



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: April 1, 2014

To: Honorable Mayor & City Council

From: Jonathan Lait, AICP, City Planner/Assistant Director, Community Development

Subject: Update on Ordinance Regulating Discontinued Conditionally Permitted Uses and Legally Nonconforming Uses

Attachments:

- A. Planning Commission Report, February 13, 2014, without attachments
- B. City Council Report, July 2, 2013, without attachments
- C. City Council Report, April 2, 2013, without attachments

INTRODUCTION

This report transmits an update on the subject policy project. The City Council has directed staff to work with the Planning Commission to study the option of placing time limits on discontinued conditionally permitted uses and legally nonconforming uses. This report summarizes the direction provided to staff by the Planning Commission on this topic during a study session held on the matter. Staff is prepared to move forward with the preparation of a draft ordinance based on this direction, with the concurrence of the City Council.

BACKGROUND

On April 2, 2013, staff presented the City Council with information on discontinued conditionally permitted uses¹ and legally nonconforming uses² in the City at the request of Mayor Mirisch. Staff returned to the City Council on July 2, 2013, with a scope and timeline for the project in order to further define the project goals and process (Attached).

¹ A conditional use permit allows the City to permit uses that may be necessary or desirable to the community, but are recognized to have potential impacts to the neighborhood or adjacent properties. Conditions of approval may be applied during the discretionary review of a conditional use permit to mitigate the potential negative impacts that the proposed use may have on adjacent property, the neighborhood and the public welfare.

² Nonconforming uses are defined in the Beverly Hills Municipal Code as: "A use of property that was permitted at the time that it was lawfully established, but is presently prohibited or presently requires a conditional use permit or other use permit and no such permit has been issued for the use."

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Update on Ordinance Regulating Discontinued Conditionally Permitted Uses and Legally Nonconforming Uses

On February 13, 2014, the Planning Commission held a study session on this topic (Attached). Staff provided the Commission with information on:

- current regulations;
- a summary of other cities' regulations on such uses, and;
- policy alternatives for consideration.

The Planning Commission further discussed:

- land use considerations;
- General Plan goals and policies, and;
- fiscal impacts that may result from the establishment of a time limit on discontinued conditionally permitted and legally nonconforming uses.

DISCUSSION

Planning Commission Direction

After considering the alternatives for regulating discontinued conditionally permitted and legally nonconforming uses and discussing pros and cons of each, the Planning Commission provided staff with the following direction:

- A time limit should be established for discontinued legally nonconforming and conditionally permitted uses in order to address potential impacts related to the reestablishment of discontinued uses after a prolonged period of time;
- The preferred time limit is 2-3 years after a use has been discontinued that it may no longer be reestablished. A one year limit was perceived as being too restrictive for property owners due to the length of time it can take to find a tenant/execute a lease agreement;
- Staff was directed to return to the Planning Commission with information on the businesses and properties this regulation would impact, and;
- The ordinance should address commercial uses in both commercial and residential areas.

Staff will continue with the process of drafting an ordinance that incorporates this direction.

Public Outreach

The City Council identified broad community involvement as an important aspect of the study of discontinued nonconforming and conditionally permitted uses. The Council expressed a desire to engage residents, property owners, and realtors in the study process. In order to ensure the community is informed of this policy discussion, the Planning Commission discussion held on February 14, 2014 was noticed in the following manner:

- A notice ran in the Beverly Hills Courier and the Beverly Hills Weekly prior to the meeting.

Meeting Date: April 1, 2014

Update on Ordinance Regulating Discontinued Conditionally Permitted Uses and Legally Nonconforming Uses

- An announcement about the hearing was posted on the City website prior to the meeting.
- A notice was sent to:
 - Homeowner and community groups in the City
 - Chamber of Commerce and realty offices that operate in the City
 - The Southeast Task Force
 - Other interested parties.

Staff will continue to keep these groups informed about the progress on this issue. Additionally, staff will provide notice, via direct mailing, to all properties and businesses that will potentially be impacted by a change in regulation prior to the Planning Commission public hearing.

