



## AGENDA REPORT

**Meeting Date:** January 8, 2013  
**Item Number:** D-4  
**To:** Honorable Mayor & City Council  
**From:** Susan Healy Keene, AICP, Director of Community Development  
**Subject:** AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE MUNICIPAL CODE TO ESTABLISH A REVIEW PROCESS TO DETERMINE SUBSTANTIAL COMPLIANCE WITH CERTAIN ZONING CODE STANDARDS BASED ON SPECIFIC FINDINGS.

**Attachments:**

1. Draft Ordinance
2. Planning Commission Resolution
3. Planning Commission Staff Reports

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### **RECOMMENDATION**

Staff recommends that the City Council move to waive the full reading of the ordinance and that the ordinance entitled "An ordinance of the City of Beverly Hills amending the municipal code to establish a review process to determine substantial compliance with certain zoning code standards based on specific findings" be introduced and read by title only.

### **INTRODUCTION**

This report forwards the Planning Commission and staff recommendation to establish a Substantial Compliance Determination process. Also presented in this report is a recommendation to change language in the ordinance to provide the City with a greater ability to review and allow deviations to the zoning code standards if the required findings are met.

On December 19, 2011, recommendations from the Mayor's Task Force on Government Efficiency were shared with the City Council. One of the recommendations of the Task Force was to modify the City's Zoning Ordinance to allow the Director of Community Development to allow minor deviations from zoning code standards.

Many cities have a process for approving minor deviations to their zoning codes. Staff studied 24 cities in California with such processes, and on December 13, 2012, the Planning Commission studied case summaries for select cities in Southern California which have such processes. The ordinance, attached, would create a Substantial Compliance Determination process through which minor deviations to zoning code standards could be approved if specific findings were met.

In the past, by no fault of the contractor and with no intent on the part of the home owner or property owner, projects have been constructed in a manner that did not precisely conform to the City's zoning code standards. When this happens, the City's sometimes requires parts of the new construction to be demolished and rebuilt to meet code. Demolition and reconstruction can result in extreme costs and delays to the home owner or property owner; and where the deviation from the zoning code standard is minor, having the project conform may provide little benefit to the community compared to the financial hardship incurred.

The process proposed in the attached ordinance would, on a case-by-case basis, allow the City to review, and if the findings could be made, allow development that adheres to the intent of the zoning code when the particular project cannot meet the strict application of all zoning code standards. As proposed, the Substantial Compliance Determination process would provide the City with a means of offering relief to home owners and other property owners who find themselves in a situation where their new home or building does not exactly meet the City's code standards while ensuring that any allowed deviation to requirements on the City's zoning code would not impact neighboring properties.

## **DISCUSSION**

The Planning Commission recommends that the City Council establish a Substantial Compliance Determination process through which the City may approve minor deviations to certain zoning code standards. The recommendation in the draft ordinance (Attached) would establish a process with the following aspects:

- Limit Allowable Deviations to the following List of Zoning Standards:
  - Building Encroachments into Required Setback Areas,
  - Fence/Wall Location, Length, and Height,
  - Minimum Drive Aisle Width, and
  - Minimum Parking Stall Dimension.
- Provide Public Notice
  - All Property Owners and Occupants within 100-Feet prior to, and after a decision is made.
- Require the following Findings to be met:
  - That requiring strict compliance with the zoning code would create substantial financial hardship for the applicant;
  - That the items that deviate from the code would not exceed the permissible deviations stated in the table included in this section;
  - That approval of a substantial compliance determination would not result in substantial, adverse impacts to neighboring properties;

- That approval of a substantial compliance determination would not pose a threat to life or safety; and
- That the circumstances surrounding the request for a substantial compliance determination do not indicate that the applicant intended to deviate from the zoning code standards.
- Make Decisions Appealable.
  - Director Decisions Appealable to the Planning Commission
  - Planning Commission Decisions Appealable to the City Council
- Allow Director to Refer Cases to the Planning Commission.
  - If a case merits a greater level of review.
- Limit approval to ten-percent (10%) or six-inches (6”), whichever is less, of the zoning standard.
- Limit approval of fence height to three-inches (3”).

The process requires that neighbors are notified, allows the public to participate in the process, requires specific findings to be made, and allows decisions to be appealed.

As proposed, the Substantial Compliance Determination would further the City’s efforts to improve the development review process, while ensuring that neighboring properties are not impacted. Determinations could only be applied to specific zoning standards, thereby limiting the universe of potential deviations from the zoning code, and deviations from building height and floor area standards would not be allowed. The process would require specific findings to be made, ensuring that neighboring properties are not impacted, and all decisions by the Director and the Planning Commission would be appealable up to the City Council, thereby assuring that aggrieved neighbors’ concerns could be raised in a public hearing before a decision-making board.

### **Staff Analysis**

Staff supports the attached ordinance with the following changes, which are not supported by the Planning Commission:

- Limit deviations to ten-percent (10%) of the zoning standard (without the six-inch limit).
- Limit deviations for fence height up to ten-percent (10%) if approved by the Director, and establish a Design Review/Architectural Commission review process to approve greater deviations (without the six-inch limit on location and the three-inch limit on height).

Using ten-percent as the standard allows the City to weigh the potential for impact to neighbor’s privacy proportionally with the depth of the setback in question. For smaller setbacks, where neighboring homes may be closer to the property lines, the percentage of allowable deviation would be small because of risk of impacting privacy would be great. In situations involving larger setback depths where neighboring homes would be farther away, the percent deviation the City could allow would be greater because the risk of impacting a neighbor’s privacy would be less as a result of the greater distance. Using the percentage standard not only establishes a proportionality measure, but also allows the City to focus review and approval of Substantial Compliance Determinations

on whether the deviation and circumstances meet the required findings, without being limited to only approving those deviations that are less than six-inches.

Situations where a Substantial Compliance Determination may be considered could include a situation where a wall or fence is constructed and includes a finish cap or lighting standard, or other ornamentation on the wall or fence that ends up above the allowable height. For front yard property line walls and fences the maximum ten-percent deviation would be either three-inches if the wall is built right at the property line, or six-inches if the fence or wall is set back a distance (in the central area the distance is 20-percent of the front yard setback depth, in the hillside the distance is ten-feet, or three-feet with City approval). Allowing the Planning, Design Review, or Architectural Commission to review and approve greater deviations to fence and wall height would accommodate light standards and ornamentation taller than 3, or 6-inches, if the findings could be met.

Accommodating this level of flexibility would be in keeping with recent efforts to improve and streamline the City's development review and permitting processes. Limiting non-conformity to ten-percent of the zoning code standard, provided that the findings could be met, would provide the discretion necessary to ensure that neighbors are not impacted, while also assuring that property owners would not be caught in an extended development correction process at potentially high costs and long delays.

The recommended language is provided below in strike-out/underline format. With direction from the City Council, these language changes could be integrated into the chart in the ordinance on Pages 3 and 4.

Staff Recommended Language Changes to the Ordinance

Zoning Standard	Permissible Deviation
Building Encroachments into Required Setback Areas	Building walls, architectural projections, balconies, awnings, chimneys, and porches may encroach no more than ten-percent (10%) <del>or six inches (6")</del> , whichever is less, into a required setback.
Fence and Wall Location, Length, and Height	In terms of location, <u>height</u> and length, fences and walls may be built no more than ten-percent (10%) <del>or six inches (6")</del> , whichever is less, beyond the applicable zoning code standard or condition of approval, <u>unless approved by the Planning, Design Review or Architectural Commission.</u> <del>In terms of height, fences and walls may be built no more than three inches (3") beyond applicable zoning code standard or condition of approval.</del> In no event shall the fence or wall block an automobile driver's field of vision when exiting a driveway.
Minimum Drive Aisle Width	The width of a drive aisle may be up to ten-percent (10%) <del>or six inches (6")</del> , whichever is less, narrower than the width specified by the city's minimum parking standards or a condition of approval.
Minimum Parking Stall Dimension	The dimension of a parking stall may be up to ten-percent (10%) <del>or six inches (6")</del> , whichever is less, shorter in each

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direction than specified by the city's minimum parking standards or a condition of approval. No more than one parking stall shall be eligible for this deviation. Parking spaces in single-family zones are not eligible for this deviation.

