2009, the Planning Commission took public testimony regarding the regulation of commercial CID and discussed or had questions about the following issues: how other local governments regulate commercial CID including operational issues such as maintenance, fiscal implications for the City of allowing commercial CID, allowing commercial CID with limitations and whether allowing commercial CID prevents future commercial redevelopment. The public speakers' comments are summarized in the draft Planning Commission minutes (Attachment 2). On October 28, 2009, attorney Murray Fischer, representing BHP Holdings, provided information for the Planning Commission's review. That information is separately bound and listed as Attachment 11 to this report. Staff is in the process of reviewing the information and will be prepared to discuss it at the Planning Commission meeting.

DISCUSSION

The issues of concern to the Planning Commission are discussed below as responses to five questions that summarize the discussion at the July 23, 2009 Planning Commission meeting:

1. Is Beverly Hills' proposal to prohibit or limit commercial CID unusual as compared to the practices of other local governments?
2. Will allowing commercial CID limit the City's ability to attract larger tenants and/or desirable businesses; does allowing commercial CID make it more difficult to redevelop buildings over time?
3. Does commercial CID result in diminished maintenance of buildings over time?
4. Is it difficult for a business owner to expand a business within a commercial CID?
5. Would allowing commercial CID have a positive or negative fiscal impact on the City? Could such developments be taxed, pay a fee or enter into a development agreement to ensure no negative fiscal impact to the City?

#1. Is Beverly Hills' proposal to prohibit or limit commercial CID unusual as compared to the practices of other local governments?

Staff has conducted extensive research of other cities' practices regarding commercial CID including internet research, review of other cities' ordinances, request and receipt of a research report from the Planning Advisory Service of the American Planning Association

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and telephone calls to other cities and real estate professionals. Research confirms that commercial CID is a more recent development type for many California cities. While commercial CID has existed in some cities (mostly in the east) for many years, it appears to have become more widely used beginning in 2005, coinciding with the upturn in real estate values. A number of real estate experts attributed the trend at that time to low interest rates for acquisition financing and increasing rents making owner-occupied space more financially attractive. Although the financing situation has changed, there still appears to be a market for this type of development, especially for smaller businesses that would like to build equity, have cost stability and customize office space. As a result, a number of cities have adopted regulations specifically addressing commercial CID.

Other Cities' Ordinances

Staff has found that no city surveyed prohibits commercial CID outright. Most cities allow commercial CID under the same regulations applicable to residential CID. In California these regulations are under the Subdivision Map Act. These cities would include Beverly Hills (Attachment 3) and all of the other Westside Cities as well as Los Angeles, San Diego and San Francisco. Some cities have separate regulations regarding commercial CID in recognition that commercial CID differs from residential CID and that separate regulations allow cities to adopt standards that will protect both the community and the purchasers of commercial CID units. These are generally straightforward ordinances that require compliance with subdivision and zoning regulations, a building report, notice to tenants as well as provisions for landscaping, utilities and utility metering, parking, refuse, and maintenance/refurbishing including cash reserve requirements. Such ordinances may also include a requirement that the Codes, Covenants and Restrictions (CC&Rs) for each commercial CID shall be approved by the City and that certain requirements must be included in the CC&Rs. Cities with such ordinances include Pleasant Hill, San Dimas and Livermore (a copy of the City of Pleasant Hill ordinance is included as an example – Attachment 4). Some cities require proposed commercial CID projects to go through an additional discretionary permit process to ensure compatibility with adjacent development or within the development itself: The City of Rancho Santa Margarita requires a "Declaration of Use Restrictions" reviewed by the Planning Director to ensure that only uses deemed compatible within the same building will be allowed and that there is adequate parking for all uses on the site (Attachment 4). The City of San Jose has additional restrictions based on concerns about the impact of commercial CID on the City's economy.

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COMMERCIAL CID: Regulation in California Cities

City	Commercial CID Subject to State/City Subdivision Regulations	Separate Commercial CID Ordinance	Other Provisions Apply to Commercial CID
<i>Local</i>			
Beverly Hills	X		
Culver City	X		
Los Angeles	X		
Malibu	X		
Santa Monica	X		
West Hollywood	X		
<i>Other Cities in California</i>			
Costa Mesa	X	X (2007)	Commercial CID restricted in urban plan areas
Livermore	X	X (2003)	
Pleasant Hill	X	X (2007)	
Rancho Santa Margarita	X	X (2007)	"Declaration of Use Restrictions" required
San Diego	X		
San Dimas	X	X (2006)	Found the conversion of multi-tenant nonresidential buildings into smaller ownership units beneficial to encourage property improvements and to allow ownership opportunities for smaller businesses
San Francisco	X		
San Jose	X	X (2006)	Special Use Permit required; Restrictions on CID size in certain areas; must make a finding that the proposed CID will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development or in the city as a whole.
Winters	X	X (2007)	Separate ordinance; intent is to provide increased options for commercial development and business ownership. Commercial CID is viewed as an economic development tool, particularly for historic structures

