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Los Angeles City Council  
Planning and Land Use Committee  
200 North Spring Street  
Los Angeles, CA 90012

RE: Partridge Zone Change and GPA, inconsistency with City Charter

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Hon. Jose Huizar, Chair  
Hon. Marqueece Harris-Dawson, Vice Chair  
Hon. Mitchell Englander  
Hon. Gil Cedillo  
Hon. Felipe Fuentes  
c/o Sharon Dickinson, Legislative Assistant

Planning & Land Use Management Committee  
City of Los Angeles  
200 N. Spring Street, Rm. 395  
Los Angeles, CA 90012

Hon. Chair Huizar and Members of the PLUM Committee:

All objections, including those regarding proper notice and due process, are expressly reserved. In particular, we object to the City Council's ongoing failure to adopt the procedural zoning and land use hearing rules mandated by the Legislature in the 1971-72 enactment of Government Code Section 65804. The purpose of this state law is to prevent what happens at land use and zoning hearings before the Los Angeles City Council: parties to the hearing and members of the public have no idea how the hearings will be conducted in advance of the hearing. As a result, the hearings are conducted at the whim of the Chair. In particular, the City Council often fails to provide for the right to respond to significant new matters or undisclosed

amending motions that clearly were negotiated outside the hearing room. See, e.g., Clark v. City of Hermosa Beach (1996) 48 Cal.App.4th 1152, 1172-1173.

This letter outlines a number of flaws in the process of approvals for the proposed Zone change and general plan amendment pertaining to the Partridge Project (Project). We include by reference the attached appeal letter submitted by the Silverstein Law Firm appealing the Palladium project. Due to the similarities between the two cases, we are using the exhibits from the Palladium project appeal as the same exhibit numbers for this letter. Those exhibits are found at the back of this letter.

A finding by the Citizen's Committee on Zoning Practices and Procedures in 1968 influenced Assembly-member Yvonne Braithewaite-Burke introducing legislation requiring that all cities and counties in the state, including the Los Angeles City Council, adopt fair hearing rules. It is ironic that even though the Citizen's Committee recommended enactment of fair hearing procedures in 1968 (**Exhibit 1** [Citizen's Committee First Report and Summary Version of First Report ("First Report"), July 1968]), and the legislature mandated it in 1971-72 by the enactment of Government Code Section 65804, for 46 years the Los Angeles City Council has continued to operate its land use and zoning hearings without any adopted or published procedural rules. The lack of fair treatment of land use appellants and persons who appear at public hearings where they may be given a mere one minute to speak, if that, on complex land use issues feeds the growing anger and cynicism that the only people that matter at City Hall are the campaign contributors or the donors to the Councilmember's legal defense fund or officeholder's discretionary expenditure fund. These actions are not constitutionally consistent with procedural due process of law principles.

## **I. THE CONTEXT OF THIS ZONING CASE.**

Residents from throughout the City are currently alarmed at the magnitude of deference paid to campaign contributors from the real estate industry. A bit of history of Los Angeles planning and zoning controversies shed an important light on the \_\_\_\_\_ proposal. In 1966-1969, Los Angeles City Hall was rocked with a "pay-to-play" bribery scandal when the 1966 Los Angeles County Civil Grand Jury found credible evidence that parcel by parcel, project-oriented zone changes were being processed by City officials based upon campaign contributions, cultivated lobbyist friendships, and even bribes. (**Exhibit 2**. [1966 Grand Jury Report].)

One developer was convicted of grand theft, fined \$5000, and placed on three years probation. At least four City planning or zoning appeals commissioners resigned under fire or were transferred when it was revealed they were voting on matters in which they were

financially interested, or where they met privately outside the zoning hearing room with developers to decide how to approve projects. (**Exhibit 3** [Newspaper clippings of Los Angeles Times articles reporting the scandals].)

At the end of two trials, former Los Angeles City Councilmember Thomas Shepard was convicted on one count of bribery, denied probation and sent to jail. In refusing probation, the sentencing judge observed that “the power to rezone, is the power to create great wealth.” The judge stated he regarded those who would go to great lengths, despite the facts of the case, to greatly increase the value of land with such individual rezoning actions, no different than stealing the public’s money from the City’s treasury. (**Exhibit 4** [LA Times article, Shepard Bribery Verdict].)

In response to the outcry over a corrupted City planning and zoning process, the City Council appointed a blue ribbon committee known as the Citizen’s Committee on Zoning Practices and Procedures to extensively study and recommend overhaul of the City’s planning, zoning, hearing, and ethics processes in connection with land use approvals. After 14 months of hearing testimony from experts and the public, the Citizen’s Committee released a July 1968 report finding serious problems and recommending 36 reforms. (**Exhibit 1**.)

One of the most important reforms was to make the City’s general plan binding and requiring all zoning code enactments to be consistent with the general plan. In order to remove the political pressure associated with project-by-project general plan amendments and rezoning, the Citizen’s Committee recommended an important City Charter reform measure to limit the minimum size of general plan amendments. The Committee, led by former Mayor Fletcher Bowron, observed that comprehensive planning had to occur on a community-wide or City-wide basis, not on a project-specific basis. (**Exhibit 1**, pp. 19-21.) The Committee therefore recommended in its Final Report in May 1969 a requirement that general plan amendments only be allowed for geographical areas that possess “significant social, economic, or physical identity.” (**Exhibit 5**, [Final Report] at p. 15.) In other words, the general plan would not be amended and updated lot by lot.

This reform of the City’s Charter was not substantially altered during the City’s 1998-1999 charter reform process, especially since no substantive change was ever proposed, discussed at a public meeting, or voted upon by the Charter Reform Commissions that crafted the 2000 Los Angeles City Charter. (**Exhibit 6** [\_\_\_\_ Declaration and Unified Charter Report].) Thus, it is unlawful for the City Planning Director, the City Planning Commission, the Mayor, and the City Council to initiate, consider or approve small geographic general plan amendments involving a single or small group of related real estate development projects.

After the People's 1969 reforms, the problems continued. The first general plans prepared for the City in the 1970s showed potentially devastating environmental impacts if the City were built out at the density set forth in the 1946 zoning code. The City therefore adopted general plans stating it was necessary to reduce densities all over the City to mitigate the impacts. But the City Planning Department and the City Council delayed making the City's zoning consistent with its general plan.

The Legislature, responding to complaints about the City of Los Angeles, acted on AB 283 and enacted Government Code Section 65680, subdivision (d). This new law mandated that the City make its zoning consistent with its general plan within a set period of a few years. Thus, the state instructed Los Angeles to do what every other general law city in the state was required to do and most charter cities were voluntarily doing: making its general plan and zoning consistent to assure a harmonious planning and zoning process. See, e.g., City of Los Angeles v. State of California (1982) 138 Cal.App.3d 526,534.