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### **Planning Commission Review**

The Planning Commission studied staff's recommendation to limit deviations to ten-percent of the zoning code standard on December 20, 2012. The Planning Commission felt that using ten-percent would be relaxing the City's regulations too far and opted to limit any deviation to no more than six-inches, and in the case of fence height, to no more than three-inches. The Planning Commission also studied the proposal to grant the Design Review and Architectural Review Commissions the authority to approve greater deviations than ten-percent. The Planning Commission rejected this option in favor of recommending fixed limits on allowable deviations with no additional discretionary review by the Design Review and Architectural Review Commissions.

### **PUBLIC NOTICE AND COMMENT**

Notice of this public hearing was duly published in the Beverly Hills Courier on December 28, 2012 and noticed in the Beverly Hills Weekly on January 3, 2013. As of the writing of this agenda report, no public comments have been received.

Notice of the Planning Commission's public hearing was duly noticed in the Beverly Hills Courier on November 30, 2012 and in the Beverly Hills Weekly on December 6, 2012. During the Planning Commission's public comment period two emailed comments were received. One commenter advocated for the process to be based on a percentage standard as opposed to limiting the discretion to six inches, the second commenter advocated for establishing the process but did not weigh in on particulars.

### **GENERAL PLAN CONSISTENCY**

The proposed zoning code amendments are consistent with the objectives, principles, and standards of the General Plan. The contemplated deviations from zoning code standards that would be authorized through the proposed substantial compliance determinations involve minor changes to the City's development standards, would not alter or change designated land uses, and would not be contrary to any of the goals, policies and programs in the General Plan.

### **ENVIRONMENTAL REVIEW**

The code amendments contemplated have been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that adoption of this Ordinance would not have a significant environmental impact and is exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. It can be seen with certainty that there is no possibility that the adoption and implementation of a future ordinance may have a significant effect on the environment because of the *de minimis* nature of any potentially authorized deviations from the code requirements.

**FISCAL IMPACT**

A fiscal impact is anticipated in staff hours to process applications for Substantial Compliance Determinations, but requests are expected to be rare. To reclaim costs, a fee would be charged based on the expected cost to process an application. Thus, fiscal impacts from establishing the process would be offset by application fees.

Susan Healy Keene  
Director of Community Development

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Approved By



# Attachment 1

Draft Ordinance

ORDINANCE NO. 13-O-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING THE MUNICIPAL CODE TO ESTABLISH A  
REVIEW PROCESS TO DETERMINE SUBSTANTIAL  
COMPLIANCE WITH CERTAIN ZONING CODE  
STANDARDS BASED ON SPECIFIC FINDINGS.

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

Section 1. On December 13, 2012, the Planning Commission held a duly noticed public hearing, which was continued to the following meeting on December 20, 2012, at which the Planning Commission adopted Resolution No. 1660, recommending that the City Council amend the Zoning Code to establish a process by which deviations from development standards occurring as a result of construction can be approved if certain findings are met. On January 8, 2013, the City Council held a duly noticed public hearing, received public testimony, and thereafter introduced this Ordinance.

Section 2. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that adoption of this Ordinance would not have a significant environmental impact and is exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. 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.

Section 3. This Ordinance is consistent with the objectives, principles, and standards of the General Plan. The contemplated deviations from zoning code standards that

would be authorized through the proposed substantial compliance determinations involve minor changes to the City's development standards, would not alter or change designated land uses, and would not be contrary to any of the goals, policies and programs in the General Plan.

Section 4. This Ordinance is consistent with the recommendations of the Mayor's Task Force on Governmental Efficiency as presented to the City Council on December 19, 2011. In its report, the Task Force included a recommendation to establish a procedure through which minor deviations from zoning code standards that occurred as a result of construction could be approved in certain instances.

Section 5. The City Council hereby amends Section 10-3-203 of Article 2 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code by adding the following language, with all other language in that Section to remain unchanged:

"G. Substantial Compliance Determination. An applicant may seek a determination that a project substantially complies with the zoning code if, after a development project has been approved, a building permit has been issued and the City has approved placement of the footing, it is discovered that the project as constructed does not meet the requirements of the zoning code or conditions of approval. A substantial compliance determination may be approved, with or without conditions, for the zoning code standards listed in the table included in this section if the reviewing authority makes all of the following findings:

1. That requiring strict compliance with the zoning code would create substantial financial hardship for the applicant;
2. That the items that deviate from the code would not exceed the permissible deviations stated in the table included in this section;
3. That approval of a substantial compliance determination would not result in substantial, adverse impacts to neighboring properties;
4. That approval of a substantial compliance determination would not pose a threat to life or safety;
5. That the circumstances surrounding the request for a substantial compliance determination do not indicate that the applicant intended to deviate from the zoning code standards.

Nothing in this section shall allow the amount of front yard paving, the floor area of a building, or the height of a building to exceed the limitations in the zoning code.

Nothing in this section shall authorize any encroachment onto the public right-of-way or onto neighboring properties.

The reviewing authority for a substantial compliance determination shall be the director of community development. If, in the opinion of the director an application merits review by the planning commission, the director may refer such application to the planning commission and the planning commission shall serve as the reviewing authority for such application and shall conduct a noticed public hearing regarding the requested substantial compliance determination.

Notice of a public hearing, an intended decision and a final decision shall be provided in accordance with Section 10-3-3602 of this code.

The applicant or any person aggrieved by any decision regarding a substantial compliance determination may appeal to the planning commission, if the original decision was made by the director, or to the city council, if the original decision was made by the planning commission, as provided in title 1, chapter 4, article 1 of this code.

Zoning Standard	Permissible Deviation
Building Encroachments into Required Setback Areas	Building walls, architectural projections, balconies, awnings, chimneys, and porches may encroach no more than ten-percent (10%) or six inches (6"), whichever is less, into a required setback.
Fence and Wall Location, Length, and Height	In terms of location and length, fences and walls may be built no more than ten-percent (10%) or six inches (6"), whichever is less, beyond the applicable zoning code standard or condition of approval. In terms of height, fences and walls may be built no more than three inches (3") beyond the applicable zoning code standard or condition of approval. In no event shall the fence or wall block an automobile driver's field of vision when exiting a driveway.

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Minimum Drive Aisle Width	The width of a drive aisle may be up to ten-percent (10%) or six inches (6”), whichever is less, narrower than the width specified by the city’s minimum parking standards or a condition of approval.
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Minimum Parking Stall Dimension	The dimension of a parking stall may be up to ten-percent (10%) or six inches (6”), whichever is less, shorter in each direction than specified by the city’s minimum parking standards or a condition of approval. No more than one parking stall shall be eligible for this deviation. Parking spaces in single-family zones are not eligible for this deviation.”
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Section 6.     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 and remain in full force and effect.

Section 7.     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.

Section 8.     Effective Date.   This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:

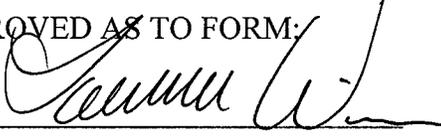
Effective:

\_\_\_\_\_  
WILLIAM W. BRIEN, MD  
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:

\_\_\_\_\_  
JEFFREY C. KOLIN  
City Manager

  
\_\_\_\_\_  
SUSAN HEALY KEENE  
Director of Community Development

# Attachment 2

Planning Commission Resolution

RESOLUTION NO. 1660

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL AMEND THE MUNICIPAL CODE TO ESTABLISH A REVIEW PROCESS TO DETERMINE SUBSTANTIAL COMPLIANCE WITH CERTAIN ZONING CODE STANDARDS BASED ON SPECIFIC FINDINGS.

