



AGENDA REPORT

Meeting Date: April 5, 2016

Item Number: E-1

To: Honorable Mayor & City Council

From: Ryan Gohlich, AICP, Assistant Director of Community Development/City Planner
Timothea Tway, AICP, Associate Planner

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO ESTABLISH TIME LIMITS FOR LEGALLY NONCONFORMING AND CONDITIONALLY PERMITTED USES TO BE REESTABLISHED ONCE THEY HAVE BEEN DISCONTINUED

Attachments:

1. Ordinance
2. Planning Commission Resolution
3. February 25, 2016 Planning Commission Report

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 Beverly Hills municipal code to establish time limits for legally nonconforming and conditionally permitted uses to be reestablished once they have been discontinued" be introduced and read by title only.

INTRODUCTION

Beginning in 2013, the City Council directed staff and the Planning Commission to review the City's regulation of discontinued legally nonconforming and conditionally permitted uses and to make recommendations regarding whether a time limit should be established for these uses once they have been discontinued or vacated for some period of time. This report presents the ordinance and time limits recommended by the Planning Commission. The draft ordinance is included as Attachment 1, and the recommendation in this report is that a five-year time limit be established for any such discontinued use.

BACKGROUND

Nonconforming uses are uses that were once allowed in the City when initially commenced, but, due to subsequent changes in City ordinances, are now prohibited or require some form of discretionary review, such as a Conditional Use Permit. Nonconforming uses vary based upon the zoning district in which the use is established.

Examples of uses that are nonconforming in the City include:

- Veterinary clinics;
- Mini shopping centers established prior to the requirement of a Conditional Use Permit (CUP), and;
- Hotels in residential zones.

Conditionally permitted uses require review and approval by the Planning Commission. The Planning Commission has the authority to add conditions of approval to a conditional use permit in order to ensure that the granting of the permit will not result in impacts that the use might otherwise cause.

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, and;
- Private training centers over 2,000 square feet of floor area.

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 or the use is discontinued for an extended period of time. A property loses the right to a non-conforming or conditionally permitted use only 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. Medical uses are governed in an alternate section of the Municipal Code (10-3-1620.1). In all other instances, once a conforming use is established, a non-conforming use cannot later be re-established. Nonconforming uses and conditionally permitted uses cannot be expanded or intensified without further review by the City.

Previous Discussions

On April 2, 2013, staff presented the City Council with information on discontinued conditionally permitted uses and legal nonconforming uses in the City at the request of Mayor Mirisch after the following concerns were raised by various members of the community regarding the City's regulations:

- During the time in which a property is vacant neighboring properties could change hands, or the community's vision for the area could change;
- Since there is currently no time limit on how long a property can remain vacant and retain its nonconforming 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;

- Leaving a property vacant, and then reusing the property after an extended period of time results in changes to existing neighborhood character;
- Re-instating nonconforming or conditionally permitted uses after a long period might cause impacts that were not originally foreseen and addressed when the use was originally permitted, and;
- Current regulations for the reinstatement of nonconforming and conditionally permitted uses do not provide opportunities for community input.

On February 13, 2014, as directed by the City Council, the Planning Commission held a study session on this topic. Staff provided the Commission with information on:

- Current regulation of discontinued nonconforming and conditionally permitted uses;
- A summary of other cities' regulations on such uses, and;
- Policy alternatives for consideration.

The Commission directed staff to study the issue further and return with a draft Ordinance to establish time limits for discontinued legally nonconforming and conditionally permitted uses.

On October 22, 2015 the Planning Commission held a public hearing to consider a draft ordinance that would establish a two-year limit for discontinued uses. The Planning Commission provided the following direction to staff:

- A two-year limit for discontinued, non-conforming and conditionally permitted uses is not long enough, and a longer term should be considered;
- Optional time extensions should be provided for certain circumstances beyond the control of a property owner (e.g. environmental remediation or an extended economic downturn), and;
- Convene a meeting of the City Council/Planning Commission Liaison to establish the appropriate time limit for discontinued use expiration.

The City Council/Planning Commission Liaisons discussed the topic at a meeting on November 24, 2015. At this meeting it was determined that an appropriate time limit is five years, and that there should be optional extensions, consistent with the Planning Commission's prior direction, that can be granted by the Planning Commission for special circumstances that are beyond the property owner's control such as environmental remediation or an extended economic downturn.

Subsequent to the Liaison meeting, on February 25, 2016, the Planning Commission adopted a resolution recommending to the City Council the attached draft Ordinance.

DISCUSSION

Summary of Draft Ordinance

The draft Ordinance attached to this report includes the following provisions:

- Nonconforming and conditionally permitted uses that are discontinued for more than five years will expire. The five-year clock stops once a property owner applies for planning entitlements or building permits.
- Properties affected by circumstances out of the property owner's control are eligible for extensions on the time limit by way of an extension request to the Planning Commission.
- The ordinance does not affect residential uses. This provision is per Planning Commission direction during previous discussions on the topic.
- The ordinance does not affect medical uses. Medical uses would continue to be governed by the recently developed medical use overlay zone regulations, which can be found in Beverly Hills Municipal Code Section 10-3-1620.1.
- The burden of proof of continuing operation shall be on the property owner. If a property owner cannot produce proof that a use was in operation, it will be considered to be discontinued.
- The ordinance is not retroactive. The five-year period for discontinuance of any use on a property shall begin once the ordinance has been adopted and is in effect.

Summary of Potentially Impacted Properties

Using a list of CUPs compiled by staff over time and the City's Online Business Center, staff identified approximately 101 properties with commercial CUPs that were granted between 1969 to 2015. Generally, the CUPs were granted for the following uses:

- Automotive Uses (32 CUPs)
- Religious/Educational/Museum Uses (25 CUPs)
- Hotel Uses (12 CUPs)
- Other (exercise club over 2,000 square feet, drive-through uses, childcare uses, etc.) (22 CUPs)
- Medical Uses (8 CUPs)

Potentially Impacted Nonconforming Uses

The City does not maintain a comprehensive list of nonconforming uses, however, based on research, there are only a limited number of properties in the City that may house legally nonconforming uses. The uses represented in this category include animal hospitals, dry cleaners with on-site processing equipment, and hotels in residential zones. Because these uses are no longer allowed anywhere in the City, if they were discontinued for a period of more than five years they may not be allowed to reestablish within the City.

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, all public hearings on this matter have been noticed in the following manner:

- A notice ran in the Beverly Hills Courier and the Beverly Hills Weekly.
- A courtesy notice was emailed to:
 - Homeowner and community groups in the City
 - The Chamber of Commerce
 - The Southeast Task Force
- A mailed notice was sent to all commercial property owners in the City.
- An additional mailed notice was sent to owners and occupants of properties that were identified as housing a conditionally permitted or potentially legally nonconforming use.

GENERAL PLAN CONSISTENCY

Establishing a time limit for the expiration of discontinued legally nonconforming and conditionally permitted uses 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 commercial districts and adjoining residential neighborhoods, assuring that the integrity, character and quality of both commercial and residential areas are protected, and quality of life is maintained.

ENVIRONMENTAL ANALYSIS

The Ordinance has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City’s Local CEQA Guidelines (hereafter the “Guidelines”). The Planning Commission finds that adoption of the Ordinance will not have a significant environmental impact and is exempt from CEQA pursuant to Section 15305 of Title 14 of the California Code of Regulations because the Ordinance represents minor alterations in land use limitations and do not result in any changes in land use or density.

FISCAL IMPACT

There are no identified fiscal impacts associated with this Ordinance.

Susan Healy Keene, AICP

Approved By