The City Council's response was to defy the Legislature and this new law. The City sued the state Legislature claiming that AB 283 violated the City's home rule powers. While the City obtained a favorable decision at the Superior Court in Los Angeles County, the Second District Court of Appeal soundly rejected the City's objection to AB 283. City of Los Angeles v. State of California (1982) 138 Cal.App.3d 526, 534. Finding nothing objectionable with the Court of Appeal decision, the California Supreme Court denied the City Council's petition for review. Thus, the City was required to comply with AB 283.

After the 1982 Court of Appeal decision, the City Planning Department and City Council continued to drag its feet in the implementation of AB 283. Exasperated by the City's unwillingness to promptly comply with the law, in 1984 the Center for Law in the Public Interest sued the City on behalf of a number of homeowner groups in the City seeking a writ of mandate to force the City to comply with its duty to make zoning consistent with the general plans. Federation of Hillside and Canyon Associations v. City of Los Angeles (L.A. Super. Ct. No. 526,616). In January 1985, the Superior Court issued a writ commanding the City to revise its zoning to conform to its general plan within 120 days. Because the City could not accomplish this task within 120 days, it negotiated a settlement agreement. The parties agreed that the City would make its zoning consistent with the general plan within 3 years as a court-appointed monitor oversaw the process and made regular reports to the Court. While the City completed the easiest zoning changes within 3 years, according to Carlyle Hall who litigated this case, it took 10 years for the City to largely complete the general plan consistency process, making its zoning consistent with the general plan.

Unfortunately, however, the City Planning Department had a new “solution” for real estate developers who decided they wanted more density for their individual development projects. In the late 1980s, it had been about 20 years since the 1966-69 pay-to-play bribery scandals tied to zone changes. Perhaps the reforms had receded into the past. Someone in the City Planning Department began to allow real estate developers to propose a general plan amendment in connection with a particular real estate project. This would enable a corresponding zone change and perhaps removal of building height limits.

The processing of general plan amendments began, even though the geographic area of a single project violated the City Charter’s restriction that amendments to the general plan were limited to parts of elements or geographical areas that possess “significant social, economic, or physical identity.” Thus, the City began ignoring the City Charter’s restriction on the size of general plan amendments, and in so doing, reopened the door to a “pay-to-play” culture.

There is no known official compilation of individual project general plan amendments, but their existence recently came to the attention of community leaders in the City when more and more individual projects began requesting general plan amendments to obtain zoning densities far above those authorized by the current general plan. The number of such changes are especially occurring within the Redevelopment Plan area for Hollywood, Downtown, Koreatown, and in the San Fernando Valley. But examples can be found throughout the City, including the sleepy, residential Elysian Valley where \$1.2 billion in promised “river redevelopment” has caused rampant speculation with no controls in place. Some weeks, the City Council considers and approves multiple project-oriented general plan amendments. The result is not planning; it is random, chaotic, and politically-driven development of the City – a result specifically condemned in state law and contrary to the City Charter.

But City Planners seem to not understand this scam. Instead of protecting the public interest, City Planners are bringing forward general plan amendments for individual projects (which is unlawful under City Charter Section 555, subdivision (a)) that propose to change even more land to the “Regional Center Commercial” and “transit oriented” land use designation. None of these extremely dense developments were envisioned in the Community Plan Update for the area, and a certain bubble of real estate speculation now infects the real estate development community, and the City Planning Department, City Planning Commission, and City Council.

With this prelude of the history of planning and zoning in Los Angeles, we turn to the Partridge Project which openly violates the City Charter’s general plan amendment restriction, and offers no significant public benefits; in fact it robs the public of the Open Space and possibility of future parklands offered as “potentially-significant” impact mitigation to up-zoning

the surrounding area in the 2003/2004 MND for the Community Plan Update of the Silverlake-Echo Park-Elysian Valley plan area.

We have come full circle, where general plan amendments and rezoning can more than triple the value of this parcel to benefit the developer in exchange for campaign contributions to City officials and a few illusory promises about River-sensitive development that remains to be completed in the developer's discretion. This process must be reformed.

## **II. PROJECT OVERVIEW.**

The entire Elysian Valley business and residential community will be adversely impacted by the Project approvals sought by the applicant because the City Council is asked to violate the Los Angeles City Charter.

The Project as now proposed will withdraw the promise of future parklands in a park-poor area of the City, rapidly gentrifying with increased density. There are no project conditions to preserve any portion of the Open Space. It is simply an out-right giveaway to up-zone the land, triple its value and allow for a giant building project that could include up to a 5-story tower with commercial uses. The Project ushers in the potential for a massive injection of inappropriate and harmful density onto a significant parcel of land abutting the sensitive wildlife habitats and recreation zones of the LA River and Marsh Park, which is improper and unlawful.

Former City Planning Commission President Jane Usher, who spearheaded the project design principles that became "Let's Do Real Planning," famously observed during the Planning Commission hearing on December 13, 2007 regarding another Hollywood proposal: "It's an instance where an applicant asks for the sun, the moon and the stars in a zone where there's no hint or whisper of it being an appropriate request." (City Planning Commission Hearing, <http://planning.lacity.org/InternetCalendar/pdf.aspx?Id=43395> Hearing Tape 2, at 44:33.) The Partridge re-zone and GPA is similarly outrageous, but orders of magnitude greater.

City Staff has cleverly wrapped up the developer's desire for rezoning to maximize his development opportunities into a "clerical error" that went undiscovered, not only by the 33,000 people who received the new zoning map in the mail back in 2005 indicating the Open Space, but all of the Planning Staff at the City and Mr. La Kretz' team of lawyers and real estate advisors.

**A. The City Charter And LAMC Bar This Project From Seeking A General Plan Amendment.**

Los Angeles City Charter Section 555 expressly prohibits the City from proposing, considering, or approving any general plan amendment that does not encompass a geographical area with “significant social, economic, or physical identity.” The entire Project as conceived, applied for, and approved by the Commission is a clear violation of Section 555 because it assumes that the general plan amendment for a portion of a lot, can be granted by the City. It cannot. Because so much rides on the General Plan Amendment, the Partridge Project’s house of cards falls.

“In the case of a charter city, “the charter represents the supreme law of the City, subject only to conflicting provisions in the federal and state Constitutions and to preemptive state law. [Citation.] ‘[T]he charter operates . . . as an instrument of *limitation* and *restriction* on the exercise of power over all municipal affairs which the city is assumed to possess. . . .’ [Citations.]” (Domar Electric, Inc. v. City of Los Angeles (1994) 9 Cal.4th 161, 170, 36 Cal.Rptr.2d 521, 885 P.2d 934 (Domar), italics added.) “[I]t is well settled that a charter city may not act in conflict with its charter. [Citations.] Any act that is violative of or not in compliance with the charter is void. [Citation.]” (Id. at p. 171, 36 Cal.Rptr.2d 521, 885 P.2d 934.) The provisions of the city’s charter thus “supersede all municipal laws, ordinances, rules or regulations inconsistent therewith” (Stuart v. Civil Service Com. (1985) 174 Cal.App.3d 201, 206, 219 Cal.Rptr. 770) and “an ordinance [or resolution] violative of or not in compliance with the city charter is void.” (5 McQuillin Municipal Corporations (3d ed. 2011) § 15:17.)” San Diego City Firefighters, Local 145, AFL-CIO v. Board of Admin. of San Diego City Employees’ Retirement System (2012) 206 Cal.App.4th 594, 608.