The Planning Commission of the City of Beverly Hills hereby finds, resolves, and determines as follows:

**Section 1.** On December 13, 2012, the Planning Commission held a duly noticed public hearing, which was continued to the following meeting on December 20, 2012, to consider a resolution recommending that the City Council amend the Zoning Code to establish a process by which deviations from development standards occurring as a result of construction can be approved if certain findings are met. As proposed, the draft Ordinance included in Exhibit A would amend the City of Beverly Hills Municipal Code to establish an administrative procedure by which substantial compliance with zoning code standards can be confirmed if certain criteria are met.

**Section 2.** This Ordinance is consistent with the objectives, principles, and standards of the General Plan. The contemplated deviations from zoning code standards that would be allowed through the proposed substantial compliance determinations involve minor deviations from the City's development standards, would not alter or change designated land uses, and would not be contrary to any of the goals, policies and programs in the General Plan.

**Section 3.** This Ordinance is consistent with the recommendations of the Mayor's Task Force on Governmental Efficiency as presented to the City Council on December 19, 2011. In its report, the Task Force included a recommendation to establish a procedure through which

minor deviations for zoning code standards that occurred as a result of construction could be approved in certain instances.

**Section 4.** This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that adoption of this Ordinance would not have a significant environmental impact and is exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

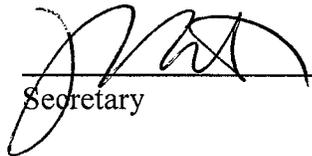
**Section 5.** The Planning Commission hereby recommends that the City Council adopt an Ordinance approving and enacting the proposed zoning text amendment substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

**Section 6.** The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

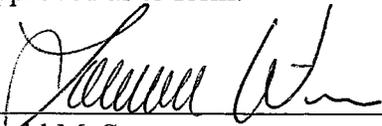
Adopted: December 20, 2012

  
\_\_\_\_\_  
Craig Corman  
Chair of the Planning Commission  
City of Beverly Hills, California

Attest:

  
\_\_\_\_\_  
Secretary

Approved as to form:

  
\_\_\_\_\_  
David M. Snow  
Assistant City Attorney

Approved as to content:

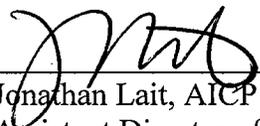
  
\_\_\_\_\_  
Jonathan Lait, AICP  
Assistant Director of Community Development /  
City Planner

Exhibit A – Draft Ordinance Amending the Municipal Code to Establish a Review Process to Determine Substantial Compliance with Certain Zoning Code Standards based on Specific Findings.

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES        )     SS.  
CITY OF BEVERLY HILLS            )

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1660 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on December 20, 2012, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of four (4) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES:           Commissioners Rosenstein, Fisher, Yukelson, and Chair Corman.

NOES:           None.

ABSTAIN:       None.

ABSENT:        None.

  
\_\_\_\_\_  
JONATHAN LAIT, AICP  
Secretary of the Planning Commission/  
City Planner  
City of Beverly Hills, California

AN ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING THE MUNICIPAL CODE TO ESTABLISH A  
REVIEW PROCESS TO DETERMINE SUBSTANTIAL  
COMPLIANCE WITH CERTAIN ZONING CODE  
STANDARDS BASED ON SPECIFIC FINDINGS.

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

**Section 1.** On December 13, 2012, the Planning Commission held a duly noticed public hearing, which was continued to the following meeting on December 20, 2012, at which the Planning Commission adopted Resolution No. 1660, recommending that the City Council amend the Zoning Code to establish a process by which deviations from development standards occurring as a result of construction can be approved if certain findings are met. On \_\_\_\_\_, 2012, the City Council held a duly noticed public hearing, received public testimony, and thereafter introduced this Ordinance.

**Section 2.** This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that adoption of this Ordinance would not have a significant environmental impact and is exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. 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.

**Section 3.** This Ordinance is consistent with the objectives, principles, and standards of the General Plan. The contemplated deviations from zoning code standards that would be

authorized through the proposed substantial compliance determinations involve minor changes to the City's development standards, would not alter or change designated land uses, and would not be contrary to any of the goals, policies and programs in the General Plan.

**Section 4.** This Ordinance is consistent with the recommendations of the Mayor's Task Force on Governmental Efficiency as presented to the City Council on December 19, 2011. In its report, the Task Force included a recommendation to establish a procedure through which minor deviations from zoning code standards that occurred as a result of construction could be approved in certain instances.

**Section 5.** The City Council hereby amends Section 10-3-203 of Article 2 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code by adding the following language, with all other language in that Section to remain unchanged:

"G. Substantial Compliance Determination. An applicant may seek a determination that a project substantially complies with the zoning code if, after a development project has been approved, a building permit has been issued and the City has approved placement of the footing, it is discovered that the project as constructed does not meet the requirements of the zoning code or conditions of approval. A substantial compliance determination may be approved, with or without conditions, for the zoning code standards listed in the table included in this section if the reviewing authority makes all of the following findings:

1. That requiring strict compliance with the zoning code would create substantial financial hardship for the applicant;
2. That the items that deviate from the code would not exceed the permissible deviations stated in the table included in this section;
3. That approval of a substantial compliance determination would not result in substantial, adverse impacts to neighboring properties;
4. That approval of a substantial compliance determination would not pose a threat to life or safety;
5. That the circumstances surrounding the request for a substantial compliance determination do not indicate that the applicant intended to

deviate from the zoning code standards.

Nothing in this section shall allow the amount of front yard paving, the floor area of a building, or the height of a building to exceed the limitations in the zoning code.

Nothing in this section shall authorize any encroachment onto the public right-of-way or onto neighboring properties.

The reviewing authority for a substantial compliance determination shall be the director of community development. If, in the opinion of the director an application merits review by the planning commission, the director may refer such application to the planning commission and the planning commission shall serve as the reviewing authority for such application and shall conduct a noticed public hearing regarding the requested substantial compliance determination.

Notice of a public hearing, an intended decision and a final decision shall be provided in accordance with Section 10-3-3602 of this code.

The applicant or any person aggrieved by any decision regarding a substantial compliance determination may appeal to the planning commission, if the original decision was made by the director, or to the city council, if the original decision was made by the planning commission, as provided in title 1, chapter 4, article 1 of this code.

Zoning Code Standard	Permissible Deviation
Building Encroachments into Required Setback Areas	Building walls, architectural projections, balconies, awnings, chimneys, and porches may encroach no more than ten-percent (10%) or six inches (6"), <u>whichever is less</u> , into a required setback, <del>whichever is less</del> .
Fence and Wall Location, Length, and Height	In terms of location and length, fences and walls may be built no more than ten-percent (10%) or six inches (6"), whichever is less, beyond the applicable zoning code standard or condition of approval. In terms of height, fences and walls may be built no more than three inches (3") beyond the applicable zoning code standard or condition of approval. In no event shall the fence or wall block an automobile driver's field of vision when exiting a driveway.
Minimum Drive	The width of a drive aisle may be up to ten-percent

Aisle Width	(10%) or six inches (6"), whichever is less, narrower than the width specified by the city's minimum parking standards or a condition of approval.
Minimum Parking Stall Dimension	The dimension of a parking stall may be up to ten-percent (10%) or six inches (6"), whichever is less, shorter in each direction than specified by the city's minimum parking standards or a condition of approval. No more than one parking stall shall be eligible for this deviation. Parking spaces in single-family zones are not eligible for this deviation.

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**Section 6.** **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 and remain in full force and effect.

**Section 7.** **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.

**Section 8.** Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:

Effective:

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WILLIAM W. BRIEN, MD  
Mayor of the City of  
Beverly Hills, California

ATTEST:

\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

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LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

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JEFFREY C. KOLIN  
City Manager

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SUSAN HEALY KEENE  
Director of Community Development

# Attachment 3

Planning Commission Staff Reports

December 13, 2012

December 20, 2012



## Planning Commission Report

**Meeting Date:** December 13, 2012

**Subject:** Establishing a Substantial Compliance Determination.

**Recommendation:** Open the Public Hearing and receive comments, and consider a resolution recommending establishment of a substantial compliance determination procedure for the Director of Community Development to allow minor modifications to certain zoning code standards based on specific criteria.