FISCAL IMPACT

There are no fiscal impacts associated with this report.

RECOMMENDATION

Staff recommends that the City Council receive and file this item.


Susan Healy Keene, AICP
Director of Community Development

Attachment A
Planning Commission
Report, February 13, 2014



City of Beverly Hills

Planning Division

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Planning Commission Report

Meeting Date: February 13, 2014

Subject: Discussion regarding regulation of discontinued legally nonconforming and conditionally permitted uses

Recommendation: Discuss and provide direction

Attachments:

1. City Council Report, April 2, 2013
2. City Council Report, July 2, 2013
3. List of Uses Conditionally Permitted in the City
4. Case Studies

REPORT SUMMARY

The City Council directed staff and the Planning Commission to review the City's regulation of legally nonconforming and conditionally permitted uses and to make recommendations regarding whether time limits should be established for these uses once they have been discontinued or vacated for some period of time. This report presents the City's current regulations, issues to be considered, neighboring cities' regulation of legally nonconforming and conditionally permitted uses, and potential alternatives to regulate such uses focusing on the pros and cons of setting a maximum amount of time a property can remain vacant before its legally nonconforming or conditionally permitted use status expires. Staff is seeking Planning Commission input with the goal of striking a balance between limiting impacts to neighborhoods, attracting and retaining businesses, assuring properties can be leased, and meeting the goals and policies of the General Plan.

BACKGROUND

On April 2, 2013, at the request of Mayor Mirisch, the City Council discussed the City's regulation of sites with nonconforming and conditionally permitted uses that have been discontinued or vacant for a period of time. The City Council directed the Planning Commission to review the topic and provide recommendations. Staff returned to the City Council on July 2, 2013, with a scope and timeline for the project in order to further define the project goals and process. The staff reports from these meetings are included as Attachments 1 and 2 to this report.

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DISCUSSION

Issues Statement

This report serves as an “Issues Statement” pursuant to the work scope presented to City Council on July 2, 2013 (Attachment 2). The Issues Statement includes a summary of the City’s current regulations and issues to be considered.

Current Regulations: *Nonconforming Use*

Nonconforming uses are defined in the Beverly Hills Municipal Code (BHMC) as: “A use of property that was permitted at the time that it was lawfully established, but is presently prohibited or presently requires a conditional use permit or other use permit and no such permit has been issued for the use.”

Examples of types of nonconforming uses that currently exist in the City include:

- A use that was once allowed but is no longer allowed anywhere in the City (example: veterinary clinic);
- A use that is allowed in the City but is no longer allowed in the area where it is currently located (example: hotels in residential zones); and,
- A use that was established by right and did not require a conditional use permit (CUP) or other use permit at the time but would require a CUP or other use permit today because of changes in the Zoning Code since the use was originally established (example: automobile dealerships and service).

Article 41 of the BHMC regulates Nonconforming Buildings, Parking and Uses. As outlined in BHMC Section 10-3-4101, expansion of a nonconforming use is not allowed and a nonconforming use may not be resumed once that use is converted to a conforming use¹. This section of the code does not address discontinuance or abandonment of nonconforming uses. As a result, a building that most recently housed a legally nonconforming use may remain vacant for any period of time and, so long as there has been no intervening use that conforms to current code, the legally nonconforming use may be reestablished.

Current Regulations: *Conditional Use Permits*

A conditional use permit allows the City to permit uses that may be necessary or desirable to the community, but are recognized to have potential impacts to the neighborhood or adjacent properties. Conditions of approval may be applied during the discretionary review of a conditional use permit to mitigate the potential negative impacts that the proposed use may have on adjacent property, the neighborhood and the public welfare.

¹ Medical uses have a unique provision that allows the use to be reestablished if discontinued, provided the property owner registered the property with the City.

