STAFF REPORT

Meeting Date: August 16, 2016

To: Honorable Mayor & City Council

From: Ryan Gohlich, AICP, Assistant Director of Community Development

Subject: Request by Mayor Mirisch to Discuss Establishing an Ordinance that Would Prohibit Buildings from Being Demolished Prior to Approval of a Replacement Project for the Site.

Attachments: 1. Steve Mayer Letter – June 6, 2016

BACKGROUND

Mayor Mirisch has requested that this item be placed on the City Council's agenda to discuss whether demolition permits should be contingent on a replacement project being approved for a given site.

DISCUSSION

At the City Council's June 6, 2016 meeting, public comments were submitted by Steve Mayer in regard to the City's process for issuing demolition permits. The specifics of Mr. Mayer's comments are provided as Attachment 1 to this report, and generally highlighted concerns regarding the ability of a property owner to demolish a structure without a replacement project being approved first. In particular, Mr. Mayer referenced a property located at 331 North Oakhurst Drive, which was fenced for approximately one year in anticipation of being demolished, even though a replacement project has not yet been approved.

The property in question was recently demolished during the week of June 13, 2016 in accordance with all applicable Municipal Codes, and is now subject to being maintained pursuant to the City's vacant lot standards, which require fencing, landscaping, and irrigation. Although the specific property highlighted by Mr. Mayer has already been demolished, the broader policy regarding demolition remains a discussion point.

Should the Council wish to change the current process for issuance of demolition permits, an amendment to the Municipal Code would be required, and could either be accomplished by the

City Council through adoption of an urgency ordinance, or through the Planning Commission as a regular ordinance that would ultimately make its way to the City Council for consideration.

In addition, it should be noted that requiring project approval prior to demolition may create additional processing requirements for applicants and reduce the overall level of certainty a property owner may have in redeveloping a property.

Separate from but related to requiring project approval prior to demolition, the City Council has previously discussed the City's rules and policies concerning the installation of construction fencing. Construction fencing can currently be installed prior to obtaining project approvals, as fencing is generally tied to demolition work, and is not necessarily contingent on obtaining project approval. Accordingly, requiring project approval prior to demolition may cut down on the instances in which fencing is installed well in advance of demolition.

RECOMMENDATION

It is recommended that the City Council discuss whether demolition permits should be contingent on obtaining approvals for a replacement project, and provide staff with direction as appropriate.

Susan Healy Keene, AICP,
Approved By

ATTACHMENT 1

STEVE MAYER LETTER – JUNE 6, 2016

TO: **HONORABLE MAYOR AND COUNCILMEMBERS**

RECEIVED
CITY OF BEVERLY HILLS
2006 JUN -6 P 1:16
CITY CLERK'S OFFICE

FROM: **STEVE MAYER**

DATE: **JUNE 6, 2006**

RE: **331 NORTH OAKHURST**
NEED FOR INTERIM ORDINANCE

INTRODUCTION

The request is for one paragraph of the Beverly Hills Municipal Code to be suspended regarding demolition, until the City Council can addresses the underlying issue.

On April 19th, the Council instructed the City Manager to return to the City Council within 30 days for a policy based that would address construction fencing being erected in anticipation of Planning Commission and/or City Council approval (for a proposed project). The policy would also address "clearing cutting" and "lot clearing". The basis of the policy would be what is shown in Exhibit A.

A property is imminent danger of being demolished prior to the City Council able to even examine a new policy. In such light, an **interim ordinance** is being requested, **to suspend one paragraph of BHMC 10-3-4201**.

The existing Demolition Ordinance is comprised of three criteria:

> *10-3-4201: RESTRICTIONS ON DEMOLITION AND REMOVAL OF BUILDINGS:*
>
> *A. Except as provided in section 10-3-4202 of this chapter, no permit shall be issued to allow the demolition of a building, or any portion of a building, or the removal of a building or any portion of a building from a site, unless:*
>
> > *1. A building permit is also issued at the same time to authorize construction of a replacement building or to restore a partially demolished building to a habitable condition;*
> >
> > *2. Architectural commission approval has been granted for an alternative use of the property that does not require a building permit; or*

> *3. A landscaping, fencing and maintenance plan, other than a plan requiring architectural commission approval, in a form acceptable to the director of building and safety has been submitted in accordance with the requirements of this section.*

The proposed interim ordinance **requests that third paragraph** ("landscaping, fencing, and maintenance plan") **be suspended** until such time that the Council can address all issues regarding demolition and construction fencing.

BACKGROUND

At its April 5th meeting, the Council asked that the issue of construction fencing being erected before Planning Commission and/ori City Council approval (for a proposed project) be agendized.

A property at 331 North Oakhurst served as the stimulus for such a request. The owner of that property had recently erected construction fencing, in anticipation of a Planning Commission approval. Such construction fence erection deters public participation in the planning process.

The existing structure at 331 North Oakhurst is a **one-story, 899 SQFT single-family home** built in **1924**, on a 3300' SQFT postage stamp-sized lot.

A **45' three-story single-family home**, with subterranean parking is being proposed on a **15th of an acre**.

The likelihood that an approval for the proposed project occur is all but nil.

At its April 19th Study Session, during its discussion of Item A-7, the City Manager was directed to return within thirty days with a policy regarding erecting construction fencing in anticipation of demolition. In addition, that policy would also address the issue of "clear cutting" and/or "lot clearing."