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### REPORT SUMMARY

The Mayor's Task Force on Government Efficiency has recommended that the City develop a means through which minor deviations from zoning code standards can be approved by the Director of Community Development.

### BACKGROUND

#### Mayor's Task Force on Government Efficiency

On December 19, 2011, recommendations from the Mayor's Task Force on Government Efficiency were shared with the City Council (Report Attached). One of the recommendations of the Task Force was to modify the City's Zoning Ordinance to allow the Director of Community Development to approve minor modifications to code requirements under certain circumstances. The Task Force recommendations report is attached and provides a summary of the recommended director's modification under the title "Increase Discretionary Review" on page 4.

#### Administrative Processes to Address Minor Deviations from Zoning Code Standards

Staff studied twenty-four cities throughout California, including Dana Point, Camarillo, Bellflower and Culver City, which have an administrative process to allow for minor deviations from zoning code standards. The following are excerpts from the code sections of some of these cities:

**Dana Point** Administrative modifications are used only when deviations from code standards are truly minor and no potential impact will occur to the health, safety, or general welfare of adjacent persons or properties.

**Camarillo** When in the public interest, the director of planning and community development, without publishing, posting, or mailing of notice and without public hearing, may consider and render decision on minor modifications in the provisions of this title.

#### Attachment(s):

1. Recommendations for the Mayor's Task Force on Governmental Efficiency
2. Resolution of the Planning Commission Exhibit A. Draft Ordinance

#### Report Author and Contact Information:

Peter Noonan, AICP CEP

Associate Planner

(310) 285-1127

pnoonan@beverlyhills.org

- Bellflower** The purpose of a minor modification is to provide flexibility necessary to achieve the objectives of the General Plan and the Zoning Ordinance by providing for minor adjustments to development regulations in those circumstances where such request constitutes a reasonable use of property that will be compatible with adjoining uses.
- Culver City** Administrative Modification of specific development standards of this Title, when the strict application of those standards creates an unnecessary, involuntarily-created hardship or unreasonable regulation that makes it impractical to require compliance with the development standards.

Based on the city codes reviewed, administrative modifications appear to be a procedure developed to compliment a city's development review and construction inspection processes in the following manner. Building and architectural plans are drawn up to guide construction and renovation of buildings and structures. Prior to issuing a building permit, a city reviews and confirms that the building and architectural plans comply with the city's zoning code standards. Building plans, however, cannot always anticipate every aspect of a property, and contractors cannot always site a building or structure with the same level of precision specified on building and architectural plans. Sometimes, by no fault of the contractor and with no intent from the property owner, a project is constructed slightly outside of a city's zoning code standards. In the instance where the new development is only slightly outside of the zoning code standards and does not present any potential impacts to a neighborhood, requiring that the new construction be demolished and rebuilt would provide negligible benefit to the community and could result in extreme financial hardship to the property owner. Therefore a process by which a city, on a project-specific basis, may allow development that adheres to the intent of that city's zoning code standards when the particular project cannot, for the reasons stated above, meet the strict application of that city's zoning code standards would reduce potential uncertainty in the construction process and thereby be a benefit to property owners in that community.

## **DISCUSSION**

The process proposed in the draft ordinance would establish a procedure through which the Director or Director's designee would be able to approve slight changes from the City's established zoning code standards in instances where, in good faith, building plans were followed, but the resulting development did not meet a strict application of the City's zoning code standards.

Under the approach included in the draft ordinance (attached as Attachment 2, Exhibit A), in order to qualify for a substantial compliance determination, specific criteria would have to be met. Substantial compliance determinations would only be available for specific zoning code standards, and in most cases only deviations which were no more than 10% out of compliance with zoning code standards would be allowed. Building height, allowable floor area, and amount of paving in the front yard setback area would not be included under the proposed determination, nor would any form of encroachment beyond the property lines. For example, setbacks are included under the proposed determination. A common minimum setback required in the Code is five feet. Ten percent (10%) of a five-foot setback is six inches which is the proposed maximum deviation from any setback that the ordinance would allow the Director to approve.

**PUBLIC NOTICE AND COMMENT**

Notice of this public hearing was duly published in the Beverly Hills Courier on November 30, 2012 and noticed in the Beverly Hills Weekly on December 6, 2012. As of the writing of this report no public comments have been received.

**GENERAL PLAN CONSISTENCY**

The proposed zoning code amendments are consistent with the objectives, principles, and standards of the General Plan. The contemplated deviations from zoning code standards that would be authorized through the proposed substantial compliance determinations involve minor changes to the City's development standards, would not alter or change designated land uses, and would not be contrary to any of the goals, policies and programs in the General Plan.

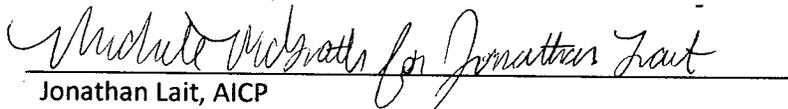
**ENVIRONMENTAL REVIEW**

The code amendments contemplated have been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that adoption of this Ordinance would not have a significant environmental impact and is exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. Further, it can be seen with certainty that there is no possibility that the adoption and implementation of a future ordinance may have a significant effect on the environment because of the *de minimis* nature of the any potentially authorized deviations from the code requirements.

**NEXT STEPS**

Once the Planning Commission has taken action, the ordinance will be brought before the City Council for its consideration.

Report Reviewed By:



Jonathan Lait, AICP  
City Planner

# Attachment 1

Recommendations from the Mayor's  
Task Force on Governmental Efficiency



## CITY OF BEVERLY HILLS STAFF REPORT

**Meeting Date:** December 19, 2011  
**To:** Honorable Mayor & City Council  
**From:** Susan Healy Keene, AICP, Director of Community Development  
**Subject:** Recommendations from the Mayor's Task Force on Government Efficiency  
**Attachments:** 1) List of Stakeholders Interviewed  
2) Stakeholder Issues/Actions/Task Force Recommendations

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### INTRODUCTION

This report provides information on the work completed by the Mayor's Task Force on Government Efficiency and their recommended actions to improve and streamline the development review process.

### BACKGROUND

At the City Council installation in March, Mayor Brucker announced the formation of a Task Force on Government Efficiency and appointed Vice-Mayor Brien as Chair. Subsequently, Planning Commissioner, Noah Furie, was selected as Vice-chair of the Task Force. Members of the Task Force include:

- Craig Corman, Vice-Chair of the Planning Commission
- Jerry Felsenthal, former Planning Commissioner
- Howard Fisher, recently appointed Planning Commissioner
- Steve Matt, CEO, Matt Construction
- Kathy Reims, former Planning Commissioner

At the initial meeting of the Task Force on June 14, 2011, Vice-Mayor Brien and Vice-Chair Furie identified the goals of the Task Force. These goals included:

- Improve customer experience
- Review/expand staff authority
- Provide efficiencies to reduce process times
- Provide metrics to assess performance

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- Initiated Streamlining efforts at Architectural Commission and Design Review Commission
- Continued internal, bi-weekly, Development Review Task Force meetings. The Internal Task Force consists of city staff from building & safety, planning, engineering, fire inspection, and the permit center.

#### Fees

- Simplified and reduced the cost of street-use and hauling permits
- Reduced certain fees for design review

### RECOMMENDATIONS

The Task Force provided specific suggestions to improve the development review process based on the input they received. The following general recommendations were supported:

#### Customer Service

- Conduct Customer Satisfaction Surveys
- Provide additional customer service training for staff
- Provide additional handouts & checklists and maintain current information on webpage
- Need a live person answering phones
- Need front reception desk in Permit Center staffed to guide customers

#### Process

- Increase cross training
- Support for ProjectDox (electronic plan review)
- Support for "Open Table" type inspection request module
- Reformat Zoning Code for ease of use
- Consider hiring an outside consultant to take over authority for elevator inspections (currently conducted by State inspectors).

