



## CITY OF BEVERLY HILLS STAFF REPORT

**Meeting Date:** June 7, 2011  
**To:** Honorable Mayor & City Council  
**From:** Jonathan Lait, AICP, Assistant Director of Community Development  
**Subject:** Request from Councilmember Mirisch to Discussion and Possible Direction to Staff Regarding Changes to Demolition Permit Procedures  
**Attachments:** BHMC Article 42 – Demolition of Structures

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### **INTRODUCTION**

Councilmember Mirisch requested a study session item be placed on the agenda concerning demolition permits and possible amendment to the municipal code to require approval of a replacement project prior to issuance of a demolition permit.

### **BACKGROUND**

Demolition permits are regulated in the zoning code and issued by Community Development. Demolition permits are ministerial actions that require no staff discretion for issuance. Accordingly, demolition permits are not defined as a project under the California Environmental Quality Act and, therefore, no environmental analysis is performed.

Some communities require a replacement project in order to minimize the presence of vacant parcels in neighborhoods. Vacant parcels may detract from the quality and character of established neighborhoods and result in unwanted nuisances. When a replacement project is required, the demolition of the existing structure may then be subject to environment review, if the replacement project requires a discretionary action, such as commission-level design review. In such cases, the removal, loss or partial loss of the existing structure would be evaluated for potential impacts to cultural resources. If it is determined that the loss of the structure results in a significant unavoidable impact to cultural resources, an environmental impact report would be prepared and the ability to demolish the structure allowed only if the decision-making body adopts a statement of overriding considerations.

The City of Beverly Hills allows a demolition permit to be issued without a replacement project, but requires landscaping and fencing to address the potential deleterious impacts associated with having a vacant parcel within a residential neighborhood or

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commercial corridor. The standards related to demolition permits are attached to this report (Attachment 1).

### **DISCUSSION**

Requiring a replacement project prior to demolition is an effective regulation to address concerns related to urban blight and reduce the likelihood of nuisance properties. The city's fencing and landscaping procedures establish another alternative that has worked for this community.

Requiring a replacement project for the sole purpose of subjecting demolition permits to an environmental review process, however, is less effective. While this approach may capture some projects, it would not capture all. New residential development, for instance, in the Hillside, Trousdale, and some Central Area projects would not require discretionary design review or any other discretionary review. Requiring a replacement project for that type of development would not create an opportunity to evaluate the existing structure in an environmental context. And, it may result in minor delays as site preparation could not begin until a demolition permit was issued, which is tied to the building permit. A regulation such as this would only capture projects that are subject to discretionary review. Accordingly, this regulation introduces less predictability into the development process and may give the public a false expectation of the city's intent to evaluate potentially significant cultural resources.

As an alternative to requiring a replacement project for demolition permits, the City Council has previously discussed the possibility of a 40 or 60 day pause in the issuance of a demolition permit for a project that is identified as a potentially significant structure. This discussion was held in the context of the Mills Act ordinance, which is currently being prepared. The concept behind the pause is that the homeowner may then be encouraged to seek a possible buyer for the property that may be interested in restoring or preserving the structure. However, staff does not anticipate that a significant number of property owners would use this demolition permit delay to actively seek alternative buyers and that requirement may generate more frustration than achieve any significant preservation results.

Another alternative could be to require discretionary review of applications for the demolition of structures over a certain age (or other criterion). This approach has more transparency, a defined purpose and a formalized review process. This approach is a more proactive preservation tool. Prior Councils have discussed more proactive preservation alternatives in the past, but action on those policies have been deferred to higher priority work plan items. Additionally, this approach has significant application processing, staff workload and commission case management implications that would need to be studied further if the City Council were interested in pursuing this or a similar type of historic preservation ordinance.

### **FISCAL IMPACT**

The recommendation in this report does not have any significant fiscal or budget impacts, however, direction to proceed may impact progress made on department work plan items that have been adopted as part of the budget and amended from time to time by the City Council.

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**RECOMMENDATION**

It is recommended that that City Council discuss and provide direction to staff, as appropriate.

Susan Healy Keene, AICP, Director

Approved By

A handwritten signature in black ink that reads "Susan Healy Keene". The signature is written in a cursive style with a large initial 'S' and 'K'.