Examples of uses that are conditionally permitted in commercial areas of the City include:

- Convenience stores
- Drive-through facilities
- Mini shopping centers
- Vehicle sales, service or fuel stations
- Private training centers over 2,000 square feet of floor area.

Examples of uses that are conditionally permitted in residential areas of the City include:

- Educational institutions
- Museums
- Childcare uses
- Senior housing.

Attachment 3 includes a complete list of conditionally permitted uses in commercial and residential areas.

Article 38 of the BHMC regulates Conditional Use Permits. Section 10-3-3802 "Restrictions" states that "in granting a conditional use permit, the planning commission may impose such conditions on the permit as the commission deems necessary or proper to protect adjacent property and the public welfare from potential adverse impacts related to the approved use."

Conditions that may be imposed include "limiting height or area of buildings and structures that would otherwise be permitted by the provisions of this title and conditions that require an applicant to provide parking and loading spaces in excess of the parking and loading spaces." Earlier conditional use permits included minimal conditions and, over time, the Planning Commission has been imposing more conditions on conditional use permits to better address potential impacts and community expectations. There is no language included in the Zoning Code that sets time limits for conditional use permits, whether or not the conditional use has been discontinued.

It is noted that the Beverly Hills Municipal Code does address the discontinued exercise of rights with regard to variances (also referred to as abandonment of the variance). BHMC 10-3-3714 states that "the failure to exercise any right granted by a variance within the time limits provided, or the discontinuance of the exercise of any right heretofore or hereafter granted by a variance for a continuous period of twelve (12) months, shall constitute an abandonment of such variance and such rights shall lapse..." Staff is researching the legislative history and intent of this regulation to better understand why similar provisions have not been adopted for use permits in the Code and will provide more information during the study session.

Land Use Considerations

Allowing the reestablishment of nonconforming or conditionally-permitted uses after a long period of vacancy may:

- cause impacts that were not originally foreseen and addressed when the use was permitted,
- create conflicts with residents and businesses because of changing expectations (traffic, parking, etc.),
- provide inadequate opportunities for community input on impacts of the use.

An owner of a property with a legally nonconforming use or a CUP may be inclined to allow property to remain vacant, sometimes for years, in order to wait for a certain business type or rental rate. This could be problematic because:

- during vacancy the community’s vision and goals for the area could change,
- land that remains vacant for an extended period of time may degrade neighborhood character,
- property left vacant could have fiscal impacts on the City.

Review of Neighboring Cities’ Regulations

Staff compiled information on regulation of legally nonconforming and conditionally permitted uses as they relate to discontinued uses and vacant properties from several cities in the region including Los Angeles, West Hollywood, Culver City, Santa Monica, Glendale, Pasadena and Malibu. The table below summarizes this information. Attachment 4 provides more information for each city.

Maximum amount of time a property can remain vacant before its nonconforming or conditionally permitted use status expires

Beverly Hills	No Limit	No Limit (Review authority may impose time limit conditions at time of review)
Los Angeles	One year	One year
West Hollywood	One year	No Limit (review authority may impose time limit conditions at time of review)
Culver City	One year (unless director determines that property owner has made legitimate effort to use or lease)	One year
Santa Monica	One year	Six months (requires a revocation hearing before Planning Commission)
Glendale	One year	Limit set by review authority when CUP approved
Pasadena	One year	One year
Malibu	180 days (6 months)	Six months (requires a revocation hearing with Planning Commission)

Legal Nonconforming Uses

As shown in the table above, all but one city (Malibu) examined for this report place a one-year restriction on how long a property can remain vacant before a nonconforming use on the property expires. Malibu has a more stringent requirement of 180 days at which point a nonconforming use is no longer allowed to be reestablished after it has been discontinued.