The City seeks to change the zoning of the parcel from Open Space, the number 1 most restrictive land use designation, to Commercial Manufacturing, the 27<sup>th</sup> most restrictive. This requires a General Plan Amendment to alter the Community Plan that designated the parcel OS, and its MND offered it as mitigation to potential impacts on parks and recreation facilities. The City claims that this was an “error” by Planning Staff during the Update process, but has provided no evidence to support that statement. By contrast, the statements incorporated into the environmental study explicitly indicate that both Marsh Park and the Partridge parcel are designated for future parkland. Simply because a “private non-profit” no longer intends to develop the land for public use, this developer’s whim does not erase the designation that was

deliberately planned and offered up to the public in the Community Plan Update. Further corroboration of the Open Space designation can be found in the discussion section of the Mitigated Negative Declaration ENV-2003-7281-MND dated October 10, 2003, page 9, item d.—Parks:

The proposed Plan mitigates potential impacts on parks, open space and recreational facilities by encouraging the preservation and acquisition of parkland and strategies to develop greenways that link existing and future open spaces (Community Plan Goals 4 and 5). In an effort to restore the Los Angeles River (just outside of the boundaries of the Plan area) to a more natural state and to improve it as a recreational resource, **parcels of land have been purchased by land trusts and other private nonprofit organizations and developed (or with future intent to develop) as open space and parks for public use.** The proposed Plan recommends Plan Amendments and Zone Changes to designate and rezone these properties as open space to ensure their preservation for this use (Community Plan 5-1.2 and related programs). [Bold added]

Charter Section 555 does not authorize a general plan amendment to enable rezoning like this. For such a small bit or piece of the City, the Charter bars a general plan amendment because the geographical area involved lacks a “significant social, economic, or physical identity.”

The Mayor, the City Planning Commission, the City Planning Director, and the City Attorney suffer from a misperception of the law that has gone on in this City for too long. They act as though they may engage in what amounts to spot general planning and spot zoning to give to favored development interests what an average resident of this City could not dream of requesting – an individually-tailored amendment of the long-term, comprehensive plan for how the City’s growth is to proceed.

Even more concerning for City residents is the fact that for a number of years, someone at City Hall began to allow developers to apply for general plan amendments, zoning changes, and removal of height limits to accomplish what the City Charter does not allow: a parcel-by-parcel increase in land use density, up-zoning, and removal of height limits outside of a comprehensive planning process embodied in a holistic review of: (1) the entire general plan, (2) an entire element, or (3) a geographic area encompassing a “significant social, economic, or physical identity.”

With increasing frequency, the Mayor, City Planning Commission, the City Planning Director, and the City Attorney have dismantled the concept of a general plan by amending our City’s community plans bit-by-bit and piece-by-piece.

The plain language of the Los Angeles City Charter prohibits two things:

1. A landowner has no authority under City Charter Section 555 to request a general plan amendment to allow a project that would otherwise violate the current general plan. By the express language of Section 555, subdivision (b), a general plan amendment may only be requested as follows: **“The Council, the City Planning Commission or the Director of Planning may propose amendments to the General Plan.”** (Emphasis added.)

2. Even more significantly, Charter Section 555, subdivision (a), expressly limits amendments of the general plan as follows: **“The General Plan may be amended in its entirety, by subject elements or parts of subject elements, or by geographic areas, provided that the part or area involved has significant social, economic or physical identity.”** (Emphasis added.)

These restrictions on the powers of the Mayor, City Planning Commission and City Planning Director were imposed by vote of the People, exercising their home rule powers, so that the City’s General Plan would retain its force and integrity to guide the long-term and comprehensive development of the City. It specifically bans what the City and Project developer here seek to accomplish.

Los Angeles Municipal Code Section 11.5.6 contains provisions that implement the City Charter procedures for the general plan. With respect to who may request a general plan amendment and the required minimum scope of a general plan amendment, the LAMC repeats the limitations imposed by Charter Section 555:

**SEC. 11.5.6. GENERAL PLAN. Pursuant to Charter Section 555, the City’s comprehensive General Plan may be adopted, and amended from time to time, either as a whole, by complete subject elements, by geographic areas or by portions of elements or areas, provided that any area or portion of an area has significant social, economic or physical identity.**

**A. Amendments. Amendments to the General Plan of the City shall be initiated, prepared and acted upon in accordance with the procedures set forth in Charter Section 555 and this section.**

**B. Initiation of Plan Amendment. As provided in Charter Section 555, an amendment to the General Plan may**

**be initiated by the Council, the City Planning Commission or the Director of Planning.** Initiations by the Council or City Planning Commission shall be by majority vote. If an amendment is initiated by the Council or City Planning Commission, then it shall be transmitted to the Director for report and recommendation to the City Planning Commission. Whether initiated by the Director, the Council or the City Planning Commission, the Director shall prepare the amendment and a report recommending action by the City Planning Commission. The report shall contain an explanation of the reasons for the action recommended. After the Director prepares a Plan amendment and report, the Director shall transmit the file to the City Planning Commission for its action. (Emphasis added.)

In this particular case the general plan amendment was initiated by Planning Staff, and transmitted to the City Planning Commission based on a false statement that an “error” had occurred during the Community Plan Update process and the rationale given was:

- 1) The property is private land
- 2) Commercial Manufacturing is appropriate for the land
- 3) The City Planning Commission has transmitted its recommendations
- 4) The General Plan Amendment is consistent with the intent and purposes of the Community Plan to designate land use in an orderly and unified matter [sic]

The Transmittal for the June 18<sup>th</sup> 2015 item is relied on a decision made eleven years earlier, based on findings over twelve years old corresponding to the 2003 MND. No alternate, new findings were presented that would present substantive facts to demonstrate that an error had occurred at some point during the Community Plan Update and approvals process. The rationale given in the Resolution dated June 23, 2015 and included in council file 05-0876-S2 is based on mischaracterization of facts. This faulty rationalization continued in the Negative Declaration later submitted to the file (EVN-2015-3200-ND) where no substantive evidence was presented to justify either an “error” had occurred or that Open Space presents an inconsistent land use designation for a parcel that abuts both a park and the LA River.

Both the City Charter and the applicable LAMC provisions contemplate that in certain circumstances, an applicant or the Commission may file an application for a zone change

applicable to his or her property, if it is consistent with the currently adopted General Plan. Charter Section 558 provides in relevant part:

(a) **The requirements of this section shall apply to the adoption, amendment or repeal of ordinances, orders or resolutions by the Council concerning:**

(1) the creation or **change of any zones** or districts for the purpose of regulating the use of land;

(2) **zoning or other land use regulations** concerning permissible uses, height, density, bulk, location or use of buildings or structures, size of yards, open space, setbacks, building line requirements, and other similar requirements, including specific plan ordinances . . . .