#### Fees

- Provide a check guarantee service for checks over a certain amount
- Consider elimination of maintenance fees and permit issuance fees for plans and permits obtained on-line

#### Metrics

- Provide metrics to measure progress of the streamlining efforts
- Include service indicators such as response time for returned phone calls, processing

The Task Force was also encouraged to provide big, bold ideas to improve the development review process. The following recommended items require review and

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approval as they may have resource and fiscal implications and/or require amendments to the code:

1) Increase Discretionary Review

The Task Force supported modification to the Zoning Ordinance to allow the Director to approve minor modifications to code requirements under certain circumstances. Several stakeholders cited examples where staff was limited in their ability to approve construction conditions that did not meet development standards, but the changes were minor in nature. The Task Force was comfortable with a modification of a maximum of 10% to development standards not including height or floor area ratio (FAR). There was also a discussion of whether a Director's modification should apply to both pre- and post-construction. The Task Force recommended that approval for post-construction modifications should only be granted where a good faith effort had been made to comply with Code, there was no willful violation, and when there were no health and safety issues. The Task Force recommended that there be a penalty imposed and a list of modifications granted be recorded with a six month to one-year review. The Code currently provides for some modification to development standards. If pursued, a text amendment to this section of the code would be reviewed by the Planning Commission with a recommendation forwarded to City Council for approval.

2) Modify Commissions

The Task Force heard concern from stakeholders regarding the amount of time spent during the development review process in either the Design Review Commission (for single family homes) or the Architectural Commission (for multi-family and commercial structures). The Task Force questioned the need for two design commissions and supported combining the two commissions. The Task force noted that a single design review commission could provide two meetings per month thereby providing applicants more opportunity to address revisions in less than one month.

The Task force also supported the addition of an Urban Designer to staff this combined commission. The combination of an Urban Designer and strengthened design standards could reduce the number of discretionary reviews and facilitate more staff level approvals. There is additional work necessary to coordinate this recommendation. Staff would consider the expiration of commissioner terms as well as the length of time required to make any modifications to the design standards. Analysis regarding addition of an Urban Designer could be considered in the proposed FY 2012-13 budget. The earliest any modification would likely occur is late 2012.

3) Restructure Community Development Department

Input was received from stakeholders and some Task Force members regarding a lack of communication and collaboration between the various city divisions involved in the development review process. The Task Force suggested a model used in other cities that combines all functions into one development services program.

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A development services program would co-locate all functions that perform plan review into one division within the Community Development Department. The benefits of this organizational structure would be multiple disciplines under unified supervision focused on common goals. The Development Review program would be comprised of planners, plan reviewers, inspectors and the addition of a Public Works Engineer and Fire Department plan reviewer. Staff associated with the proposed Development Services Program would all be located in the City Hall Permit Center. Transportation Planning would be transferred to the Planning Program. In order to address delays in elevator inspections, there was also consideration of hiring contract personnel to plan review and inspect elevators.

There are a number of logistical and fiscal considerations necessary to execute this plan and if supported would need to be worked out as part of the FY 2012-13 budget process.

4) Provide Additional Expedited Service

Several stakeholders expressed the need and willingness to pay for expedited plan review and inspection services to meet the schedule demands of tenants. While this service is now provided for an additional fee for building plan review and inspection, it is not available for all disciplines that review plans.

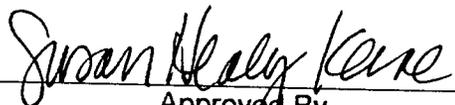
The Task Force considered several potential models for this higher level of service. Further consideration of this recommendation is needed.

**FISCAL IMPACT**

The recommendations in this report do not have any significant fiscal or budget impacts; however, direction to proceed on specific recommendations may have a fiscal impact. City Council may direct certain recommendations be enacted earlier than others and depending on the time frame would be requested at the time or will be included as part of the FY 2012-13 proposed budget.

**RECOMMENDATION**

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

  
\_\_\_\_\_  
Approved By  
Susan Healy Keene, AICP  
Director of Community Development

# **ATTACHMENT 1**

## **LIST OF STAKEHOLDERS INTERVIEWED**

**Mayor's Task Force on Government Efficiency Interviews**

**Meeting Date: July 11, 2011**

Interviewees: Avry Mizrahi  
Sharona Nazirian  
Kelly Schulman

**Meeting Date: July 26, 2011**

Interviewees: Walter Marks  
Jack Neeson

**Meeting Date: August 23, 2011**

Interviewees: Mitchell Dawson  
Morris Gasmer  
Steve Webb

**Meeting Date: September 13, 2011**

Interviewees: Murray Fischer  
Hamid Gabbay  
Steven Schwartz  
Arnold Rosenstein  
Joseph Tilem

**ATTACHMENT 2**  
**STAKEHOLDER ISSUES/ACTIONS/TASK FORCE**  
**RECOMMENDATIONS**

MAYOR'S TASK FORCE ON GOVERNMENT EFFICIENCY

1.0	ISSUES	ACTIONS TAKEN	TASK FORCE RECOMMENDATIONS
1.1	Attitude - Staff needs to be problem-solvers	1) Ongoing Training	1) Customer Satisfaction Surveys 2) Additional customer service training
1.2	Permit Center Receptionist at Info Desk/ Ombudsman needed in permit center to guide customers	1) Volunteers provide some coverage supplemented by Customer Service Rep; 2) In process of providing fulltime coverage at front reception area	1) Consider additional expedited service (fee based) 2) Supports full-time staffing at Permit Center info desk
1.3	Need back up for planners and plan checkers	1) Staff provides info to supervisor for coverage 2) Supervisor reassigns as necessary	Action addresses issue
1.4	Misinformation/ inconsistent answers /Wrong comments sent to applicant	1) Added dedicated planner at counter 2) Established permit center manager position 3) Ongoing Training & improved access to public information	1) Quality Assurance 2) Project Dox 3) Handouts, Checklists, Website, Procedures
2.0	<b>COMMUNICATION</b>		
2.1	<ul style="list-style-type: none"> <li>• Phone calls not promptly returned / Full Mailboxes</li> <li>• Calls should be returned within 24 hours</li> <li>• Some people make appointment or inspection request just to get a response to an email or phone question</li> <li>• Takes about 1 week to get a response from an inspector</li> <li>• Need a fix "mailbox full". Can't leave messages for people—need to change limitation to length of message you can leave</li> <li>• Have a "back-up" person take messages when people are out of office (also leave a message when out of office)</li> </ul>	1) Reinforcement of phone policy-return calls within 24 hrs; 2) Addition of inspector provides more time for inspectors to return calls; 3) Review of department voicemail boxes on a daily basis	1) Need live person answering the phones

