



## AGENDA REPORT

**Meeting Date:** July 29, 2014

**Item Number:** F-1

**To:** Honorable Mayor & City Council

**From:** Jonathan Lait, AICP, Assistant Director of Community Development  
Ryan Gohlich, Senior Planner

**Subject:** AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS  
TO PROHIBIT THE EXPANSION OF THE LEVEL PAD AREA OF  
LOTS IN THE HILLSIDE AREA OF THE CITY AND DECLARING  
THE URGENCY THEREOF

**Attachments:** 1. Interim Ordinance  
2. Relevant Hillside Area Development Standards

---

### **RECOMMENDATION**

It is recommended that the City Council adopt an interim ordinance prohibiting the expansion of the level pad area of lots in the Hillside Area of the City.

### **INTRODUCTION**

At its July 24, 2014 meeting, the Planning Commission discussed concerns regarding grading and the construction of retaining walls in the Hillside Area of the City. The Planning Commission's concerns stem from an increasing reliance by property owners upon grading and retaining walls to facilitate larger projects, and the concerns include increased mass and scale, degradation of natural hillside contours and neighborhood identity, increased construction impacts, and slope destabilization. The result of the Planning Commission's discussion was a unanimous vote of the members present to recommend that the City Council adopt an Interim Ordinance pursuant to Government Code Section 65858 to prohibit the expansion of the level pad area of lots in the Hillside Area of the City to protect the health, safety, and welfare of the community and afford the City the opportunity to study potential revisions to the City's Hillside Area grading and retaining wall standards. This report outlines existing grading and retaining wall standards, and identifies potential code amendments that would be studied by the Planning Commission.

The attached Ordinance for consideration by the City Council explains the urgency situation, would take effect immediately and requires a four-fifths vote of the City Council. In the event that the City Council adopts the attached Ordinance, the prohibitions would remain in place for a 45 day period, unless further extended by action of the City Council pursuant to the provisions of Government Code Section 65858.

The Council could consider adopting the Ordinance as a regular, as opposed to urgency, ordinance, which would require notice, first reading, second reading and 30 days until it would take effect.

## **EXISTING HILLSIDE AREA DEVELOPMENT STANDARD**

### **Floor Area**

The maximum allowed floor area for single-family properties in the Hillside Area of the City is a function of how much of the property contains level pad (areas with a 5% slope or less) versus how much of the property is sloped (areas with more than a 5% slope). The applicable floor area calculations are as follows:

- A. If the area of a site is fifteen thousand (15,000) square feet or less, then the maximum permitted cumulative floor area for buildings and structures on the site shall be forty percent (40%) of the area of the level pad plus ten percent (10%) of the area of the slope.
- B. If the area of a site is between fifteen thousand one (15,001) and twenty five thousand (25,000) square feet, then the maximum permitted cumulative floor area for buildings and structures on the site shall be thirty seven percent (37%) of the area of the level pad plus ten percent (10%) of the area of the slope.
- C. If the area of a site is between twenty five thousand one (25,001) and thirty thousand (30,000) square feet, then the maximum permitted cumulative floor area for buildings and structures on the site shall be thirty four percent (34%) of the area of the level pad plus ten percent (10%) of the area of the slope.
- D. If the area of a site is greater than thirty thousand (30,000) square feet, then the maximum permitted cumulative floor area for buildings and structures on the site shall be thirty one percent (31%) of the area of the level pad plus ten percent (10%) of the area of the slope.

As is evidenced above, level pad is more valuable from a floor area perspective, as level pad allows a greater amount of development to occur when compared to sloped area. For example, on a 20,000 square foot property, 10,000 square feet of sloped area would allow for 1,000 square feet of development, but would allow for 3,700 square feet of development if graded level.

## **Grading**

In order to maximize the amount of development that can occur on a property, it is common for sloped areas of properties to be graded level, thereby allowing increased floor area based on the above formulas. The Municipal Code requires review by the Planning Commission whenever more than 3,000 cubic yards of earth material are imported to, or exported from, a site (approximately 300 truckloads); however, grading to create level pad area rarely exceeds this threshold since most of the earth material remains on site as fill.

In addition to limiting the maximum amount of earth material that may be imported or exported, the Municipal Code limits the amount of total grading that can occur on a property. The total grading that can occur relies on a complex formula that takes into consideration the size of a property and the average slope of a property. For example, the formula would allow a 20,000 square foot property with a 10% average slope to cut and fill up to 12,000 cubic yards (approximately 1,200 truckloads) without Planning Commission review. Similar to the 3,000 cubic yard import/export limit, this threshold is rarely exceeded when creating additional level pad on a property.

## **Retaining Walls**

When located outside a required front or street-side setback, retaining walls are allowed to be up to 7' in height. The height of a retaining wall is measured from natural or finished grade, whichever is lower, and the height of a wall is measured from the side of the wall closest to a property line. There is no limit on the number of walls that may be constructed in series, provided that a minimum 3' landscaped area is provided between any walls in series. Retaining walls are commonly used to create additional level pad, and a series of walls is sometimes constructed in order to maximize the amount of level pad that can be achieved. Sometimes the series of walls is visible from the public right of way (e.g. 1201 Laurel Way), and in other instances the retaining walls are located within the interior of a property since the location of sloped areas typically dictates where retaining walls are needed. Additionally, retaining walls have been used to create switchback stairs that run down a slope in order to connect a level pad to the street below. To date, staff is not aware of retaining walls causing any slope failures; however, the appearance of some streets/properties has been altered as a result of retaining walls.