(b) Procedures for the adoption, amendment or repeal of ordinances, orders or resolutions described in subsection (a) shall be prescribed by ordinance, subject to the following limitations:

(1) **Initiation.** An ordinance, order or resolution may be proposed by the Council, the City Planning Commission, or Director of Planning or by application of the owner of the affected property if authorized by ordinance.

(2) **Recommendation of the City Planning Commission.** After initiation, the proposed ordinance, order or resolution shall be referred to the City Planning Commission for its report and recommendation regarding **the relation of the proposed ordinance, order or resolution to the General Plan** and, in the case of proposed zoning regulations, whether adoption of the proposed ordinance, order or resolution will be in conformity with public necessity, convenience, general welfare and good zoning practice. (Emphasis added.)

Thus, while the City Charter contemplates an applicant requesting a zone change that is consistent with the currently adopted general plan, it does not contemplate or authorize a piecemeal amendment of the general plan.

LAMC Section 12.32 implements Charter Section 558. In relevant part it provides:

A. Initiation. **The City Council, the City Planning Commission or the Director of Planning may initiate consideration of a proposed land use ordinance.** Any initiation by the Council or the City Planning Commission shall be by majority vote. The Council or the City Planning Commission shall forward the proposed ordinance to the Director of Planning for a report and recommendation.

B. Application. **An owner of property may apply for a proposed land use ordinance if authorized to do so by Subsections F through S relative to that owner's property.** The applicant shall complete the application for that proposed land use ordinance, pay the required fee and file the application with the Department of City Planning on a form provided by the Department. (Emphasis added.)

The language used by the People in the City Charter and the City Council in its implementing ordinances demonstrates that while an applicant might file an application on the City's form for a zoning change that meets certain criteria set forth in the LAMC (and is of course consistent with the currently adopted general plan), there is no authority for the City even to accept for filing a Master Land Use Permit Application Form that includes an applicant-initiated general plan amendment.

Despite the unambiguous limitation on who may apply for a general plan amendment, the City's Planning Department began not only allowing applicants to apply for a general plan amendment so they could develop their property contrary to the City's adopted general plan, but the City Planning Director has instituted a formal policy of accepting general plan amendment applications from applicants. Then, after a review, the Director uses his own power under the City's Charter to initiate parcel-by-parcel general plan amendments on behalf of applicants.

The City has devised procedural memoranda and general plan initiation forms to carry out this process. However, the City Planning Director's memorandum to consultants and developers evidences no assessment of whether or not an applicant's general plan amendment request covers a geographical area that has a significant social, economic, or physical identity, as required by the City Charter. (**Exhibit 7** [Planning Director April 8, 2015 Memo, "General Plan Amendment Initiations, Requests to the Director of Planning"].)

In fact, the City Planning Director has implemented an Orwellian wording on forms he requires applicants to sign as a condition of having the City Planning Director "initiate" a general plan amendment. For example, as shown in **Exhibit 8**, "Request for Initiation of an Amendment

to the City's General Plan," the "Initiation Request and Time Extension Authorization" attached thereto admits:

By law only the City may initiate a Plan Amendment. Your application is technically for a Zone Change only. Therefore you must request that the City initiate the corresponding Plan Amendment by checking the box below:  I hereby request that the City Planning Commission initiate a Plan Amendment **consistent with my requested zone change.** (Exhibit 8, emphasis added.)

In other words, the City of Los Angeles Planning Commission and Director have forms stating that what they are doing is amending the General Plan to make it "consistent with my zone change."

Regardless of the form of the transaction, the substance is that the property owner "initiates" the general plan amendment by asking for a zone change that is inconsistent with the currently adopted General Plan. By this proposed Project, Los Angeles would be violating the integrity of the General Plan process enacted by its voters in 1969. The City Planning Commission and/or City Planning Director then act as if the whole idea to initiate for this particular property at this particular time was the City's and not the property owner's. Our City's Charter may not be so easily defeated by such an obvious contrivance.

The Partridge Project owner, in this case a prolific developer of high-density projects, did not find it necessary to file a Master Land Use Permit to request the amendment, he simply asked the Mayor or the Department staff to do so in advance of his anticipated application. This gave birth to the convoluted and unsubstantiated "error" during the Community Plan Update process that serves as the rationale for this zone change and general plan amendment. In no way does the Project site meet the definition of minimum size required to process a general plan amendment. The City's pattern and practice is unlawful, and its use in the instant case illustrates how developers are permitted to violate the law by densifying individual parcels beyond that permitted by the General Plan or ever analyzed in the EIRs supporting the General Plan.

The City Planning Director himself also has no authority to propose a general plan amendment as is sought herein. The language contained in the City Charter prohibits the processing of a general plan amendment unless such proposal involves the entire General Plan, an entire Element, a significant part of an Element, or a geographical area so long as the Element part or geographical area constitutes a "significant social, economic, or physical identity."

Yet for some time the City Planning Director and City Planning Commission have engaged in changing General Plan land use designations at the mere request of a developer. In this case the only difference is that the request happened behind closed doors, out of the public view and the application process. The letter from Project owner and prominent Los Angeles developer Morton La Kretz' land use attorney suggests that he was somehow caught unaware that this prime piece of LA River frontage was zoned Open Space. It is quite unlikely that his team of lawyers and real estate advisors were caught unaware of the zone. What is more likely is that it was assumed that he would be granted the zone change when the time came—which turns out to be now. It has become an accepted assumption that almost any proposed project in Los Angeles can happen because a developer wants it, regardless of the general plan land use designation.

**B. The Current Process Undermines Any Integrity In The Comprehensive General Plan And Feeds The Public's Cynicism.**

Former City Planning Director Gail Goldberg famously observed on her arrival at the City:

In every city in this country, the zone on the land establishes the value of the land. In Los Angeles, that's not true. The value of the land is not based on what the zone says . . . . It's based on what [the] developer believes he can change the zone to. This is disastrous for the city. Disastrous. Zoning has to mean something in this city. (**Exhibit 9** [LA Weekly article, "Density Hawks"].)

Ms. Goldberg's efforts to change this culture of easy amendment of general plans and zoning failed. She was pushed out in a short time. Mayor Antonio Villaraigosa appointed former Zoning Administrator Michael LoGrande who, unfortunately, carried forward the violations of the City Charter outlined herein.

Several new proposed ordinances once submitted for City Council approval (Master Planned Development Zone Ordinance and Hybrid Industrial Zone Ordinance) directly conflicted with the City Charter by including language that if an applicant's project proposal does not comply with the currently adopted general plan, a plan amendment will be processed to make the City's General Plan "consistent" with the developer's proposed project – in effect an improperly guaranteed, reverse-engineered outcome.

Gail Goldberg's disaster is unfolding before our eyes.