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Cities Restricting Commercial CID: San Jose, CA

A few cities have reviewed the issue of regulating commercial CID more critically including the City of San Jose which has a separate discretionary review process (Special Use Permit). This is due to concerns such as long-term maintenance already stated above but additionally because, "...such regulation is necessary to the support of a healthy local economy by preserving opportunities for large-scale commercial and industrial uses to avoid the conversion, fragmentation and diminution of large commercial and industrial buildings and lands within the city." (San Jose Municipal Code Sec. 20.175.010) As a result of this concern, San Jose requires a Special Use Permit for commercial and industrial CID and requires the minimum unit size for non-residential condominiums in its large redevelopment area to be 10,000 square feet in a building that has a minimum of 20,000 square feet. In addition, no Special Use permit may be issued for a commercial or industrial common interest development unless the finding can be made that the proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development or in the city as a whole (see Attachment 5, City of San Jose ordinances and staff reports).

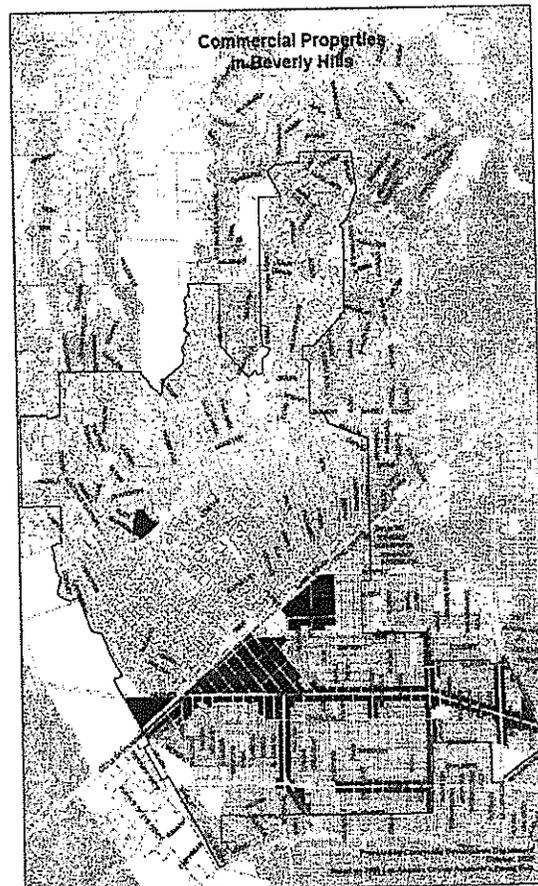
Cities Encouraging Commercial CID

A few cities appear to regard commercial CID as an economic development tool. The cities of San Dimas, CA and Winters, CA have found commercial CID is beneficial to encourage property improvements and to provide increased options for commercial development and business ownership opportunities, particularly for smaller businesses. Winters also views commercial CID as a way to maintain and revitalize historic structures. Proponents of commercial CID have noted that building owners may be more invested in the community and more stable than building tenants and that Beverly Hills, by considering restrictions on commercial CID, could drive away some businesses that are interested in owning the units they occupy.

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Limited Commercial Area in Beverly Hills

Proponents of commercial CID often point to the many cities that have seen successful commercial CID projects such as New York City, Chicago and San Francisco. What becomes clear in reviewing other cities' regulations is that Beverly Hills is unique. Beverly Hills does not have the land area of most of the cities discussed above, does not have redevelopment areas like many of the other cities and has a building stock that is relatively low in height with a Zoning Code that only allows a 45-foot height for commercial buildings. This is important because of changes in how cities receive revenue. Revenue is based more and more on how land is used and developed rather than on property taxes. According to the 2008 Economic Sustainability Report prepared for the City of Beverly Hills (excerpts attached – Attachment 6), the average acre of land in the City generated \$38,000 in revenue in 2006 from the major tax sources - property, sales, business and hotel taxes. Single-family and multi-family residential generated \$8,000 and \$16,000 respectively per acre. Commercial uses generated an average of \$199,000 in revenues per acre. According to the General Plan Update Technical Background Report (October, 2005), only 8.9 percent of Beverly Hills' land area (248.8 acres) is comprised of commercial uses, i.e. the relatively small area zoned for commercial use pays for the bulk of City services and infrastructure. As a comparison, the City of San Jose has approximately 12.6 percent of land (11,150 acres) in its "Urban Service Area" zoned for non-residential (Commercial and industrial) uses and the City of Los Angeles has eight percent of its land or 14,093 acres zoned for industrial use.