MAYOR'S TASK FORCE ON GOVERNMENT EFFICIENCY

	ISSUES	ACTIONS TAKEN	TASK FORCE RECOMMENDATIONS
2.2	Inspection Line Problems	Improved with addition of inspector; was capacity not a technical issue; simplified inspection call process	Proceed with "Open Table" type inspection request module is being developed by I.T. to create a wider offering of inspection request appointments.
2.3	Meet with contractors quarterly to evaluate process/hear suggestions	First meeting held	Continue quarterly meeting schedule
2.4	Need better info on "how to remodel" and "how to build a new house", "how to retain nonconforming elements"	Prioritized production of handouts	Prepare public information handouts
2.5	Develop a course to educate homeowners/contractors		Work with Cable TV to develop an instructional video
2.6	Provide applicant contact list of all people working on application	Contact information provided on first review letter to applicant	Use Project Dox to include staff contact information
2.7	Can't communicate with outsourced engineer	Phone number available upon request	If needed, augment Plan Review Staff to reduce outsourcing
2.8	Allow applicants to see staff report prior to making available to public	Staff notifies applicants to key issues in staff report but does not release report prior to decision makers review	Action addresses issue
2.9	Weekly meetings on larger projects are helpful even if phone conferences	Ongoing training to staff to maintain continuous communication with applicants	Action addresses issue
3.0	<b>PROCESS</b>		
3.1	Process is too difficult – make easier and people will pull more permits	Increased over the counter approvals; 70 Day Restaurant Review amendments approved	Clarify Code; increase on-line and over-the-counter permits
3.2	Multiple reports of plans lost; drawings seem to get lost; it happens at every city, but more often in BH	Improved tracking	Transition to Project Dox will eliminate plan loss concerns.
3.3	Need for more administrative authority Staff needs to exercise authority if granted (afraid of mistakes) / Commission & Council need to support staff	Additional director authority granted with the 70-Day Restaurant streamlining ordinance adopted 11/3/11	Propose text amendment to add Director modification language to allow 10% modification to development standards under specific criteria.
3.4	Need to make separate appointments for separate issues—not efficient	Now schedule joint appointments based on project, not function	Cross train allowing a single review the ability to review multiple functions.
3.5	Add back pre-application meetings	Remains an available option	Reconstitute in more productive format

**MAYOR'S TASK FORCE ON GOVERNMENT EFFICIENCY**

	<b>ISSUES</b>	<b>ACTIONS TAKEN</b>	<b>TASK FORCE RECOMMENDATIONS</b>
3.6	Police escort needed for large hauls (not efficient use of police and police not always available)	Now only required for certain size vehicles	Explore alternate escort vehicles
3.7	Provide comprehensive first round plan review scheduled with specific time	Established timelines; reprioritized work	Project Dox has built in review times and administrative oversight that currently does not exist for supervisors
3.8	Even for permits that can be paid on-line you need to go to City Hall to pick up plans	Implementing ProjectDox	Action addresses issue
3.9	Can't renew heavy haul and other smaller permits on-line	Annual permit are now included as part of the building permit	Action addresses issue
3.10	Need a set process and a "go to" person for larger projects. Assign a project manager	During planning entitlement, the planner is the project manager. This shifts to the assigned plan review engineer during plan check	Action addresses issue
3.11	Need to provide "How to Remodel" information for single family residences (SFR)	Will include in handouts created and provide on website	Action addresses issue
3.12	Allow applicants to contract for environmental impact reports (EIRs)	Staff has improved consultant selection process to reduce time to initiate process. Applicant hiring consultant does not meet other city goals.	No action required
3.13	Suggested cities to research: Newport Beach, San Mateo, Palo Alto, Sunnyvale, Oxnard.	Information reviewed	No action required
4.0	<b>INSPECTIONS</b>		
4.1	Additional inspection items added each time an inspector is on site. Inspector says "do these 6 things" and then next time he's out there's 2 more corrections not included first time	Inspection staff has been made aware of this concern	1) Inspection checklists should be prepared and provided to the contractor and inspector so expectations are understood, consistent and documented. 2) Send customer satisfaction surveys when projects are completed to provide feedback and accountability.
4.2	Disconnect between plan checkers and inspectors	Ongoing training to staff to maintain continuous communication	Meet more regularly to improve communication.

**MAYOR'S TASK FORCE ON GOVERNMENT EFFICIENCY**

ISSUES	ACTIONS TAKEN	TASK FORCE RECOMMENDATIONS
4.3 Inspection request system doesn't work. May take 1 ½ weeks to get an inspection. Elsewhere a typical TI build out takes 6-7 weeks (7-9 weeks max); in BH TI build out takes 10-14 weeks due to delays in inspections	One inspector has been reinstated to improve customer service and meet the demand.	Continue with "Open Table" type inspection request module being developed by I.T. to create a wider offering of inspection request appointments.
4.4 Inspector can only sign off on inspection that was requested	Inspection request system has been modified to provide for this. A one half-hour hour inspection appointment is provided to allow for any inspections that can be conducted within that time-frame.	Action addresses issue
4.5 Inspector doesn't show up during stated window of time	One inspector has been reinstated to improve customer service and meet the demand.	Provide cell phones for inspectors to notify customers if they are running behind schedule.
4.6 Building and Fire inspections are not coordinated and adds too much down time	Review of separate request systems.	Consolidate functions. Consider one request inspection time for both.
4.7 Inspectors suggest contractors request "after-hours" inspection & they can be there next day	Inspectors have been talked to address this concern.	Could be part of a Expedited Service (fee based)
4.8 Fire/sprinkler inspectors always booked causing further delay		Augment Fire Inspection Staff or consolidate functions.
4.9 Group first round of inspections-have one inspector perform all the rough inspections at same time	Inspection request system has been modified to allow this. A one half-hour hour inspection appointment is provided to allow for any inspections that can be conducted within that time-frame.	Action addresses issue
4.10 If inspector cannot make appointed time window call job superintendent to advise	Will request a budget enhancement to provide cell phones for inspectors.	Provide cell phones for inspectors to notify customers if they are running behind schedule.
4.11 Inconsistent message re conduit permit vs., electrical permit and inspection of same	Staff will prepare an information bulletin	Information Bulletin will be prepared.
4.12 Assign same inspector for entire commercial building even if different tenant spaces	Transition to this model in progress.	Action addresses issue
4.13 Inspector would not sign off on something because tree lawn had tall weeds	Reinforce to applicants the relationship between ongoing property maintenance and inspections	Action addresses issue

MAYOR'S TASK FORCE ON GOVERNMENT EFFICIENCY

	ISSUES	ACTIONS TAKEN	TASK FORCE RECOMMENDATIONS
4.14	Provide on website <i>10 top items inspectors review</i>	Will provide on website	Action addresses issue
4.15	Consider use of Deputy Inspector or self certification to speed inspection process	Will investigate pros and cons	Action addresses issue
5.0	<b>TIMING</b>		
5.1	Staff discretion	Limited Director discretion added in 70-day Restaurant Amendments	Propose text amendment to add Director modification language to allow 10% modification to development standards under specific criteria
5.2	Long waits to schedule an appointment (days delayed)	Reduced appointment times and combined certain project-related appointments; established verification meetings	Conduct customer satisfaction survey to evaluate success
5.3	What is reasonable amount of time to wait to get an appointment?	Question posed to Task Force	48 hours
5.4	Need ability to pre-schedule inspections (like a week ahead)	Staff working on system	Action addresses issue
5.5	Need for after hours inspection	Currently available upon request	Consider as part of Expedited Service
5.6	MEPs in Beverly Hills take too long--3-4 weeks	Assigned a dedicated plan reviewer at the counter. Most reviews completed at counter, longest review approximately one week.	Action addresses issue
5.7	Staff needs greater sensitivity to retail holiday season.	Increased staff awareness	Action addresses issue; confirm with customer satisfaction surveys
5.8	Over-the-counter/smaller plan checks should take no more than one week	Increased number of O-T-C (over-the-counter-permits)	Augment Plan Review staff to reduce turn-around times.
6.0	<b>CODE</b>		
6.1	Code search is challenging-need exact key words	Address as part of FY 2011-12 work plan item	Investigate options for new Code vendor
6.1	Not organized clearly	Address as part of FY 2011-12 work plan item	Action addresses issue
6.3	Need revisions Location of A/C and pool equipment	Address as part of FY 2011-12 work plan item	Action addresses issue
7.0	<b>ORGANIZATIONAL STRUCTURE</b>		
7.1	Lack of communication between PW & B & S	Continue with bi-weekly Development Review Task Force	1) May be resolved with ProjectDox. 2) Consolidate functions.
7.2	"islands of authority" in development process		1) May be resolved with ProjectDox. 2) Consolidate functions.