The California Supreme Court has acknowledged that since 1971, a city's general plan is a constitution for future real estate development and all plans, codes, and planning decisions are

**subordinate to and must conform with the general plan.** In DeVita v. County of Napa (1995) 9 Cal.4th 763, 772-773, the Supreme Court explained:

Although California law has prescribed that cities and counties adopt general or master plans since 1927 (Stats. 1927, ch. 874, pp. 1899-1913), the general plan prior to 1972 has been characterized as merely an ‘interesting study,’ and no law required local land use decisions to follow the general plan’s dictates. (City of Santa Ana v. City of Garden Grove (1979) 100 Cal.App.3d 521, 532 [].) In 1971 several legislative changes were made to significantly alter the status of the general plan. For the first time, proposed subdivisions and their improvements were required to be consistent with the general plan (Gov. Code, § 66473.5 [formerly in Bus. & Prof. Code, § 11526]), as were zoning ordinances (Gov. Code, § 65860). (Stats. 1971, ch. 1446, §§ 2, 12, pp. 2853, 2858; City of Santa Ana, supra, 100 Cal.App.3d at p. 532.) Moreover, charter cities were no longer completely exempted from the requirements of the planning law; these cities had to at least adopt general plans with the required mandatory elements. (Gov. Code, § 65700, subd. (a); Stats. 1971, ch. 1803, § 2, p. 3904.) Thus after 1971 the general plan truly became, and today remains, a “‘constitution’ for future development” (Leshar Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531, 540 [ ] [ ] located at the top of ‘the hierarchy of local government law regulating land use’ (Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176, 1183 [ ]).

The general plan consists of a ‘statement of development policies . . . setting forth objectives, principles, standards, and plan proposals.’ (Gov. Code, § 65302.) The plan must include seven elements – land use, circulation, conservation, housing, noise, safety and open space – and address each of these elements in whatever level of detail local conditions require (id., § 65301). General plans are also required to be “comprehensive [and] long[ ]term” (id., § 65300) as well as ‘internally consistent.’ (Id., § 65300.5.) The planning law thus compels cities and counties to undergo the discipline of drafting a master plan to guide future local land use decisions.

The City in this case proposes to amend the general plan to conform with Mr. La Kretz' desired use of land at a greater height, density, and in derogation of the current general plan land use designation as Open Space. This is improper. The Supreme Court held in Leshar Communications v. City of Walnut Creek (1990) 52 Cal.3d 535, 541 that the primacy of the general plan cannot be overridden by enacting inconsistent zoning ordinances:

The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan as a pro tanto repeal or implied amendment of the general plan. The general plan stands. A zoning ordinance that is inconsistent with the general plan is invalid when passed [citations omitted] and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. (§ 65860.) The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform.

The result of these Charter violations, apparent in the case of the Project proposed herein, is destructive and far-reaching. The City is up-zoning the density and height of parcels at the requests of developers, and conflicts with the General Plan are wiped away by ignoring the City Charter mandate that the General Plan process does not permit such piecemeal amendment. In fact, because the City has "solved" the density and height desires of developers via the unlawful process outlined above, the City has had no incentive for decades to conduct comprehensive general plan revisions envisioned by both the State Planning law and the City's own charter. Why engage in a comprehensive and holistic planning process embodied in the General Plan when developers can get the density and increased value by merely asking the City Planning Director, or City Council/Mayor to amend the General Plan for his or her lot?

C. **The City Council Repealed a Section of the Municipal Code Imposing a Duty To Periodically and Comprehensively Review and Amend the General Plan and the City Attorney's Office Swept this Under the Rug.**

Our research shows that in October 2005, the City Council approved Ordinance 177103 (effective December 18, 2005) to repeal LAMC Section 11.5.8. This law formerly imposed on the City Planning Commission the duty to periodically and comprehensively review, revise and amend the General Plan in accordance with a schedule adopted by the City Council.

Incredibly, head of the Civil Division of the City Attorney's office signed a memo representing to the public that the changes in the ordinance were merely "technical and

clarifying” changes to correct typographical errors and similar matters. (**Exhibit 10** [City Attorney Report No. R05-0317 dated, September 12, 2005].)

We would suggest that a repeal of the City Planning Commission’s legal duty to engage in comprehensive and long-term general planning is not a technical or clarifying change. It was a substantive change, apparently adopted without serious discussion because the City Attorney’s accompanying memorandum erroneously represented it as a non-substantive change. The City Planning Commission was relieved of doing “real planning.” Curiously, we know of no evidence that thereafter anyone on the City Council or the City Planning Commission asked what happened to the general plan comprehensive reviews.

For the last decade, free of the legal obligations of Section 11.5.8, this City’s planning activities have been focused on project-by-project General Plan amendments and massive density upzoning schemes rather than on comprehensive and long-term planning.

In this illegally “de-regulated” atmosphere, any project can be approved almost anywhere. This Project will usher in a whole new level of abuse—changing a parcel intended to benefit the public with Open Space and parkland and handing the developer a triple-value gift allowing him to build a high-density residential tower/hotel/office building/shopping plaza where the community was promise future recreation area. These are examples of serial violations of the People’s Charter.

The City’s refusal to comply with the plain language of the City Charter and the discovery that it quietly repealed its legal obligation to periodically and comprehensively keep its General Plan up-to-date, led to the formation of a Coalition to propose and gather signatures on an initiative addressing this corrupt practice of City officials. Entitled the “Neighborhood Integrity Initiative,” it provides further clarification of the City Charter prohibition against piecemeal general plan amendments, and it restores former LAMC Section 11.5.8 that imposes a duty on the City to periodically and comprehensively update its General Plan on a regular basis, instead of ignoring this vital planning duty for decades. The initiative is a logical expression of community realization that the 1966-69 pay-to-play process has been revived at City Hall and once again must be constrained. The Partridge Project is a poster child for why the initiative is needed to curb open violation of the City’s laws.

**D. The History Of The Enactment Of City Charter Section 555 Establishes That Small General Plan Amendments Are Prohibited.**

Sometimes things go full circle. The current state of spot zoning for individual developers looks similar to the crisis that led to the People reforming the City’s planning and

land use laws in the 1960s – including placement of the geographical limitation clause of City Charter Section 555 in the City Charter.

The crisis became clear when, in November 1966, the Los Angeles Civil Grand Jury issued a report concerning “a complex zoning case in the West Valley section of Los Angeles.” “The evidence before us indicated that a developer had represented to his partners that he could secure favorable zoning treatment from the City of Los Angeles in exchange for payment of monies.” (**Exhibit 2**) Although the Grand Jury was unable to conclusively determine that monies were paid in exchange for the City Council to reverse adverse recommendations from every agency that considered the West Valley zoning proposal from its inception, the Grand Jury observed:

We regretfully report that evidence we heard demonstrated that influence can and has been and in all probability will be exerted through the medium of campaign contributions, political obligations and friendships. (Id.)

Based upon this observation, the Grand Jury made a number of recommendations including conflict of interest legislation, requiring applicants to list campaign contributions made or promised to an elected official under penalty of perjury, that zoning hearings be conducted under oath, and that super majority City Council votes be required to override the conclusions of subordinate land use decision makers in the City.