Los Angeles: Regulation of Industrial Land

Fiscal and economic realities are a part of land use policy decisions and planners are realizing the importance of planning for both the future land use and fiscal needs of cities. For many cities, it is the industrial land that has been lost because many different land uses are allowed in industrial areas and commercial and residential developers can pay more than industrial users for the land. As a result of

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such concerns, many cities including San Francisco, San Diego, San Jose and Los Angeles have taken steps to protect industrially-zoned land. In December, 2007, the Los Angeles Community Redevelopment Agency and the City of Los Angeles produced a report, "Los Angeles' Industrial Land: Sustaining a Dynamic City Economy" (Attachment 7). The report begins, "[j]ob producing land is a critical component of a healthy and prosperous city." As noted above, only 8 percent of the City of Los Angeles is zoned for industrial use (excluding the Port of Los Angeles and LAX). Los Angeles has identified protection of its dwindling industrial land as crucial to retaining and expanding businesses, attracting new uses that provide job opportunities for the City's residents and maintaining "a healthy jobs/household ratio that supports the General Fund and its capacity to pay for essential services and programs for the City's existing and future population" (page 3 of report). Additional information about how Los Angeles, San Jose and cities across the country have taken steps to protect industrial land/employment areas is included in the Los Angeles report (see "Summary Comparison of Industrial Land Use Studies" in the report).

Beverly Hills: Reduction of Commercial Land

In Beverly Hills, it is the commercial land that fulfills the goals of producing jobs, providing services and supporting the General Fund and its capacity to pay for essential services. The Industrial land in Beverly Hills is part of the commercially-zoned land (the "old industrial area," now the C-5 Commercial Zone). Similar to other cities' experience with industrial land, the commercially-zoned land in Beverly Hills has been reduced over time by approval of housing conversions or approval of new mixed-use developments (9900 Wilshire, 9200 Wilshire, 8601 Wilshire, 8600 Wilshire Boulevard). Such developments can accomplish City goals (building more housing, creating a better jobs/housing balance, encouraging more pedestrian activity); however, it is important to review whether such projects are short-term solutions proposed by developers or represent the long-term interests and policies of the City.

While staff has not found any example of another city prohibiting commercial CID outright, other cities have identified the importance of maintaining job and revenue-producing land, particularly when that area is limited, and have added special review of commercial/industrial CID as well as restrictions on such development. Beverly Hills has unique characteristics that staff concludes warrant regulation of commercial CID.

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#2. Will allowing commercial CID limit the City's ability to attract larger tenants and/or desirable businesses; does allowing commercial CID make it more difficult to redevelop buildings over time.

Parcelization of offices into relatively small, individually-owned spaces presents constraints in assembling large spaces for large enterprises (corporate headquarters, etc.). The City has discussed the goal of attracting and maintaining larger corporate headquarters, particularly key businesses that define Beverly Hills' identity and character such as entertainment, finance, professional and, increasingly, technology firms.

Importance of Large Employers

The 2006 Beverly Hills Economic Profile (available on the City's website at <http://www.beverlyhills.org/civica/filebank/blobdload.asp?BlobID=3270>) states, "[t]he engines of highest growth and spending potential are the larger firms." (page 7) "There are 58 establishments in Beverly Hills with 100 or more employees. Only one percent of businesses are in this largest employer size category; yet, these larger businesses employ nearly one-third of those working in the City." (page 7 & 11 of 2006 Profile) The highest paid workers in Beverly Hills are concentrated in the entertainment, finance and professional industries and are located in the City's office buildings. The economic reports commissioned by the City show that Beverly Hills is uniquely positioned to attract these companies, yet has a shortage of the kind of large, updated Class A office space required by such companies.

There is concern that by allowing commercial CID, the larger commercial office spaces in the City would be fragmented into many smaller spaces restricting the ability to reconstitute the larger spaces once many owners are involved. While the CC&Rs for a commercial CID can include a requirement that an owner must sell if a majority of owners vote to do so, staff has been unable to identify any common interest development, residential or commercial, that has been reconstituted and sold as one building once it has been subdivided.