Conditionally Permitted Uses

The restrictions placed on conditionally permitted uses that have been discontinued or abandoned are not as uniform among the cities reviewed as those for legal nonconforming uses. Three cities, Los Angeles, Culver City and Pasadena, allow a conditionally permitted use to be reestablished up to a year after such use has been discontinued. Santa Monica and Malibu have a six month limit for a conditionally permitted use to be reestablished after discontinuance; however, a hearing by a review body is required to revoke the conditional use permit. Glendale and West Hollywood do not have explicitly stated time limits on conditionally permitted uses but do allow the Planning Commission to impose time limit restrictions on such permits when they are considered for approval (similar to Beverly Hills).

Alternatives

Several policy alternatives are presented below. Each alternative includes discussion of impacts to the City, community, and property owner as well as benefits and considerations.

Alternative 1: No change in regulation (current standard)

One alternative is to continue to allow legally nonconforming and conditionally permitted uses to be authorized indefinitely.

Benefits

- Property owners with nonconforming uses or CUPs could benefit from a wider range of uses/businesses potentially available to occupy their properties, particularly during economic slowdowns when it may be more difficult to lease properties.

Considerations

- Allowing nonconforming and conditionally permitted uses to continue into perpetuity could result in neighborhood incompatibilities when community priorities and expectations change and old uses are reestablished after periods of vacancy.
- If property owners allow a property to remain vacant in order to wait to lease to a certain type of tenant, long vacancies could impact community character, present property maintenance issues and could mean lost revenue for the City.
- No change in the current regulation will continue to result in certain properties remaining vacant for long periods of time.

Alternative 2: Establish a time limit for legally nonconforming uses and conditionally permitted uses

The Planning Commission may wish to consider recommending establishment of a time limit for legally nonconforming uses and conditionally permitted uses that are discontinued or vacated. The time limit established could be different for nonconforming uses and conditionally permitted uses. The most commonly used time period in neighboring jurisdictions is one year after the discontinuance of the use. As noted previously, variances granted by the City of Beverly Hills also expire after one year of discontinued exercise of rights. Given that establishing a time limit on these uses would be a new regulation for property owners in Beverly Hills, the Planning Commission may wish to consider a time limit in excess of one year to provide property owners with additional flexibility to locate desirable tenants to fill vacant spaces. The Planning Commission may wish to consider establishing a time limit between two and five years.

Benefits

- Establishing time limits would give the City more ability to ensure orderly reuse of property consistent with the General Plan.
- Time limits could encourage property owners to establish a conforming use which could be more compatible with the surrounding neighborhood.
- If there were time limits on reestablishment of vacant and discontinued uses, property owners would have an incentive to locate tenants and fill spaces rather than keeping properties vacant waiting for a particular tenant.
- Pursuant to the points above, staff anticipates time limits could result in fewer longtime vacant properties in the City which could have a positive impact on community character, property maintenance and City revenues.

Considerations

- Establishing time limits for discontinued nonconforming uses and CUPs would limit the range of uses/businesses available to a property owner and may limit a property owner's ability to establish a lucrative use on his/her property .
- There may be existing nonconforming uses that the Code no longer allows in the City, and once abandoned pursuant to a proposed time limit, could not be reestablished in Beverly Hills.
- There could be difficulties in administering proposed time limits such as determining that a particular use has or has not been operating during the given time limit.
- From a legal perspective, the City has the ability to introduce a time limit for existing CUPs but there may be considerations related to the rights granted in specific CUPs and whether property owners have had the opportunity to amortize the value of any granted rights over time. If the Planning Commission wishes to pursue a time limit on CUPs, staff will explore these considerations more fully.

GENERAL PLAN CONFORMANCE

Establishing regulations for legally nonconforming and conditionally permitted uses that promote economic vitality while minimizing negative impacts to neighboring property owners is consistent with goals and policies in the General Plan.