In the Grand Jury’s conclusion, it strongly urged the City to commence an in-depth study to prevent the poor adherence to the City’s General Plan evidenced in the case before it:

It is apparent that a projected and in-depth study of this field is not only overdue, but one which would be invaluable to the interests of our community. It is our recommendation that such a study should be undertaken as soon as possible. (Id.)

Corruption indictments and convictions of numerous people (**Exhibit 3**) including a City Councilmember (**Exhibit 4**) followed. The City Council then appointed a Blue Ribbon Commission that studied and made recommendations. Known as the “Citizen’s Committee on Zoning Practices and Procedures,” it dealt with abuses that resulted from the City Council routinely ignoring its General Plan to grant developers zoning or exceptions to zoning they wanted – apparently in exchange for campaign contributions, monies given to favorite non-profits of the Councilmember, and free travel/gifts.

As the West Valley Property Owners’ Association observed in its letter to the City Council supporting the charter amendments proposed by the Citizen’s Committee:

In 1966 a mandate was delivered by the Grand Jury to enact proper zoning practice reforms to prevent a re-occurrence [sic] of the shocking scandals surrounding certain zoning cases. Since that time, we have seen several public officials brought to trial and convicted on various charges. One case, still before the courts, involves a member of the Los Angeles City Council. (**Exhibit 11** [West Valley Property Owners' Assn. February 11, 1969 letter]).

After more than a year of hearings and investigation, in July 1968, the Citizen's Committee issued its First Report to the Mayor and City Council entitled "A Program to Improve Planning and Zoning in Los Angeles." The report contained 36 recommendations for improvement including charter amendments, municipal code amendments, uniform zoning hearing procedures (which 46 years later remain incomplete), and ethics reforms. (**Exhibit 1**).

The findings of the Citizen's Committee will be particularly significant for a reviewing court with regard to the actions proposed to be taken in this case:

The main purpose of defining the General Plan content [in the City's Charter] should be to insure comprehensiveness. We find that there are at least four dimensions of comprehensiveness which should be recognized:

1. Geographic – The entire area of the City should be covered. However, because of the large size and peculiar boundaries of the City, it is not always practical to consider the entire City as a single planning unit. Therefore the City should be divided into smaller units for planning purposes – **but any such unit should be an area of substantial size, with social and economic identity.** (**Exhibit 1**, p. 19.)

And on p. 21 of the First Report where "Area-by-Area Consideration" is set forth in detail, the Committee made this recommendation:

**Recommendation 3:** Provide for the adoption or amendment of the General Plan on a scheduled area-by-area basis, each area covering less than the entire City, **but must involve comprehensive consideration of a logical planning area.** The General Plan should be reviewed on this regularly scheduled area-by-area basis, such schedule and areas to be established by the City

Council upon recommendation of the Director of Planning and the City Planning Commission. (Emphasis added.)

The Committee then acknowledged for local planning that “for many purposes it is necessary to deal with community-size units such as Hollywood, San Pedro, Pacific Palisades and the central business district.” The Committee’s recommendation emphasized the need to assess each general plan amendment within “logical planning units” on the community level:

In view of the size and diversity of the City of Los Angeles, it is apparent that much of the material which should constitute the City’s General Plan can only be adequately maintained through a continuing area-by-area process of study and revision. (**Exhibit 1**, p. 21.)

In support of the recommendation that general plan amendments be conducted on an area-by-area basis, the Citizen’s Committee observed regarding the origin of the language in the City Charter that defines the legal minimum area for a General Plan Amendment:

A completely piecemeal approach to General Plan amendments would defeat the principle of comprehensiveness and destroy the integrity of the Plan. To prevent this, any change in the Plan **should be viewed in at least a community-wide context** Therefore, in the above recommendation we propose that **recognized community areas with social and economic identity be the minimum size units for general plan study and revision.** (**Exhibit 1**, p. 21; emphasis added.)

Following the First Report, there were two joint meetings of the Citizen’s Committee and the City Planning Commission where there was agreement on 21 recommendations.. After the Citizen’s Committee submitted its proposed charter amendments to the City, the City Council revised and weakened some of the amendments and sent it to the voters. On May 25, 1969, the voters adopted the Charter Amendments.

Just prior to the election, the Citizen’s Committee issued its Final Report, which set forth each of the charter amendments proposed to the planning and zoning provisions of the City’s charter. (**Exhibit 5**.) The Citizen’s Committee set forth all new proposed language to implement its recommendations regarding adoption and amendment of the general plan. New City Charter Section 96.5(3)(a) read as follows:

Proceedings pertaining to preparation, consideration, hearings, time limited, approval and adoption of the General Plan, or any of

its parts or amendments thereto, shall be as provided by ordinance, **subject to the following limitations:**

- (a) The General Plan shall be so prepared that the Planning Commission may approve and the Council **may adopt it only as follows:** as a whole; by complete subject elements; **by substantial geographical areas; or by substantial portions of subject elements; provided that any such area or portion has significant social, economic or physical identity.** (Final Report, p. 15; emphasis added.)

This portion of new City Charter Section 96.5 included this explanatory note of the Committee's drafting intent:

To be truly comprehensive, the General Plan must cover the entire City and interrelate all of the pertinent subject matter. However, because Los Angeles is so large and complex, it is necessary as a practical matter to break the Plan into logical units for consideration and adoption. On the other hand, **it would be entirely inconsistent with the comprehensive nature and coordinating purpose of the General Plan for it to be adopted and amended in small bits and pieces. In order to prevent such piecemeal consideration, a limitation must be placed upon the extent to which the Plan can be divided up for purposes of adoption or amendment.** (Emphasis added.)

Under the authority of this section, the City was broken up into 35 community plans based upon characteristics that marked a significant social, economic or physical identity.

In 1999, the draft of the Appointed Charter Reform Commission was adopted by the joint meetings of the Appointed and Elected City Charter Reform Commissions. The redlined changes to the City Charter Section 96.5 were minor and the limiting language is now found in the reorganized 2000 City Charter at Section 555. The portion relevant to the issues involving the Partridge Project is:

**Sec. 555. General Plan - Procedures for Adoption.**

Procedures pertaining to the preparation, consideration, adoption and amendment of the General Plan, or any of its elements or parts, shall be prescribed by ordinance, subject to the requirements of this section.

(a) **Amendment in Whole or in Part.** The General Plan may be amended in its entirety, by subject elements or parts of subject elements, or by geographic areas, provided that the part or area involved has significant social, economic or physical identity.

(b) **Initiation of Amendments.** The Council, the City Planning Commission or the Director of Planning may propose amendments to the General Plan. The Director of Planning shall make a report and recommendation on all proposed amendments. Prior to Council action, the proposed amendment shall be referred to the City Planning Commission for its recommendation and then to the Mayor for his or her recommendation. (Emphasis added.)