Office Space Competition

The 2008 Economic Sustainability Report, along with the General Plan Technical Background Report and the 2006 Beverly Hills Economic Profile, clearly show that while Beverly Hills has been able to stay fairly competitive with other markets with regard to the key entertainment, financial and professional businesses, the City's commercial buildings are older and smaller than competitive markets and very little vacant land is available. According to the 2008 Economic Sustainability Background Report, nearly half of the commercial office building square footage in Beverly Hills is more than 40 years old; only 14 percent in Century City and 18 percent in Westwood is that old. Class A office buildings in Beverly Hills are shorter than elsewhere in the market; the median Class A office building is five floors, in Century City it is 17 floors and in Westwood, 14 floors. The average Class

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A building in Beverly Hills has 111,000 square feet, whereas the average is 404,000 in Century City and 162,000 in West Hollywood. Several prominent businesses have relocated out of the City in recent years, including two large entertainment firms, reportedly due to the inability of those businesses to find larger, updated office space to house their expanding operations. This is also a reason for initial location of businesses outside of Beverly Hills. Because of the attractive environment Beverly Hills offers entertainment agencies, one of the entertainment agencies that relocated out of the City attempted to find office space to move back in to the City and was unable to do so.

Size of Commercial Space in Beverly Hills

Figures such as 100,000 to 200,000 square feet of commercial space have been used to define the minimum needs of corporate headquarters for entertainment, financial and professional businesses. The number of businesses of that size the City would actively recruit is limited and the City does not currently have many sites where such buildings could locate; however, a list of the largest office building tenants in the City (Attachment 8) shows that while the seven companies occupying the most commercial floor area in Beverly Hills occupy from 91,040 square feet to 150,000 square feet, the companies that are number 8 through 25 on the list occupy anywhere from 28,584 to 65,001 square feet and these companies include Sony Music Entertainment, Academy of Motion Picture Arts and Sciences, Live Nation, UBS, Morgan Stanley, Agency for the Performing Arts, Wells Fargo Bank National Association, Merrill Lynch, Ervin, Cohen & Jessup, the current Endeavor Agency (now part of WME) space, HKS Architects and Fox Interactive Media (28,584 square feet); in other words, an area as small as 28,000 square feet could accommodate the type of business the City seeks to attract in the future. Several of the businesses listed above are small to mid-size entertainments agencies that could seek to expand in the future and it would be optimal from the city's perspective if these businesses could expand within Beverly Hills.

General Plan Update and Land Use/Development

As discussed above, the City has buildings that are older, shorter and smaller than the adjacent cities that are the City's main competitors for key businesses. Many buildings are not even developed to the potential of the City's current Zoning Code but that Code is considered restrictive by developers who consistently apply for General Plan Amendments and Zoning Code changes to redevelop buildings in a way that is economically viable. The City is in the process of updating its General Plan. Step Two of the process will review the City's land use and development policies. The economic reports referenced above consider one of the City's main challenges in attracting desirable development and businesses to be the City's Zoning Code which restricts commercial buildings to a height of 45 feet and three stories. With the possibility that Step Two of the General Plan Update process could result in some additional flexibility with regard to land use development policy, if important commercial sites are subdivided today, this would preclude the possibility of rehabilita-

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tion/redevelopment of these sites in the future when it may be more attractive to developers to do so.

Once land is subdivided, it is extremely unlikely that the multiple ownership of small units would ever be re-consolidated or sold for redevelopment. This could result in permanent under-use of prime commercial land which could present a long-term obstacle to the economic health and viability of the City, especially given that it is the policy of the City to provide opportunities for large-scale commercial users to locate within the City.

#3. Does commercial CID result in diminished maintenance of buildings over time?

Staff has researched this issue and it is not clear there would be a marked difference in the maintenance of a building that is leased as compared to a commercial CID if appropriate regulations are adopted. While a single owner can more freely overhaul and update building systems to respond to changes in technology and contemporary market demands, there is no regulation other than the dictates of the market to require an owner to do so. With a commercial CID, the CC&Rs can address maintenance issues including ensuring reserves are collected for capital maintenance and replacement. The City can review and approve CC&Rs to ensure maintenance is adequately addressed. While cities such as San Jose have noted concerns about maintenance of older commercial CID buildings based on experience with maintenance issues for older residential condominium buildings, San Jose still allows commercial CID albeit with regulations addressing maintenance. Other cities with commercial CID do not yet appear to be having a major problem with maintenance issues.

It is noted that much commercial CID is relatively new and there may be additional maintenance issues that become apparent over time. It is further noted that, as discussed above, commercial CID may preclude the redevelopment of older buildings, resulting in an aging building stock that will have difficulty meeting the future expectations of business owners without major renovation including structural work. The concern is that a building with multiple owners will have greater difficulty agreeing to such major upgrades.

#4. Is it difficult for a business owner to expand a business within a commercial CID?