- The Land Use policies found under Land Use Goal 15 “Economic Sustainability” include promoting the revitalization of vacant and underutilized buildings to sustain economic vitality, retaining and building upon key business sectors in the community and supporting businesses that contribute revenue, quality services and high paying jobs to the City.
- Land Use Policy 2.1 “City Places: Neighborhoods, Districts, and Corridors” calls for the maintenance and enhancement of the character and aesthetic qualities of the City’s distinctive neighborhoods.
- Land Use Policy 5.8 “Encroachment of Incompatible Land Uses” calls for the protection of residential neighborhoods from the encroachment of incompatible nonresidential uses and disruptive traffic, to the extent possible.
- Land Use Goal 12 “Business Districts Adjoining Residential Neighborhoods” calls for fostering compatible relationships between commission districts and adjoining residential neighborhoods and assuring the integrity, character and quality of both commercial and residential areas are protected and quality of life is maintained.
- LU 12.1 Functional and Operational Compatibility. Require that retail, office, entertainment, and other businesses abutting residential neighborhoods be managed to assure that businesses do not create an unreasonable and detrimental impact on neighborhoods with respect to safety, privacy, noise, and quality of life by regulation of hours of operation, truck deliveries, internal noise, staff parking and on-site loitering, trash storage and pick-up and other similar business activities.

POINTS OF CONSIDERATION

Staff is seeking input and direction from the Planning Commission on the following:

- Should a time limit on legally nonconforming and conditionally permitted uses be established? If so, what is an appropriate amount of time for these uses to be discontinued before the property owner is unable to reestablish the nonconforming use or must apply for a new CUP for the conditionally permitted use?
- If time limit regulations are considered, should they pertain only to properties in commercially zoned areas, or to properties in both commercially zoned areas and commercial uses in areas zoned for residential use? Staff does not recommend including nonconforming residential uses in residential areas in this discussion based on City Council direction which was aimed at impacts of commercial uses on residential areas.
- Any other potential alternatives or issues that the Commission would like to consider.

PUBLIC OUTREACH

The City Council identified broad community involvement as an important aspect of the study of vacant nonconforming and conditionally permitted uses. The Council expressed a desire to engage residents,

property owners, and realtors in the study process. In order to ensure the community is informed of this policy discussion, this public hearing has been noticed in the following manner:

- A notice ran in the Beverly Hills Courier on Friday, February 7, 2014 and the Beverly Hills Weekly on Thursday, February 13, 2014.
- An announcement about the hearing was posted on the City website beginning on Friday, February 7, 2014.
- A notice was sent to:
 - Homeowner and community groups in the City
 - Chamber of Commerce and realty offices that operate in the City
 - The Southeast Task Force
 - Other interested parties.

Staff will continue to keep all of the above groups informed about progress on this issue.

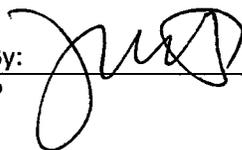
NEXT STEPS

The City Council, at its July 2, 2013 meeting, directed the Planning Commission to study this issue but did not provide specific direction that the City's regulations should be changed and did not appear to unanimously support establishing a time limit on legally nonconforming and conditionally permitted uses. The Planning Commission may wish to discuss the issue and to take the following steps:

- Conduct one additional study session at which staff can provide information such as the number and general location of commercial properties that could be impacted by the establishment of time limits on vacant nonconforming and conditionally permitted uses
 - Develop a summary of issues and draft recommendations
 - Solicit additional input from the City Council:
 - direct staff to set up a City Council-Planning Commission liaison committee meeting to discuss the issues and recommendations,
- OR
- direct staff to prepare a City Council study session report that summarizes the Planning Commission's issues and recommendations.

Either of these options would allow the City Council the opportunity to provide additional direction to the Planning Commission with regard to this issue.

Report Reviewed By:
Jonathan Lait, AICP
City Planner



Attachment B
City Council Report, July
2, 2013



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: July 2, 2013

To: Honorable Mayor & City Council

From: Jonathan Lait, AICP, City Planner/ Assistant Director of
Community Development
Peter Noonan, AICP CEP, Senior Planner, Community
Development

Subject: Scope and Timeline for Reviewing City's Regulation of Vacant
Non-conforming and Conditionally Permitted Uses

Attachments: 1. April 2, 2013 Staff Report

INTRODUCTION

On April 2, 2013, at the request of Mayor Mirisch, the City Council discussed the City's regulation of non-conforming and conditionally permitted uses on sites that have been vacant for extended periods of time. During the discussion, the City Council provided direction to the Planning Commission to review and develop a recommendation regarding current City regulations. This report presents a proposed scope and timeline for completing this work effort and returning to City Council.