## **Possible Code Modifications**

Should the City Council direct staff and the Planning Commission to study grading and retaining wall regulations in order to establish added protections for the Hillside Area, some of the options studied would include, but are not limited to:

- Prohibiting or limiting expansion of existing level pads
- Reducing the threshold that triggers grading review by the Planning Commission
- Establishing a greater minimum dimension between retaining walls constructed in a series, or limiting the number of walls that can be constructed in series
- Modifying the way that the height of walls is measured, or reducing the maximum allowed height for retaining walls

- More narrowly defining level pad to only include the level pad that the primary residence is located on (currently any level area counts as level pad if it has a dimension of at least 10')
- Calculating maximum allowed floor area based on existing level pad area, rather than after grading as the code currently allows

### **General Plan<sup>1</sup> Policies**

The General Plan includes goals and policies relevant to the City Council's discussion of Hillside Area grading and retaining walls, including:

- Policy LU 2.3 Hillside Development. Maintain the natural landforms that define the City and require that development on hillsides and in canyon areas be located, designed, and scaled to respect the natural topography and landscape.
- Policy LU 6.1 Neighborhood Identity. Maintain the characteristics that distinguish the City's single-family neighborhoods from one another in such terms as topography, lot size, housing scale and form, and public streetscapes.

### **RECOMMENDED ACTION**

It is recommended that the City Council adopt an interim ordinance prohibiting the expansion of the level pad area of lots in the Hillside Area of the City, and direct staff and the Planning Commission to study potential revisions to the City's hillside level pad, grading and retaining wall standards, and to direct staff and the Planning Commission to study the matter, and forward a recommendation for ordinance amendments for consideration by the City Council.

### **FISCAL IMPACT**

No fiscal impact to the City is anticipated from a Council decision in this matter.

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

<sup>1</sup> Available online at [http://www.beverlyhills.org/services/planning\\_division/general\\_plan/genplan.asp](http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp)

# **Attachment 1**

**AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS TO PROHIBIT THE EXPANSION OF THE LEVEL PAD AREA OF LOTS IN THE HILLSIDE AREA OF THE CITY AND DECLARING THE URGENCY THEREOF**

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

**Section 1. Legislative Findings.**

Over time, the Planning Commission of the City of Beverly Hills has developed a greater concern for the impacts associated with expanding the level pad area of lots in the Hillside Area of the City through grading and construction of retaining walls. The Planning Commission's concerns stem from an increasing reliance by property owners upon grading and retaining walls to facilitate larger projects, and the concerns include increased mass and scale, degradation of natural hillside contours and neighborhood identity, increased construction impacts, and slope destabilization. At a special meeting on July 24, 2014, the Planning Commission directed staff to forward an item to the City Council identifying the concerns. Specifically, the Planning Commission recommended that the City Council adopt an Interim Ordinance to prohibit the expansion of the level pad area of lots in the Hillside Area of the City to protect the health, safety, and welfare of the community and afford the city the opportunity to study potential revisions to the City's hillside grading and retaining wall standards, and to direct staff and the Planning Commission to study the matter, and forward a recommendation for ordinance amendments for consideration by the City Council.

The City Council of the City of Beverly Hills shares the concerns raised by the Planning Commission, and finds the hillside grading and retaining wall standards warrant study and possible amendment to address those concerns. The City Council wishes to maintain the status quo with respect to level pad areas in the Hillside Area of the City while the grading and retaining wall standards are studied.

Because the public process of studying the grading and retaining wall standards for the Hillside Area of the City and formulating any ordinance revisions that may be warranted may be lengthy, and because the further modifications to the level pads on properties in the Hillside Area of the City might frustrate the ultimate standards that may be adopted, the City Council wishes to adopt an interim ordinance that will take effect immediately and preserve the status quo while the standards are studied.

**Section 2. Authority.**

Pursuant to Government Code Section 65858, the City Council may adopt, as an urgency measure, an interim ordinance that prohibits any uses that may be in conflict with a contemplated zoning proposal that the City Council is considering, studying or intends to study within a reasonable period of time.

**Section 3. Urgency Findings.**

The City Council finds and determines that there is an immediate threat to the public health, safety, or welfare and that expanding the level pad area of lots in the Hillside Area of the City through grading and construction of retaining walls would result in that threat to the public health, safety or welfare. As described in Section 1, further expansions of level pads in the Hillside Area of the City could threaten the health, safety and welfare of the community through inappropriate increases in mass and scale of development, degradation of natural hillside contours and neighborhood identity, increased construction impacts, and slope destabilization. To preserve the public health, safety and welfare, the City Council finds that it is necessary that this ordinance take effect immediately to prevent such harm.