The relative ease of business expansion in a leased building versus a commercial CID is unclear. In each instance, a business wishing to expand has obstacles. In a leased building the tenant wishing to expand must wait for a tenant space to become available as lease contracts expire or the tenant may be able to arrange something sooner through an agreeable landlord. Typical office leases are five to ten years with five-year options although many can be longer and retail leases can be as much as twenty years. In a commercial CID one owner must be willing to sell or lease a space to another owner for an owner to expand a business within the building. The CC&Rs for commercial CID can include

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a “First Right of Refusal” provision that allows other owners in the same building the right to buy a unit first when it comes on the market (at market rate). Staff was unable to draw a clear conclusion as to whether commercial CID could prove an obstacle to business expansion within a CID building, other than the conclusion that commercial CID, by essentially removing buildings from future redevelopment consideration, could limit future commercial expansion in the City.

5. Would allowing commercial CID have a positive or negative fiscal impact on the City? Could such developments be taxed, pay a fee or enter into a development agreement to ensure no negative fiscal impact to the City

Importance of Business Taxes/Commercial Property Leasing

As has been discussed, the City has only 8.9 percent of its land zoned for commercial uses. This land, and the buildings and businesses on it, must serve a variety of functions in the City from providing local services to providing a substantial percentage of revenue for the City's General Fund. According to the 2008 Economic Sustainability Background Report, income and revenue generated from commercial land contribute 72 percent of the City's revenues; the bulk of this is business taxes with the tax on commercial leasing making up a significant portion. Commercial leasing alone accounted for approximately 10 percent of the City's General Fund revenue (or 11.55 million) from the four major tax sources in FY 2007. It is important to understand these City financing issues as part of the Planning Commission's discussion of commercial CID because these issues are integrally related to and dependent upon land use policy set by the City Council and related development decisions made by the Planning Commission.

Fiscal Impact of Commercial CID

The City's Administrative Services Department has provided an example of the business taxes that would be received by the City from the commercial leasing of a 60,000 square-foot office building. The same building subdivided into commercial CID would not provide any business tax from commercial leasing unless some of the units were leased by the individual owners. It is staff's understanding that commercial CIDs commonly have at least some units that are leased so it could be assumed that the City would receive some business tax revenue from commercial leasing in a commercial CID.

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Commercial Building - Owner Business Tax Liability		
	Leased Space	Owner Occupied
Building Area sq. ft.	60,450	60,450
Rate per sq. ft.	3.50	-
Monthly Rent	211,575.00	-
Annual Rent	2,538,900.00	-
Triple net charges	888,615.00	-
Gross Rent receipts	3,427,515.00	-
Class F Business Tax	80,546.60	-

Proponents of commercial CID have stated that commercial CIDs increase property values and therefore increase the property tax received by the City. The City's Administrative Services Department has stated that the amount of property tax received is such a small percentage of the building value that the value would have to increase dramatically to make up the business taxes lost with a commercial CID. As an example, it is assumed the 60,450 square foot building used as an example above is valued at \$100 million as a leased building. The property tax would be one percent of the value (\$1 million) and the City would receive 17 percent of that or \$170,000. For that same commercial building as a commercial CID, assuming the City would still receive some commercial leasing tax revenues (assume \$10,546), the building value would have to increase 41 percent to gain the \$70,000 in property tax revenue needed to equal the \$80,546 in commercial leasing tax revenue the building would provide to the City if entirely leased.

Pursuant to a request made by the Planning Commission at the July 23rd Planning Commission meeting, representatives of BHP Holdings, LLC, have provided market studies (Attachment 9) of two existing commercial buildings in Chicago that have been converted to common interest developments (one a vertical subdivision and the other a commercial condominium). BHP is interested in developing a commercial CID in the City and representatives will be present at the meeting. Staff has not peer-reviewed the market studies. Representatives of BHP Holdings have provided additional materials that are separately bound and listed as Attachment 11.

Fees, Taxes, Development Agreements

At the Planning Commission meeting in July, speakers suggested the City could charge a fee, a tax, or give developers the opportunity to enter into a development agreement to ensure the City would not lose revenue by allowing commercial CID. As explained above, Planning staff is concerned that allowing commercial CID could have long-term fiscal impacts for the City, whether or not revenue shortfalls caused by individual commercial CID projects may be remedied through taxes or other means.

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Fees/Taxes

A fee or exaction is usually a direct charge collected on a one-time basis as a condition of project approval. A tax can be collected in the same way as a one-time fee or may be collected on a regular basis such as annually. The City currently has a tax on residential condominium conversions in the one-time amount of \$7,041.00 per unit converted. This tax was adopted by the City Council prior to California Proposition 218 approved in 1996 which would now require a vote to institute such a tax.

