



## AGENDA REPORT

**Meeting Date:** January 24, 2013  
**Item Number:** F-5  
**To:** Honorable Mayor & City Council  
**From:** City Attorney  
**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. Ordinance

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### RECOMMENDATION

Staff recommends that the City Council move to adopt 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."

### INTRODUCTION

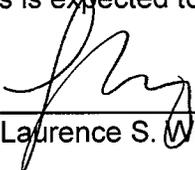
The City Council conducted a first reading of this ordinance at its January 8, 2013 meeting.

### DISCUSSION

This ordinance amends the City's zoning code to establish a procedure through which the City may approve minor deviations from certain zoning standards on a project specific basis, provided that certain findings can be made. The City Council introduced the ordinance, with certain revisions recommended by staff and council members, at its meeting of January 8, 2013.

### FISCAL IMPACT

The cost of administering the newly adopted process is expected to be offset by application fees.

*for*   
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Laurence S. Wiener, City Attorney

# **Attachment 1**

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%) into a required setback.
Fence and Wall Location, Length, and Height	In terms of location, height and length, fences and walls may be built no more than ten-percent (10%) beyond the applicable zoning code standard or condition of approval unless approved by the Planning, Design Review or Architectural Commission. 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%) 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%) shorter in each direction than specified by the city's minimum parking standards or a condition

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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.

Section 9. The City Council shall review the impacts of this ordinance and whether to modify or repeal the ordinance within one year after the effective date.

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:

*[Signature]*  
\_\_\_\_\_  
for LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
JEFFREY C. KOLIN  
City Manager  
*[Signature]*  
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SUSAN HEALY KEENE  
Director of Community Development