The City Planning Department, City Planning Commission, the City Attorney, and City Council have violated the City Charter by allowing project applicants to apply for general plan amendments in the above-described manner. Further, such project applicants have been allowed to apply for a general plan amendment merely for their own parcel(s) of land. City officials are violating the City Charter by allowing project applicants to ask for general plan amendments and to seek such amendments for, in the words of the Citizen's Committee, "small bits and pieces" of the City which is "entirely inconsistent with the comprehensive nature and coordinating purpose of the General Plan."

In a recent Second District Court of Appeal case involving the City of Los Angeles, Schafer v. City of Los Angeles (2015) 237 Cal.App.4th 1250, 1263, the Court of Appeal observed how the grant of an exception from a currently adopted general plan or zoning code would override the public interest in comprehensive zoning.

Zoning laws concern 'a vital public interest – not one that is strictly between the municipality and the individual litigant. All the residents of the community have a protectable property and personal interest in maintaining the character of the area as established by comprehensive and carefully considered zoning plans in order to promote the orderly physical development of the district and the city and to prevent the property of one person from

being damaged by the use of neighboring property in a manner not compatible with the general location of the two parcels. [Citation.] These protectable interests further manifest themselves in the preservation of land values, in esthetic considerations and in the desire to increase safety by lowering traffic volume.’ . . . (Pettitt v. City of Fresno (1973) 34 Cal.App.3d 813, 822-823, [parallel cite omitted].) (Emphasis added.)

As shown above, the City Council cannot approve the amendment because **it has no means to conditionally accept a violation of City Charter Section 555.** The Project must be rejected as it does not provide any clear evidence that Commercial Manufacturing is more consistent or a “public necessity” that would warrant the taking of future public park or recreation areas. There are few other uses that could generate a more superior public good than a park area in an underserved, low-income community that is rapidly densifying. The zoning that is consistent with the Silverlake-Echo Park-Elysian Valley community plan is Open Space. Since the amendment is unlawful, Government Code Section 66474.61 imposes a mandatory duty upon the City to deny the approval.

**III. ALL OF THE FOREGOING REQUIRES THE CITY COUNCIL TO DENY THE GPA and ZC.**

The previous sections set forth the substantial evidence showing the Advisory Agency can make no valid finding that the Project as proposed and discussed in the Final EIR can comply with the General Plan because the proposed plan amendment would be unlawful. All of the same evidence set forth above also supports the conclusion that the requested zone change and height district, which directly depend upon the ability to carry out the general plan amendment, must be denied because an attempt to approve such entitlements would violate Charter Section 555 and the current general plan provisions. This conclusion is supported by the fact that nowhere in the Draft or Final EIR did the City disclose or discuss the applicability of Charter Section 555, or how this Project could evade the strict limitation on general plan amendments of small geographic areas.

In fact, appellant’s land use expert, retired City of Los Angeles Zoning Administrator Jon Perica, reviewed the City’s Draft EIR and Final EIR and failed to find the analysis of Charter Section 555 or its implementing LAMC Section 11.5.6 in any of the documentation. (**Exhibit 12** [Perica Report].) He concluded that if this project were before him, due to the significant omissions of analysis in the EIR, as a zoning administrator he would have to deny the application and return it for consideration of a code compliant project.

It is obvious from the history of City Charter Section 555 and LAMC Section 11.5.6 that one does not look at the geographic area outside the boundaries of the proposed general plan amendment, or back into the past regarding what an area might have been a part of at one time. The only relevant question under the City Charter is whether or not the area proposed for general plan amendment is significant enough, i.e., constituting a community-wide area appropriate for comprehensive planning.

If the Project as proposed is approved, a reviewing court will interpret the restrictive language used by the Citizen's Committee, and it will regard these "findings" as evidence of the City's conscious and willful violation of its Charter. The Citizen's Committee expressed its specific legislative intent at page 15 of its final report, which bears emphasis:

In order to prevent such piecemeal consideration [of general plan amendments], a limitation must be placed upon the extent to which the Plan can be divided for purposes of adoption or amendment. (**Exhibit 12.**)

#### **IV. THE CITY FAILED TO PROCEED IN ACCORDANCE WITH THE LAW IN ITS REVIEW OF ENVIRONMENTAL IMPACTS.**

##### **A. Courts Review CEQA Procedural Legal Duties Scrupulously.**

Courts apply a de novo or independent judgment standard of review to determine legal errors under CEQA. Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 427. Questions concerning the proper interpretation of CEQA's requirements are matters of law. As such, "the existence of substantial evidence supporting the agency's ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA." Association of Irrigated Residents v. County of Madera (2003) 107 Cal.App.4th 1383, 1392.

"An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." Laurel Heights Imp. Ass'n v. Regents of the University of California (1989) 47 Cal.3d 376, 405 ("Laurel Heights"). In a challenge to the sufficiency of an EIR, a Court's inquiry extends to whether there was a prejudicial abuse of discretion. Pub. Res. Code § 21168.5. "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." Id.; Laurel Heights

at 392. “Argument, speculation, unsubstantiated opinion or narrative [or] evidence which is clearly erroneous or inaccurate . . . does not constitute substantial evidence.” Guidelines § 15384(a).

The “reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.’ [Citations.]” Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commr’s (2001) 91 Cal.App.4th 1344, 1355. The Court “must ensure strict compliance with the procedures and mandates of [CEQA].” Save Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 118.

**B. The City Violated CEQA’s Mandatory Duty To Include Responsible Agency CRA/LA In The NOP And Consultation Process.**

Public Resources Code Section 21080.3 mandates that “[p]rior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and trustee agencies. Public Resources Code Section 21080.4, subdivision (a), provides:

“If a lead agency determines that an environmental impact report is required for a project, **the lead agency shall immediately send notice of that determination** by certified mail or an equivalent procedure to each responsible agency . . .” And, “[u]pon receipt of the notice, **each responsible agency . . . shall specify** to the lead agency **the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency . . . in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental impact report.** (Emphasis added.)

CEQA Guideline 15082, subdivisions(a) and (b) carry this same mandatory duty of the lead agency.

Public Resources Code Section 21069 defines a “responsible agency” as “a public agency, other than the lead agency, which has responsibility for carrying out or approving the project.”

**E. Significant Cumulative Impacts Have Not Been Analyzed.**

A cumulative impact consists of an impact which is created as a result of the combination of the project together with other projects causing related impacts. CEQA Guidelines § 15130(a)(1). “One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming dimensions only when considered in light of the other sources with which they interact.” Los Angeles Unified School District v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1025 (internal citations and quotes omitted).

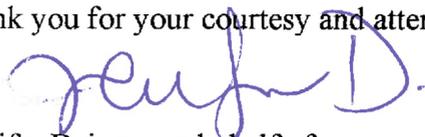
CEQA recognizes the potential for an accumulation of small contributions to a problem to create a cumulative effect, and requires investigation and disclosure of the potential of a project to be the straw that breaks the camel’s back. Guidelines § 15065(a)(3). If a lead agency finds a project’s incremental effect is not “cumulatively considerable,” the agency does need not to consider that effect significant, but it must “briefly describe its basis for [so] concluding. . . .” Guidelines § 15130(a). As with other aspects of CEQA, “cumulative impact analysis must be interpreted so as to afford the fullest protection of the environment within the reasonable scope of the statutory and regulatory language.” Citizens To Preserve the Ojai v. County of Ventura (1985) 176 Cal.App.3d 421, 431-432.