Fees/exactions that do not exceed the reasonable cost of providing the regulatory activity or service for which they are charged and which are not levied for general revenue purposes are not taxes regulated by Proposition 218 and do not require a vote. A City may charge an exaction/impact fee if a reasonable nexus between an impact and the fee charged can be shown. There is a nexus if the fee/exaction advances a legitimate City interest and mitigates adverse impacts that would otherwise result from a project. In addition, there must be a rough proportionality between the proposed fee/exaction and the project impacts the fee/exaction is intended to allay. Staff believes it will be difficult to produce a study that will support a fee/exaction for commercial CID. This would mean the City would likely have to charge a tax requiring a vote of the people to recoup revenues lost to the City as a result of commercial CID.

Development Agreement

A development agreement is an agreement between developers/investors in a prospective project and the City that can include such terms as allocation of development costs, vesting of development rights for the project and protecting the developer from future changes in development regulations. In essence it is a mutual contract guaranteeing the City and developer the terms of that agreement for a defined period of time. A term the City has generally requested in past development agreements obligates an applicant to compensate the City for revenues lost by the City as a result of a project approval. The preparation of a development agreement is regulated by State law and may be subject to local procedures and requirements and can only be adopted after public hearings are held by the planning agency (typically the Planning Commission) and the legislative body (the City Council). State law provides that a city "may" enter into a development agreement with any person having a legal or equitable interest in the real property to be the subject of the development agreement. Because of the optional language in the statute, and because development agreements are freely negotiated contracts, development agreements are not typically required by cities or counties but a developer may request one and enter into negotiations with the City. When a project could potentially have some negative impacts on a city and the city is considering requiring a public benefit(s) of the developer to balance the impacts, a development agreement is one way to obtain and ensure the public benefits; however, there

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are other mechanisms available to cities that may be appropriate depending on the nature of the public benefit.

Other Considerations

Allowing Commercial CID with Restrictions

It was suggested by speakers at the July 23rd Planning Commission that commercial CID could be allowed with thresholds such as allowing commercial CID in buildings under a certain size or in certain areas. Such restrictions are intended to address the City's concerns about maintaining flexibility on commercial sites for future development while allowing some ownership opportunities in commercial buildings. For example, the City could determine that commercial buildings under a certain square footage do not lend themselves to the kind of larger, corporate businesses the City desires to attract. The City could also determine that certain areas of the City are not as attractive to such businesses and are appropriate to smaller businesses that wish to pursue ownership opportunities. At the Planning Commission meeting and in conversations with local real estate and development professionals it has been suggested that commercial CID could be allowed in all commercial areas of the City except for the following areas: Business Triangle, Wilshire Boulevard and the C-5 Zone since these areas have been and would likely continue to be the prime areas for the location of the types of larger businesses the City wishes to attract.

Staff does not support this approach to allowing limited commercial CID because of the overarching concern that the City would be further limiting the flexibility and redevelopment potential of the City's small commercial/industrial area, particularly with Step Two of the General Plan Update regarding land use policy yet to occur. Buildings may be underdeveloped, even under the current Zoning Code, and allowing commercial CID on any site effectively "locks in" such a site at its current height, square footage and configuration, thereby reducing opportunities for future development. Similarly, determining now that certain areas of the City are more appropriate for commercial CID than other areas removes this decision from the General Plan Update process. For example, the east end of Wilshire Boulevard has been acknowledged as an area requiring more directed land use planning. Staff believes that to make a determination as to whether commercial CID is appropriate as part of a strategy for this area would be more appropriately conducted as part of the General Plan Update process.

Historic Buildings and Mixed-Use Development

Staff has identified two types of development that may be appropriate to consider for commercial CID: historic buildings and mixed-use development.

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In a number of cities commercial CID has been used to subdivide historic buildings. This has been viewed by some cities as a preservation tool because subdivided buildings with multiple owners appear to be less subject to demolition. If the Planning Commission makes a recommendation to prohibit or restrict commercial CID at this time, it may wish to consider making an exception for historic buildings. Historic buildings could be defined as those that appear on the California Register of Historic Resources (CRHR). The CRHR is a California state government program for use by state and local agencies, private groups and citizens to identify, evaluate, register and protect California's historical resources. The Register is considered the authoritative guide to the state's significant historical and archeological resources. The City has 56 sites on the CRHR including the six sites that are on the National Register of Historic Places. Attachment 10 to this report is a table of the 56 sites as listed in the General Plan Update Technical Background Report. Thirteen of the 56 sites on the list are commercial and it would be these sites that would be eligible to apply for commercial CID if structures on the CRHR are exempted from a prohibition on commercial CID.