**ATTACHMENT 1:**

**BHMC Article 42 – Demolition of Structures**

## Article 42. Demolition Of Structures

### 10-3-4201: RESTRICTIONS ON DEMOLITION AND REMOVAL OF BUILDINGS:

- A. Except as provided in section 10-3-4202 of this chapter, no permit shall be issued to allow the demolition of a building, or any portion of a building, or the removal of a building or any portion of a building from a site, unless:
1. A building permit is also issued at the same time to authorize construction of a replacement building or to restore a partially demolished building to a habitable condition;
  2. Architectural commission approval has been granted for an alternative use of the property that does not require a building permit; or
  3. A landscaping, fencing and maintenance plan, other than a plan requiring architectural commission approval, in a form acceptable to the director of building and safety has been submitted in accordance with the requirements of this section.
- B. In addition to requirements set forth in subsection A of this section, as a condition of issuance of a permit for the demolition of a building, the applicant shall be required to post a bond in a form and amount satisfactory to the director of building and safety, or other security satisfactory to the director of building and safety, to guarantee:
1. The safe completion of the demolition;
  2. The restoration of the site into a safe condition; and
  3. The provision of landscaping, fencing and maintenance of the property in accordance with the plan described in subsection A3 of this section or, where no plan is required, the provision of landscaping, fencing and maintenance sufficient, in the opinion of the director of building and safety, to maintain and protect the safety, street scape and overall appearance of the site and the areas adjacent to the site.
- C. Any landscaping, fencing and maintenance plan submitted to the city pursuant to subsection A3 of this section shall be approved by the director of building and safety if, in the opinion of the director, the plan is sufficient to maintain and protect the safety, street scape and overall appearance of the site and the areas adjacent to the site. The plan shall include fencing in accordance with and to the extent required under section 10-3-4203 of this article or any successor section. The plan shall further include a provision that requires

the applicant to install the fencing and landscaping within thirty (30) days of completion of the demolition or removal of the building from the site. As a condition of any approval of the plan by the director, the plan must be accompanied by an agreement, approved by the city attorney, wherein the applicant covenants and agrees to landscape, fence and maintain the property in accordance with the plan and the provisions of this code and to provide the security required herein.

- D. As a further condition of issuance of a permit for the demolition of a building or a portion of any building, applicants shall submit to the department of building and safety a color eight inch by ten inch (8" x 10") photograph of the building taken from a perspective and sufficient distance that, in the opinion of the director of building and safety, is adequate to depict the entire building. A quality photograph on thirty five (35) millimeter or greater film stock, accompanied by the photo negative, is required. (Ord. 99-O-2326, eff. 4-30-1999)

### **10-3-4201.1: LIMITATIONS ON THE DEMOLITION OF APARTMENT BUILDINGS:**

- A. Restriction: A permit or other entitlement which would allow any person to demolish any R-4 building may be issued only until such time as there have been issued in any one calendar year permits or other entitlements to demolish or convert such that an aggregate maximum of one percent (1.0%) of the existing multi-family residential rental stock as of January 1 of that calendar year could be demolished or converted. A permit or other entitlement to demolish shall not be issued if the total number of apartment units subject to such permits or entitlements which have been issued in that year would exceed the foregoing limitation upon issuance of that permit or entitlement. The actual physical number of apartment units that may be demolished in any given year shall be determined annually by the director of community development or his or her designee and shall be made available in the department of community development.

Notwithstanding the foregoing, in applying the annual limitation established by this section, a permit or other entitlement to demolish may be issued for a specific project to permit demolition of an existing R-4 building or buildings even if such demolition would exceed the foregoing limitation for the current calendar year, provided that at least fifty percent (50%) of the R-4 units in the project to be demolished can be accommodated under the remaining annual limitation for said calendar year, and further provided that granting the permit or other entitlement to demolish the R-4 units in the project will not cause the annual limitation established by this section to be exceeded by more than fifty (50) units for said calendar year.

- B. Recycle Provision: If the building official determines that a demolition permit has expired and

the building for which that demolition permit was issued has not been demolished, the total number of apartment units in that building which would have been subject to demolition shall be added to the number available for the year in which the demolition permit expires. A new permit or other entitlement to demolish shall not be issued to any person for demolition of such building for a period of three (3) months following expiration of the original permit.