**Section 4. Prohibition**

Notwithstanding any other ordinance or provision of the Beverly Hills Municipal Code, no level pad area of any lot in the Hillside Area of the City shall be expanded, including through grading, construction of retaining walls, or any combination thereof. For purposes of this Interim Ordinance, "level pad" shall have the meaning set forth in Beverly Hills Municipal Code Section 10-3-100. This prohibition shall not apply to any project that has obtained all necessary discretionary approvals prior to this Ordinance taking effect, and shall not apply to any project for which no discretionary permits are required and all necessary building permits have been obtained.

**Section 5. CEQA Findings.**

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. This Ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development in order to protect the public health, safety and general welfare. 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.

**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. Approval and Extension of Ordinance.**

This Ordinance, being an Interim Ordinance adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare, containing a declaration of the facts constituting the urgency, and passed by a minimum four-fifths (4/5) vote of the City Council, shall take effect immediately upon its adoption and shall continue in effect for a period of not longer than forty-five (45) days. After notice pursuant to Section 65090 of the California

Government Code and public hearing, the City Council may extend the effectiveness of this Interim Ordinance as provided in Government Code Section 65858.

**Section 8. Publication.**

The City Clerk 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.

ADOPTED:

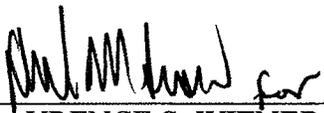
---

LILI BOSSE  
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 KOLIN  
City Manager

# **Attachment 2**

## ATTACHMENT 2: RELEVANT MUNICIPAL CODE SECTIONS

### 10-3-2521: LANDFORM ALTERATION:

Within any five (5) year period, the total cubic yards that may be cut and filled on any site in the Hillside Area, including excavation for basements, shall be calculated as follows:

$$C = \frac{\{(4-10S)^4\}}{162} \{+.1\} \times \text{Site Area in Square Feet}$$

For the purposes of this formula:

C Shall mean the total cubic yards of cut and the total cubic yards of fill permitted,

S Shall mean the "average slope" of the site as defined in section 10-3-100 of this chapter.

The following is an example of the application of this formula to a site that is 30,000 square feet in area with an average slope of twenty five percent (25%):

$$C = \frac{\{(4-2.5)^4\}}{162} \{+.1\} \times 30,000$$

$$C = \{031 + .1\} \times 30,000$$

$$C = 3,937.5$$

3,937.5 cubic yards of cut and 3,937.5 cubic yards of fill would be permitted

However, within any five (5) year period, no more than three thousand (3,000) cubic yards of earth material may be imported or exported from a site in the Hillside Area.

The limitations set forth in this section may be modified by a Hillside R-1 permit issued pursuant to article 25.5 of this chapter. (Ord. 92-O-2147, eff. 9-4-1992; amd. Ord. 95-O-2239, eff. 7-7-1995)

### 10-3-2516: WALLS, FENCES AND HEDGES:

- D. Areas Other Than Front And Street Side Yards: The maximum allowable height for that portion of a wall, fence, or hedge located outside of all front and street side yards shall be seven feet (7').
- E. Series Of Walls: If a series of walls, or portions of a wall, are constructed so that perpendicular section cut through a wall would intersect more than one wall segment and would intersect a total height of seven feet (7') or more, then a minimum three foot (3') landscaped area must be provided between the wall segments. (Ord. 80-O-1771, eff. 10-16-1980; amd. Ord. 84-O-1934, eff. 10-11-1984; Ord. 92-O-2147, eff. 9-4-1992; Ord. 95-O-2239, eff. 7-7-1995; Ord. 96-O-2271, eff. 12-27-1996)

## ATTACHMENT 2: RELEVANT MUNICIPAL CODE SECTIONS

### 10-3-100: WORDS DEFINED:

AVERAGE SLOPE: The average slope of the site as calculated using the following formula:

$$S = \frac{I \times L}{\text{[Total square footage of site]}}$$

For the purposes of this formula:

S shall mean the average slope of the site;

I shall mean the contour interval in feet as shown on a contour map of the site;

L shall mean the combined length of contour lines in scale feet on the contour map being used to calculate the contour interval.

GRADE: For the purpose of measuring the height of walls and fences, the elevation of the natural or finished surface of the ground, whichever is lower.

HEIGHT OF WALL, FENCE OR HEDGE: The vertical distance above grade to the highest element of the wall, fence, or hedge, including, but not limited to, columns, pillars, pilasters, and gates, measured on the side of the wall, fence, or hedge located closest to the property line. Grades shall not be adjusted for the purpose of circumventing the maximum height allowances set forth in this chapter.

LEVEL PAD: That portion of a site containing level finished grade. No portion of a site with a slope that is greater than five percent (5%) shall be considered to be part of a level pad. Furthermore, for the purposes of calculating floor area ratio, no portion of a level finished surface which is the longest pole of a flag lot shall be considered to be part of a level pad.

SLOPE: That portion of the site other than the level pad.

WALL: A structure with length measured horizontally in excess of twenty four inches (24") and with height and thickness designed or constructed of nongrowing materials in such a manner as to enclose property or to inhibit passage through or to obscure view.