The City compiled Phase I of an Historic Resources Survey in 1985-86 and Phase II, which updated the previous survey and further evaluated multi-family residences, was prepared in 2004. A 2006 Phase III survey, completed in 2007, again updated the previous surveys and further surveyed the City's commercial area including buildings constructed after 1935 and before 1965. This update shows that 72 additional properties would be considered eligible for the National Register and/or the California Register and seven properties would be eligible for local designation should the City or individual owners wish to pursue such designation. The City Council has not adopted a local list of historic properties. According to the most recently completed Historic Resources Survey Update, the historic surveys are intended to serve as a foundation for future historic resources surveys and as a basis for land use and historic preservation decisions by City officials.

Should the Planning Commission wish to consider a General Plan Amendment prohibiting or restricting commercial CID, staff has suggested language below that would exempt historic buildings from the prohibition. Staff has also suggested language in the proposed Municipal Code amendment that would allow consistency with the General Plan Amendment. The Commission may also wish to discuss additional Municipal Code language regulating uses in the building to ensure compatibility (the Rancho Santa Margarita model) and discuss providing clear guidance as to conditions required in the CC&Rs for an historic commercial CID to ensure maintenance of the historic building and its special features.

Mixed use development is defined in the City's Zoning Code as:

"The development of a site with two (2) or more different land uses, such as, but not limited to, a combination of residential, office or retail uses in a single or physically integrated group of structures or the development of a combination of different land use in a single zone."

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Such developments have been approved in the City and a number of these developments include commercial CID as a means of differentiating residential CID (condominiums) from commercial spaces in the project. For example, the Montage Hotel and residential condominium project includes separate parcels for the residential and commercial components of the project. The City's senior housing development on Crescent Drive similarly includes separate parcels for the ground floor grocery store and the residential senior apartment building above. If the Planning Commission chooses to recommend prohibiting or limiting commercial CID at this time, it may wish to include an exception that would not preclude the City from approving revisions to mixed-use projects already approved or future mixed-use projects that may include commercial CID. Staff has included draft General Plan and Municipal Code language below addressing this issue should the Planning Commission direct wish to review it.

GENERAL PLAN ANALYSIS

The Beverly Hills General Plan is comprised of nine elements, each of which specifically addresses issue areas required by the California Planning and Zoning Law. Development in a City must be consistent with its general plan and planning agencies may periodically revise, as necessary, the general plan. The City is in the process of updating its General Plan. The City Council requested the Planning Commission consider amending the current General Plan to prohibit commercial CID until the City adopts the balance of the General Plan Land Use Element as part of Step Two of the General Plan Update Process.

Neither the current Land Use Element of the General Plan nor Step One of the draft General Plan Update specifically addresses commercial condominium development. The current General Plan and proposed General Plan Update both have as a goal the long-term stability of the City and this goal encompasses the reasons for a proposed General Plan amendment restricting commercial CID:

LU 1 Long-Term Stability. "In general, each of the land use issues is directed toward the enhancement and maintenance of the long-term durability and stability of the community. A plan which would accomplish this must recognize the unique qualities of the community, and with it, the factors which enhance the uniqueness as well as the factors which jeopardize them. Beverly Hills is fortunate in that it is able to serve a variety of residential and commercial demands in a manner and combination which is difficult to duplicate elsewhere in the Los Angeles area. Consequently, as long as Beverly Hills is able to provide an alternative not available elsewhere, it will endure....Aside from the issues of change which face the community as new development occurs and new demands are placed upon the City, *it is equally important to recognize that the process of maintaining the quality of life is a dynamic one. The City's programs must be able to recognize and respond to the problems*

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which typically affect Cities, such as deterioration of its older housing stock, obsolescence or loss of competitive ability of commercial areas, rising costs and overburdened services and facilities, and increased problems of accessibility and parking..." (Land Use Element Page 1, Beverly Hills General Plan)

If the Planning Commission wishes to amend the General Plan to add policy language that would prevent future conversions of existing buildings to commercial CID and prevent approval of new commercial CID, the following General Plan policy language is proposed:

LU 1.2 Commercial Common Interest Development. Prohibit Conversion of commercial space to a common interest development (because of the potential of such conversions to restrict the competitive ability of the City's commercial areas). Consider exempting from this prohibition existing commercial buildings listed on the California Register of Historic Resources, projects proposing revisions to previously approved mixed-use projects, and mixed-use projects approved by the City Council so long as such projects would not have a negative economic impact on the City. (IMP 1.2, 2.1)

This proposed language is consistent with both the current General Plan and the draft General Plan Update. California Planning and Zoning law does not require specific findings for a General Plan amendment other than environmental review and a requirement that the Planning Commission make a written recommendation on the amendment of the General Plan. Staff finds that it can be seen with certainty that there is no possibility the adoption and implementation of this general plan amendment may have a significant effect on the environment.