MAYOR'S TASK FORCE ON GOVERNMENT EFFICIENCY

	ISSUES	ACTIONS TAKEN	TASK FORCE RECOMMENDATIONS
7.3	B & S should take over all Development Review	Address as part of the FY 2012-13 work plan item	1) May be resolved with ProjectDox. 2) Consolidate functions.
7.4	Building and Fire inspections are not coordinated. There is too much down time. Takes a couple days to do each and then make corrections on smoke alarms	Continue with bi-weekly Development Review Task Force	1) May be resolved with ProjectDox. 2) Consolidate functions.
8.0	<b>COMMISSIONS</b>		
8.1	Commissioner training insufficient (approach, respect, purpose – focus meeting flow)	Staff will schedule regular training	Action addresses issue
8.2	AC reviews small details while other applicants sit and wait for their item to be heard	Modified application requirement to include additional information	Provide regular training
8.3	AC needs to prioritize items- smaller vs., larger	Staff review of agenda	Advise Chair; review agenda order
9.0	<b>FEES</b>		
9.1	Too high	Trucking and hauling fees have been significantly reduced.	Eliminate Document Maintenance fees and permit issuance fees for plans and permits obtained online.
9.2	Parks & Rec fees are higher than anywhere else	Will pursue if directed	Need to evaluate
9.3	Cost to go to DRC-\$1500 for landscape	Will pursue if directed	Consider varied levels of fees
9.4	Applicants need to know fees earlier in the process	Staff will estimate costs and provide information earlier	No action required
9.5	Applicants need to understand better how fees are calculated	Information provided on website	No action required
10.0	<b>PAYMENT PROCESS</b>		
10.1	Appears on-line payment system does not take American Express, only Visa and MasterCard	American Express has been added to the online system.	Action addresses issue
10.2	Allow applicant to set up a funded account that can be drawn down rather than paying smaller change fees as they come up	Deposit account service is available now.	Action addresses issue
10.3	Not clear how/if can pay on-line with credit card with company card (may be an education piece)	This can be done.	Provide additional notification on website

MAYOR'S TASK FORCE ON GOVERNMENT EFFICIENCY

	ISSUES	ACTIONS TAKEN	TASK FORCE RECOMMENDATIONS
10.4	Pre-signed checks are difficult to use-large amounts need multiple sign-offs	Address as part of the FY 2012-13 work plan item	Recommend a check guarantee service for checks over a certain amount.
11.0	<b>OUTSIDE AGENCY APPROVALS</b>		
11.1	Timing regarding Health department approval	Purchased County equipment for Beverly Hills submittals	Loop outside agencies into ProjectDox
11.2	Timing re elevator inspection	Will pursue if directed	Recommend hiring an outside consultant to take over elevator inspections.



## Planning Commission Report

**Meeting Date:** December 20, 2012

**Subject:** Establishing a Substantial Compliance Determination.

**Recommendation:** Continue the Public Hearing and receive comments, and consider a resolution recommending establishment of a substantial compliance determination procedure for the Director of Community Development to allow minor modifications to certain zoning code standards based on specific findings.

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### REPORT SUMMARY

This report forwards a revised resolution and draft ordinance based on comments and direction received from the Planning Commission on December 13, 2012.

### BACKGROUND

On December 13, 2012, the Planning Commission held a public hearing, which was continued to December 20, 2012, to consider a resolution recommending that the City Council adopt a process through which the Director of Community Development could approve minor deviations from certain zoning code standards if specific criteria were met. During the public hearing the Planning Commission considered a draft ordinance that would establish a ministerial process by which the Director would approve deviations to certain zoning standards of up to six-inches. The Planning Commission directed staff to return with a revised process that would allow up to a ten-percent, or six-inch deviation, would require public notification, a public hearing and findings to be met, and would include a right to appeal.

### DISCUSSION

A revised approach based on the Planning Commission's direction summarized above is included in the draft ordinance, attached as Exhibit A. The following is a summary of the revised ordinance:

- For eligible zoning sections, allowances could be granted for deviations that were not more than ten-percent or six-inches, whichever was less.
- Notice of the public hearing, intended decision and final decision would follow the City's established public notification process for Minor Accommodations (Beverly Hills Municipal Code Section 10-3-3602).
- The Director would have the ability to refer a case to the Planning Commission if in her opinion it merited the Planning Commission's review.

**Attachment(s):**

1. Resolution of the Planning Commission  
Exhibit A. Draft Ordinance
2. Public Comment

**Report Author and Contact Information:**

Peter Noonan, AICP CEP  
Associate Planner  
(310) 285-1127  
pnoonan@beverlyhills.org

- Decisions granted through the Substantial Compliance Determination Process would be appealable to the Planning Commission if made by the Director, and to the City Council if made by the Planning Commission.
- Front yard paving, floor area of a building, height of a building could not be exceeded, and minimum unit area would not be able to be reduced through this process.

#### **PUBLIC NOTICE AND COMMENT**

Notice of this public hearing was duly published in the Beverly Hills Courier on November 30, 2012 and noticed in the Beverly Hills Weekly on December 6, 2012. Since the public comment period opened staff has received one comment, in the form of an email, from the public advocating for the Substantial Compliance Determination process to be based on a percentage standard as opposed to limiting the discretion to six inches in all cases (email attached).

#### **GENERAL PLAN CONSISTENCY**

The proposed zoning code amendments are consistent with the objectives, principles, and standards of the General Plan. The contemplated deviations from zoning code standards that would be authorized through the proposed substantial compliance determinations involve minor changes to the City's development standards, would not alter or change designated land uses, and would not be contrary to any of the goals, policies and programs in the General Plan.

#### **ENVIRONMENTAL REVIEW**

The code amendments contemplated have been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that adoption of this Ordinance would not have a significant environmental impact and is exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. Further, it can be seen with certainty that there is no possibility that the adoption and implementation of a future ordinance may have a significant effect on the environment because of the *de minimis* nature of the any potentially authorized deviations from the code requirements.

#### **NEXT STEPS**

Once the Planning Commission has taken action, the ordinance will be brought before the City Council for its consideration.

Report Reviewed By:



Jonathan Lait, AICP  
City Planner

Attachment 1  
Resolution

RESOLUTION NO. 1660

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL AMEND THE MUNICIPAL CODE TO ESTABLISH A REVIEW PROCESS TO DETERMINE SUBSTANTIAL COMPLIANCE WITH CERTAIN ZONING CODE STANDARDS BASED ON SPECIFIC FINDINGS.

The Planning Commission of the City of Beverly Hills hereby finds, resolves, and determines as follows:

**Section 1.** On December 13, 2012, the Planning Commission held a duly noticed public hearing, which was continued to the following meeting on December 20, 2012, to consider a resolution recommending that the City Council amend the Zoning Code to establish a process by which deviations from development standards occurring as a result of construction can be approved if certain findings are met. As proposed, the draft Ordinance included in Exhibit A would amend the City of Beverly Hills Municipal Code to establish an administrative procedure by which substantial compliance with zoning code standards can be confirmed if certain criteria are met.

**Section 2.** This Ordinance is consistent with the objectives, principles, and standards of the General Plan. The contemplated deviations from zoning code standards that would be allowed through the proposed substantial compliance determinations involve minor deviations from the City's development standards, would not alter or change designated land uses, and would not be contrary to any of the goals, policies and programs in the General Plan.

**Section 3.** This Ordinance is consistent with the recommendations of the Mayor's Task Force on Governmental Efficiency as presented to the City Council on December 19, 2011. In its report, the Task Force included a recommendation to establish a procedure through which

minor deviations for zoning code standards that occurred as a result of construction could be approved in certain instances.

**Section 4.** This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that adoption of this Ordinance would not have a significant environmental impact and is exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

**Section 5.** The Planning Commission hereby recommends that the City Council adopt an Ordinance approving and enacting the proposed zoning text amendment substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

**Section 6.** The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted:

\_\_\_\_\_  
Craig Corman  
Chair of the Planning Commission  
City of Beverly Hills, California

Attest:

\_\_\_\_\_  
Secretary

Approved as to form:

Approved as to content:

\_\_\_\_\_  
David M. Snow  
Assistant City Attorney

\_\_\_\_\_  
Jonathan Lait, AICP  
Assistant Director of Community Development /  
City Planner

Exhibit A – Draft Ordinance Amending the Municipal Code to Establish an Administrative Review Process to Determine Substantial Compliance with Certain Zoning Code Standards based on Specific Criteria.