The basis of the policy can be seen in Exhibit A. The contents of Exhibit A were included in a response to the Staff Report to the April 19, 2016 Item A-7.

BY RIGHT

The City of Beverly Hills is a "by right" City.

To many, that means that, subject to approvals, you can build whatever you desire. To these same people, "by right" does not mean that you can tear down a structure or an urban grove, just because you want to.

The public has sent a clear message on Lots 12 & 13 and other properties, that "clear cutting" and "lot clearing" is not acceptable. Such views are directly applicable to 331 North Oakhurst.

A vacant lot is a blight, and should not be allowed to occur. In turn, construction fencing is also a blight, especially when taken into consideration with the "Quality of Life" provision of the BHMC Title 5 Chapter 7.

IMMINENT DANGER

The property at 331 North Oakhurst is in imminent danger of being demolished.

It is all-but-impossible to believe that a 40' three-story single family residential home with subterranean property will be approved by the Planning Commission, especially since they had already rejected a proposed 60' condominium project across the street.

If the demolition occurs, the neighborhood will be vexed by the blight of a vacant lot, and all that entails.

It is likely a new policy will limit demolition of properties under the provision of 10-3-4201(A)(3),

In such case, an interim ordinance is needed.

Merely by suspending one paragraph (10-3-4201(A)(3)), damage to the community may be avoided.

EXHIBIT A

DRAFT LANGUAGE – ADVISORY

(As Submitted To The City Council During Its April 18, 2016 Study Session For Agenda Item A-7)

DRAFT

ADVISORY

On April 19, 2016, during its Study Session, the City Council of the City of Beverly Hills discussed Item A-7, appearing in the Agenda as:

> *"Request by Mayor Mirisch to Discuss Construction Fencing:*
>
> *"This report provides information on the City's regulations pertaining to construction fencing, and the process for installing and maintaining construction fencing."*

Upon due consideration, the Council was able to reach a consensus.

It hereby advises the Director of Community Development:

(1) For those properties seeking approval from either the Planning Commission and/or the City Council, where an existing structure resides, no fencing shall be erected until all approvals are received.

(2) For those properties seeking approval from either the Planning Commission and/or the City Council, no Application for a Demolition Permit shall be accepted until all approvals are received.

(3) For those properties seeking a Demolition Permit, no fencing permit shall be issued no sooner than ten (10) days prior to the expected issuance of the Demolition Permit.

EXHIBIT B

DRAFT LANGUAGE – INTERIM ORDINANCE

Ordinance No. 16-O-____

AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE MUNICIPAL CODE REGARDING DEMOLITION OF PROPERTIES

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

Section 1. Legislative Findings.

The Beverly Hills Municipal Code currently provides that with the approval of the Director of Building and Safety, a property can be demolished:

> *10-3-4201: RESTRICTIONS ON DEMOLITION AND REMOVAL OF BUILDINGS:*
>
> *(A)(3) A landscaping, fencing and maintenance plan, other than a plan requiring architectural commission approval, in a form acceptable to the director of building and safety has been submitted in accordance with the requirements of this section.*

The City Council of the City of Beverly Hills is concerned that demolition of properties and/or the erection of construction fencing can serve as detriment to the public participating the approval process.

The City Council is also highly concerned as to potential blight caused by vacant properties.

The City Council had directed the City Manager to return with a policy advisory within thirty (30) days of its April 19th meeting. That has not occurred.

In the absence of a new policy, the City Council recognizes that suspending one portion of 10-3-4201 is in the best interests of the City of Beverly Hills.

Section 2. Authority.

Pursuant to Government Code Section 65858, the City Council may adopt as an urgency measure, an interim ordinance regarding 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 the immediate preservation of the public health, safety, or welfare requires that this Interim Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 65858 and take effect immediately upon adoption.

The existing ordinance 10-3-4201(A)(3) will likely be changed.

The City Council had directed the City Manager to return with a policy advisory within thirty (30) days of its April 19th meeting. That has not occurred.

In the absence of a new policy, the City Council recognizes that suspending one portion of existing ordiance 10-3-4201 will not cause undue harm.

If this Ordinance does not become effective immediately, but instead becomes effective thirty (30) days after a second reading, there is a real risk that residents could suffer other impacts, upon their properties value and quality of life. It is necessary that this Ordinance take effect immediately to prevent such harm pending a final decision by the Council on the matter. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety or welfare and its urgency is hereby declared.

Section 4. The City Council hereby amends and restates

10-3-4201: RESTRICTIONS ON DEMOLITION AND REMOVAL OF BUILDINGS:

A. Except as provided in section 10-3-4202 of this chapter, no permit shall be issued to allow the demolition of a building, or any portion of a building, or the removal of a building or any portion of a building from a site, unless:

1. A building permit is also issued at the same time to authorize construction of a replacement building or to restore a partially demolished building to a habitable condition;

2. Architectural commission approval has been granted for an alternative use of the property that does not require a building permit; or

3 Suspended.

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 maintains the status quo as to approved activities with conditions of approval that protect the neighborhood, pending a final decision by the City Council on the matter called for review. 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. 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; provided, however, that 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. If this Interim Ordinance is not extended, then section 10-3-4201(A)(3) shall be reinstated in its previous form.

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: June 6, 2016

JOHN A. MIRISCH

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:

_____
MAHDI ALUZRI
City Manager