ZONING ANALYSIS

A common interest development is a form of land subdivision regulated by the California Subdivision Map Act and the Beverly Hills Municipal Code (subdivision regulations and zoning code). Applications for commercial common interest developments must conform to the City's CID ordinance and require Development Plan Review along with approval of a Tentative Tract Map. Should the Planning Commission decide to recommend prohibiting or limiting commercial CID, staff would recommend amending the Municipal Code to restrict commercial CID consistent with amended General Plan language so the City's intent is clear and consistent.

Common Interest Development Ordinance

On March 7, 2006, the City Council adopted Ordinance No. 06-2497, establishing criteria for all common interest development projects. The ordinance applies to both residential and nonresidential (commercial) common interest developments. The City Council has previously approved commercial condominiums for projects requiring legislative changes and which

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had development agreements. The Planning Commission has separately approved Development Plan Review for two commercial CID projects: 8484 Wilshire Boulevard (Flynt building) which approval has expired without being exercised and 8536 Wilshire Boulevard which was approved by the Planning Commission in October, 2008.

Should the Planning Commission wish to amend the Zoning Code with regard to commercial CID, it is proposed that Section 10-2-702 of the Zoning Code be amended as follows:

BHMC 10-2-702: PURPOSE; APPLICABILITY:

A. Purpose: Common interest development projects require special additional regulations because of special problems resulting from the divided ownership of individual units, and the purpose of this article is to provide reasonable standards for the location, design, and development of common interest development projects and the information to be contained in the precise plan of development which shall be filed with the tentative map.

B. Application: Except as otherwise provided in this article, the provisions of this article shall apply to both residential and nonresidential common interest development projects. Nonresidential common interest developments shall be prohibited except for the following: projects proposed in existing buildings listed on an official State or Federal historic structures list, mixed-use projects that include commercial CID and received discretionary approval from the City prior to Date, and mixed-use projects that include commercial CID that are approved by the City Council.

Following are the findings that the Planning Commission must make to approve a proposed amendment to the Zoning Code:

10-3-3908: DECISION OF THE PLANNING COMMISSION:

If, from the facts presented at the public hearing, or by investigation by or at the instance of the planning commission, the planning commission finds that the public interest, health, safety, morals, peace, comfort, convenience, or general welfare requires the reclassification of the property involved or the reclassification of any portion of the property, the planning commission shall so recommend to the council.

PUBLIC NOTICE AND COMMENTS

Notice of the public hearing was published in the June 19, 2009 edition of the *Beverly Hills Courier* and in the June 25, 2009 edition of the *Beverly Hills Weekly*. No correspondence was received in response to the public notice; however, a letter was submitted to the City

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Council for consideration at its June 16 meeting by Allan Abshez on behalf of BHP Holdings, in opposition to the proposed General Plan amendment, and a July 14 "Frequently-Asked-Question Brief" was also submitted on behalf of BHP (both attached). The July 23, 2009 Planning Commission meeting was continued to the meeting of September 22, 2009; then to the meeting of October 22, 2009 and finally to November 3, 2009 while staff assembled responses to the Planning Commission's questions.

RECOMMENDATION

It is recommended the Planning Commission direct staff to prepare a resolution recommending that the City Council amend the General Plan to prohibit commercial common interest developments and to prepare an ordinance amending the Beverly Hills Municipal Code to prohibit commercial CID.

Alternatively, the Planning Commission may direct staff to make no changes to the General Plan or Zoning Code, direct staff to revise the General Plan and/or Zoning Code with language as provided by the Planning Commission, or request additional information.



MICHELE MCGRATH

Attachments:

1. July 23, 2009 staff report to Planning Commission:
 includes June 16, 2009 staff report to City Council (study session) and minutes of same;
 June 15, 2009 letter from Allan Abshez; and, July 14, 2009 FAQ Brief provided by
 commercial CID proponents
2. July 23, 2009 Planning Commission meeting minutes (Draft)
3. City of Beverly Hills CID Ordinance
4. City of Pleasant Hill and City of Rancho Santa Margarita Commercial CID Ordinances
5. City of San Jose Commercial CID Ordinance and Staff Reports
6. Beverly Hills Economic Reports
7. Report: *Los Angeles' Industrial Land: Sustaining a Dynamic City Economy*
 (2007, LACRA & LA City Planning)
8. Beverly Hills Office Building Tenants over 25,000 Square Feet (7/8/09, CBRE)
9. Market Studies from Potential Applicant BHP Holdings, LLC
10. State List of Historic Properties in Beverly Hills
11. Information provided by attorney Murray Fischer representing BHP Holdings: "Commer-
 cial Condominiums 2nd FAQ Brief, November 3, 3009" (bound separately)