C. **Waiting List:** If an applicant for a permit or entitlement to demolish an R-4 building is denied such permit or entitlement because of the provisions of this section, such applicant shall be placed on a waiting list. Applicants on the waiting list shall have priority over all other applicants for available permits or entitlements, with order of priority determined by the date the city determines that the original application is complete. An applicant on the waiting list shall be notified by the director of community development of the first available time which such permit or entitlement could be issued. Such applicant shall have two (2) weeks from the date of such notice to notify the director of his or her intent to accept such permit or entitlement. Failure to respond to the notice of the director within such time shall be deemed to be notice of intent of such applicant not to accept such permit or entitlement, and such applicant's name shall be removed from the waiting list. Upon receipt of notice of intent not to accept such permit or entitlement, or if two (2) weeks have passed from the date of the notice of availability without a response from such applicant, the director shall notify the next applicant on the waiting list to whom such permit or entitlement could be issued.

D. **Exemption:** The provisions of this article shall not apply to any of the following situations:

1. Demolition of the building has been mandated by law; or
2. Demolition of the building is required to comply with the provisions of subsection 4-5-511B of this code; or
3. Demolition of the building is necessary to accommodate construction of new multi-family residential rental housing units.

The number of apartment units mandated by court order to be demolished shall be counted for the purposes of this section in the year such units are ordered to be demolished by a court of competent jurisdiction. (Ord. 06-O-2497, eff. 4-6-2006)

### **10-3-4202: EXEMPTIONS:**

A. Notwithstanding any other provision of this article, the requirements set forth in section

10-3-4201 of this article shall not apply to the following:

1. The demolition or relocation of any accessory structure or accessory building in any one-family residential zone;
2. The demolition or relocation of any publicly owned building;
3. Improvements confined to the interior of a building;
4. The storefront remodel of a commercial building, if plans for the storefront remodel have been approved by the director of building and safety for submittal to the architectural commission, and the applicant has posted a bond in a form and amount satisfactory to the director of building and safety, or other security satisfactory to the director of building and safety, to guarantee the safe completion of the demolition, the restoration of the site into a safe condition, and the completion of the storefront in a manner that, in the opinion of the director of building and safety, is sufficient to maintain and protect the safety, streetscape and overall appearance of the site and the areas adjacent to the site;
5. The demolition of any building where one or more of the following exceptions applies:
  - a. Prior to the issuance of the demolition permit, the director of building and safety determines that an exception is necessary because it is compelled by public safety due to an imminent hazardous condition requiring immediate demolition of the building;
  - b. Prior to the issuance of the demolition permit, and pursuant to an application and noticed public hearing under this section, the planning commission grants an exception based upon a finding that a proposed interim use, other than a use requiring a building permit, satisfies a public need, and bonding satisfactory to the city, or other adequate security acceptable to the city, is provided to ensure the safe completion of the demolition and the construction of the proposed interim use of the site approved by the planning commission;
  - c. Prior to the issuance of the demolition permit, a determination is made by an appropriate government body or agency that there are hazardous materials on or beneath the surface of the subject property which require, as part of a remedial plan approved by an appropriate government body or agency, the demolition of the building before any permit and/or financing to improve the property can be obtained. Any applicant seeking to rely upon this exception shall, as a condition of the issuance of a demolition permit, be required to submit a landscaping, fencing and maintenance plan acceptable to the director of building and safety in accordance with the requirements of section 10-3-4201 of this article for such a plan, including, without limitation, the provision of bonding or other adequate security for the execution of the plan as specified in that section. (Ord. 99-O-2326, eff. 4-30-1999)

### **10-3-4203: FENCING OF VACANT LOTS:**

All vacant properties that become vacant on or after the effective date of this article, shall, in addition to any landscaping requirements imposed under this article, be surrounded by a minimum six foot (6') high chainlink fence or adjacent to the property boundaries, or other alternative fencing acceptable to the director of building and safety that is adequate to protect the public safety and welfare, unless the director of building and safety determines that the installation of such fencing will be detrimental to the public safety and welfare. Any fencing required under this section may additionally require screening if the director of building and safety finds it necessary in order to protect the safety, streetscape and overall appearance of the site. (Ord. 99-O-2326, eff. 4-30-1999)