The work scope presented in this report includes an analysis of regulations in other cities, potential impacts to neighborhoods, means of providing greater community input, and meeting General Plan goals and policies.

The proposed work plan does not include an analysis of economic implications, or of the ability to attract or retain businesses. If the City Council would like economic aspects explored, an additional work item can be developed which would include a request for a consultant to complete the economic analysis.

DISCUSSION

Non-conforming uses are uses that were allowed by-right at one time in the past, but are now prohibited or require some form of discretionary review, such as a conditional use permit.

Conditionally-permitted uses are uses reviewed and approved by the Planning Commission. The Planning Commission can add conditions of approval to a conditional

use permit in order to make the finding necessary to grant the permit and address any potential impacts which the use might have on the neighborhood.

Currently, the City's zoning code regulations allow non-conforming or conditionally permitted uses to continue with no further review, even if the property is left vacant for an extended period of time. A property loses the right to a non-conforming use when a conforming use is established, unless the non-conforming use is medical and the building is on the City's medical registry. Registered medical buildings are allowed to continue as medical buildings, even if non-medical uses are established in the building for some period of time. In all other instances, once a conforming use is established, a non-conforming use cannot later be re-established. Non-conforming uses and conditionally permitted uses cannot be expanded or intensified without further review by the City.

The Mayor had raised concerns regarding the City's regulations for the Council to consider for the following reasons: (1) during the time in which a property is vacant neighboring properties could change hands, or the community's vision for the area could change; (2) since there is currently no time limit on how long a property can remain vacant and retain its non-conforming or conditionally-permitted use rights, property owners, today, might be more apt to allow properties to remain vacant, waiting for a certain business type or rental rate before leasing the property again; (3) leaving a property vacant, and then reusing the property after an extended period of time represents changes to neighborhood character; (4) re-instating non-conforming or conditionally-permitted uses after a long period might cause impacts that were not originally foreseen and addressed when the use was originally permitted; (5) current regulations for the reinstatement of non-conforming and conditionally-permitted uses does not provide opportunities for community input.

For these reasons, at the April 2, 2013 meeting, the City Council directed staff to identify and explore the issues associated with re-instating non-conforming and conditionally-permitted uses on properties that have been vacant for an extended period of time.

The City Council identified the following aspects for inclusion in the Planning Commission's study:

- Broad community involvement of residents, property owners, and realtors;
- Greater development of the issues and potential alternatives;
- Case studies from other cities.
- Striking a balance between limiting impacts to neighborhoods, attracting and retaining businesses, assuring properties can be leased, and meeting the goals and policies in the City's General Plan.
- Full consideration of potential impacts of current regulations and alternatives, including analysis of the benefits and considerations of setting a maximum amount of time a property can remain vacant and retain its non-conforming or conditionally-permitted rights.
- Potential impacts to neighboring properties from continued non-conforming or conditionally-permitted uses,

- Potential impacts from changing to by-right permitted uses,
- Potential economic implications and impacts on the ability to lease non-conforming or conditionally-permitted properties and on the ability to retain and attract businesses.

Analysis of economic considerations is not included in the proposed work scope since there would be an added cost for a consultant to complete the study. If the City Council would like to include this aspect in the study at this time, an additional work scope can be brought forward with a request for funding.