**Exhibit A**  
**Draft Ordinance**

AN ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING THE MUNICIPAL CODE TO ESTABLISH A  
REVIEW PROCESS TO DETERMINE SUBSTANTIAL  
COMPLIANCE WITH CERTAIN ZONING CODE  
STANDARDS BASED ON SPECIFIC FINDINGS.

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

**Section 1.** On December 13, 2012, the Planning Commission held a duly noticed public hearing, which was continued to the following meeting on December 20, 2012, at which the Planning Commission adopted Resolution No. 1660, recommending that the City Council amend the Zoning Code to establish a process by which deviations from development standards occurring as a result of construction can be approved if certain findings are met. On \_\_\_\_\_, 2012, the City Council held a duly noticed public hearing, received public testimony, and thereafter introduced this Ordinance.

**Section 2.** This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that adoption of this Ordinance would not have a significant environmental impact and is exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. 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.

**Section 3.** This Ordinance is consistent with the objectives, principles, and standards of the General Plan. The contemplated deviations from zoning code standards that would be

authorized through the proposed substantial compliance determinations involve minor changes to the City's development standards, would not alter or change designated land uses, and would not be contrary to any of the goals, policies and programs in the General Plan.

**Section 4.** This Ordinance is consistent with the recommendations of the Mayor's Task Force on Governmental Efficiency as presented to the City Council on December 19, 2011. In its report, the Task Force included a recommendation to establish a procedure through which minor deviations from zoning code standards that occurred as a result of construction could be approved in certain instances.

**Section 5.** The City Council hereby amends Section 10-3-203 of Article 2 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code by adding the following language, with all other language in that Section to remain unchanged:

"G. Substantial Compliance Determination. An applicant may seek a determination that a project substantially complies with the zoning code if, after a development project has been approved, a building permit has been issued and the City has approved placement of the footing, it is discovered that the project as constructed does not meet the requirements of the zoning code or conditions of approval. A substantial compliance determination may be approved, with or without conditions, for the zoning code standards listed in the table included in this section if the reviewing authority makes all of the following findings:

1. That requiring strict compliance with the zoning code would create substantial financial hardship for the applicant;
2. That the items that deviate from the code would not exceed 6" beyond the code requirements for height, length, or width;
3. That approval of a substantial compliance determination would not result in substantial, adverse impacts to neighboring properties;
4. That approval of a substantial compliance determination would not pose a threat to life or safety;
5. That the circumstances surrounding the request for a substantial compliance determination do not indicate that the applicant

specifically intended to deviate from the zoning code standards.

6. That approval of a substantial compliance determination would not affect the dimensions of more than one parking stall.

Nothing in this section shall allow the amount of front yard paving, the floor area of a building, or the height of a building to exceed the limitations in the zoning code.

Nothing in this section shall authorize any encroachment onto the public right-of-way or onto neighboring properties.

The reviewing authority for a substantial compliance determination shall be the director of community development, or designee. If, in the opinion of the director, or designee, an application merits review by the planning commission, the director, or designee may refer such application to the planning commission and the planning commission shall serve as the reviewing authority for such application and shall conduct a noticed public hearing regarding the requested substantial compliance determination.

Notice of a public hearing, an intended decision and a final decision shall be provided in accordance with Section 10-3-3602 of this code.

The applicant or any person aggrieved by any decision regarding a substantial compliance determination may appeal to the planning commission, if the original decision was made by the director, or to the city council, if the original decision was made by the planning commission, as provided in title 1, chapter 4, article 1 of this code.

Zoning Code Standard	Permissible Deviation
Building Encroachments into Required Setback Areas	Building walls, architectural projections, balconies, awnings, chimneys, and porches may encroach no more than ten-percent (10%) or six inches (6") into a required setback, whichever is less.
Fence and Wall Location, Length, and Height	Fences and walls may be built no more than ten-percent (10%) or six inches (6") beyond the zoning code standard or condition of approval in terms of location, length or height, whichever is less, provided that the fence or wall does not block an automobile driver's field of vision when exiting a driveway.

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Minimum Drive Aisle  
Width

The width of a drive aisle may be up to six inches (6") narrower than specified by the city's minimum parking standards or a condition of approval.

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Minimum Parking Stall  
Dimension

The dimension of a parking stall may be up to six inches (6") shorter in each direction than specified by the city's minimum parking standards or a condition of approval.

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**Section 6.**    **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 and remain in full force and effect.

**Section 7.**    **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.

**Section 8.** Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:

Effective:

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WILLIAM W. BRIEN, MD  
Mayor of the City of  
Beverly Hills, California

ATTEST:

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(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

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LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

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JEFFREY C. KOLIN  
City Manager

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SUSAN HEALY KEENE  
Director of Community Development

Attachment 2  
Public Comment

**Peter Noonan**

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**Subject:** FW: discretion

**From:** Stephen P. Webb

**Sent:** Tuesday, December 18, 2012 2:30 PM

**To:** Planning Commission Chair Corman, Vice Chair Rosenstein, Commissioner Yukelson, Commissioner Fisher

**Cc:** Jonathan Lait

**Subject:** discretion

Unfortunately I will be out of town on the 20<sup>th</sup>. I have long advocated for administrative discretion for Minor encroachment type issues (including height, set backs etc) but on size does not fit all. LA utilizes a % standard and I believe you should as well. While 6" may be reasonable where you encroach into a 7 1/2 side yard set back, it isn't when you are encroaching into a 75 ft front yard set back. If this is going to work you must trust in staff's judgment and give them reasonable flexibility. Thank you.

Stephen P. Webb  
Tilles, Webb, Kulla & Grant, ALC  
433 N Camden Drive, Suite 1010  
Beverly Hills, CA 90210  
Tel: (310) 888-3430  
Fax: (310) 888-3433



Community Development

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Beverly Hills, at its meeting to be held on **Thursday, December 13, 2012, at 1:30 p.m.**, in Room 280-A of the City Hall, 455 N. Rexford Drive, Beverly Hills, CA 90210, will hold a public hearing to consider:

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE MUNICIPAL CODE TO ESTABLISH AN ADMINISTRATIVE REVIEW PROCESS TO ALLOW MINOR MODIFICATIONS OF CERTAIN ZONING CODE STANDARDS BASED ON SPECIFIC FINDINGS.

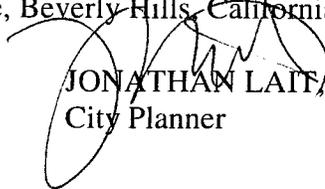
The proposed ordinance would establish a process through which the Director of Community Development could approve minor modifications of certain zoning code standards on a project specific basis, provided that certain findings can be made.

This Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. 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 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.

All interested persons are invited to attend and speak on this matter. Written comments may be submitted, c/o Planning Services, 455 N. Rexford Drive, 1<sup>st</sup> Floor, Beverly Hills, CA 90210. Comments must be received by 5:00 pm on Wednesday, December 5, 2012 to be included in the Planning Commission's agenda packet. Written and spoken comments may also be submitted during the public hearing.

If you challenge the actions in court, you may be limited to raising only those issues that were raised at the public hearing described in this notice, or in written correspondence delivered to the City, either during or prior to the end of the public comment period.

For more information, please contact Peter Noonan, AICP CEP, Senior Planner in the Beverly Hills Planning Division at 310.285.1127 or pnoonan@beverlyhills.org. The case file, including a copy of the proposed ordinance, is available for review in the Community Development Department, City Hall, 1<sup>st</sup> Floor, 455 N. Rexford Drive, Beverly Hills, California 90210.

  
JONATHAN LAIT, AICP  
City Planner