Work Scope

Staff has developed the following Planning Commission work scope to address City Council direction, with work beginning in the 2013/14 Fiscal Year:

Staff Analysis

1. Staff will develop an issues statement that presents the City's current regulation of non-conforming and conditionally-permitted uses and land use considerations to be studied. The City will identify all properties that could be affected by a change in regulation in order to notify all affected property owners and neighboring residents and tenants. The city will also notify local real estate offices.
2. Staff will provide an update to the Planning Commission presenting the issues statement, and soliciting community input at a public hearing.
3. Staff will then develop case studies from other communities that have an established limit on how long non-conforming or conditionally-permitted properties can remain vacant before losing their rights.

Planning Commission Review and Public Outreach

4. All discussions will occur before the Planning Commission during publically noticed meetings. Affected property owners, neighbors and real estate agents will be notified of all meetings.
 - a. At the publically noticed meeting, staff will present the issue statement and case studies to the Planning Commission for consideration. Staff will also present information associated with setting a time limit, including:
 - i. Potential impacts from continuing a non-conforming or conditionally-permitted use,
 - ii. Potential new impacts from changing to a permitted by-right use,
 - iii. Ability to provide greater community input,
 - iv. Ability to meet goals and policies in the General Plan.
 - b. Planning Commission will consider all public comment when studying alternatives and making its recommendation.

City Council Review

5. The City Council will be presented with the results of the Planning Commission's study and its recommendation.

Meeting Date: July 2, 2013
Vacant Non-conforming, and Conditional Uses

Timeline

It is anticipated that this item will be completed by summer 2014.

FISCAL IMPACT

There would be no fiscal impact.

RECOMMENDATION

Staff will proceed as outlined in this report, unless otherwise directed by the City Council.

Susan Healy Keene
Director of Community Development

Approved By
Susan Healy Keene

Attachment C
City Council Report, April
2, 2013



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: April 2, 2013
To: Honorable Mayor & City Council
From: Susan Healy Keene, AICP, Director of Community Development
Subject: Request by Mayor Mirisch to review the City's regulation of non-conforming and conditionally permitted uses that have been vacant for a period of time.

INTRODUCTION

At the request of Mayor Mirisch, information is being provided on the City's regulation of nonconforming uses and conditionally permitted uses.

DISCUSSION

The City's zoning ordinance regulates the size and location of buildings and permitted land uses. Some land uses are permitted by right, others may be conditionally permitted, and some are prohibited. The use of a property is declared 'nonconforming' when City policies change and the use no longer complies with current codes. For instance, a use that was previously allowed by right when it was established may now require a conditional use permit and, therefore, be determined nonconforming for lack of a conditional use permit.

Pursuant to local regulations (BHMC 10-3-4101), legally authorized uses that are now nonconforming with respect to current land use standards may continue to operate provided there is no expansion or alteration of the nonconforming use. If a nonconforming use is abandoned, the use may be reestablished at some point in the future provided there has not been an intervening use.

Some communities have regulations that would only allow a conforming use to be established once a nonconforming use was abandoned for a period of time, such as one or more years. During economic downturns and increased building vacancies, some property owners may end up losing their nonconforming rights with such regulations. Beverly Hills historically has had no limitation on when a nonconforming use can be reestablished.

Meeting Date: April 2, 2013
Conditional Uses and Existing Non-Conforming Uses

Abandoned uses become more complicated when a property owner has previously received a conditional use permit. Since conditional use permit entitlements run with the land, the City may have to undertake a revocation process in certain circumstances to amend or revoke a conditional use permit. If directed by the City Council, there may be other alternatives not presently codified that could allow for certain limitations on conditional use permits that are no longer being used, but remain valid. However, more research with the City Attorney's office would be needed to explore those options.

Replacing nonconforming uses with conforming uses may not be possible in some instances because over time the City's parking and other building regulations have changed. If City Council is interested in establishing time limits on abandoned nonconforming uses, additional research is needed to better understand the possible impacts that parking and other building regulations would have on nonconforming properties.

FISCAL IMPACT

There is no fiscal impact associated with this report.

RECOMMENDATION

This report is provided at the request of a councilmember. Staff will proceed with this item based on direction from the City Council.



Susan Healy Keene
Director of Community Development