**V. CONCLUSION.**

For all of the foregoing reasons, the Project application and requested approvals are not supported by law and must be denied.

The Project is not consistent with the City’s Charter, General Plan, Municipal Code, or state law, including CEQA. We respectfully request that you reject the Project as proposed.

Thank you for your courtesy and attention to this matter.



Jennifer Deines, on behalf of  
Citizens for Open Space  
PO Box 26048  
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March 15, 2016

Item 10, 11

## VIA EMAIL AND HAND DELIVERY

Los Angeles City Council  
Planning and Land Use Management Committee  
200 N. Spring Street, Rm. 325  
Los Angeles, CA 90012

Re: Combined Objections to General Plan Amendment, Zone Change, Height District Change, Conditional Use Permit for Alcohol, Conditional Use to Allow Hotel within 500 Feet of Residential Area, Conditional Use to Allow Floor Area Averaging and Residential Density, Zoning Administrator Interpretation, and Site Plan Review; and Appeal of Advisory Agency August 6, 2015 Approval of Palladium Residences Project located at 6201-6229 West Sunset Boulevard, 1510-1520 North Argyle Avenue, 6210 West Selma Avenue, 1531-1541 North El Centro Avenue  
Tract Map No. 72213  
CPC Case: CPC-2014-3808-GPA-ZC-HD-CU-CUB-ZAI-SPR  
Environmental Review: ENV-2013-1938-EIR

Honorable Committee Members:

### I. INTRODUCTION.

This firm and the undersigned represent appellant AIDS Healthcare Foundation. Please keep this office on the list of interested persons to receive timely notice of all hearings and determinations related to the Palladium Residence Project ("Project"). For the convenience of Commission members, this consolidated objection letter incorporates all argument and evidence as part of our submission in connection with the appeal of the Advisory Agency's approval under the Subdivision Map Act. As well, we present additional objections, argument and evidence for your consideration.

Appellant hereby adopts and incorporates by reference all Project objections raised during the environmental review process, tract map process, and City Planning Commission land

use entitlement process, including all objections and evidence submitted by all other appellants in these proceedings. In particular, appellant adopts the objections found in the Draft EIR comment letters submitted by Hollywood Heritage, Kilroy Realty Corporation, and the California Office of Historic Preservation – which were not addressed, or were inappropriately addressed, in the Final EIR.

All objections, including those regarding proper notice and due process, are expressly reserved. In particular, we object to the City Council's ongoing failure to adopt the procedural zoning and land use hearing rules mandated by the Legislature in the 1971-72 enactment of Government Code Section 65804. The purpose of this state law is to prevent what happens at land use and zoning hearings before the Los Angeles City Council: parties to the hearing and members of the public have no idea how the hearings will be conducted in advance of the hearing. As a result, the hearings are conducted at the whim of the Chair. In particular, the City Council often fails to provide for the right to respond to significant new matters or undisclosed amending motions that clearly were negotiated outside the hearing room. See, e.g., Clark v. City of Hermosa Beach (1996) 48 Cal.App.4th 1152, 1172-1173.

A finding by the Citizen's Committee on Zoning Practices and Procedures in 1968 influenced Assembly-member Yvonne Braithwaite-Burke introducing legislation requiring that all cities and counties in the state, including the Los Angeles City Council, adopt fair hearing rules. It is ironic that even though the Citizen's Committee recommended enactment of fair hearing procedures in 1968 (**Exhibit 1** [Citizen's Committee First Report and Summary Version of First Report ("First Report"), July 1968]), and the legislature mandated it in 1971-72 by the enactment of Government Code Section 65804, for 46 years the Los Angeles City Council has continued to operate its land use and zoning hearings without any adopted or published procedural rules. The lack of fair treatment of land use appellants and persons who appear at public hearings where they may be given a mere one minute to speak, if that, on complex land use issues feeds the growing anger and cynicism that the only people that matter at City Hall are the campaign contributors or the donors to the Councilmember's legal defense fund or officeholder's discretionary expenditure fund. These actions are not constitutionally consistent with procedural due process of law principles.

## **II. THE CONTEXT OF THIS ZONING CASE.**

Residents from throughout the City are currently alarmed at the magnitude of deference paid to campaign contributors from the real estate industry. A bit of history of Los Angeles planning and zoning controversies shed an important light on the Palladium Project proposal. In

1966-1969, Los Angeles City Hall was rocked with a “pay-to-play” bribery scandal when the 1966 Los Angeles County Civil Grand Jury found credible evidence that parcel by parcel, project-oriented zone changes were being processed by City officials based upon campaign contributions, cultivated lobbyist friendships, and even bribes. (**Exhibit 2.** [1966 Grand Jury Report].)

One developer was convicted of grand theft, fined \$5000, and placed on three years probation. At least four City planning or zoning appeals commissioners resigned under fire or were transferred when it was revealed they were voting on matters in which they were financially interested, or where they met privately outside the zoning hearing room with developers to decide how to approve projects. (**Exhibit 3** [Newspaper clippings of Los Angeles Times articles reporting the scandals].)

At the end of two trials, former Los Angeles City Councilmember Thomas Shepard was convicted on one count of bribery, denied probation and sent to jail. In refusing probation, the sentencing judge observed that “the power to rezone, is the power to create great wealth.” The judge stated he regarded those who would go to great lengths, despite the facts of the case, to greatly increase the value of land with such individual rezoning actions, no different than stealing the public’s money from the City’s treasury. (**Exhibit 4** [LA Times article, Shepard Bribery Verdict].)

In response to the outcry over a corrupted City planning and zoning process, the City Council appointed a blue ribbon committee known as the Citizen’s Committee on Zoning Practices and Procedures to extensively study and recommend overhaul of the City’s planning, zoning, hearing, and ethics processes in connection with land use approvals. After 14 months of hearing testimony from experts and the public, the Citizen’s Committee released a July 1968 report finding serious problems and recommending 36 reforms. (**Exhibit 1.**)

One of the most important reforms was to make the City’s general plan binding and requiring all zoning code enactments to be consistent with the general plan. In order to remove the political pressure associated with project-by-project general plan amendments and rezoning, the Citizen’s Committee recommended an important City Charter reform measure to limit the minimum size of general plan amendments. The Committee, led by former Mayor Fletcher Bowron, observed that comprehensive planning had to occur on a community-wide or City-wide basis, not on a project-specific basis. (**Exhibit 1**, pp. 19-21.) The Committee therefore recommended in its Final Report in May 1969 a requirement that general plan amendments only be allowed for geographical areas that possess “significant social, economic, or physical

identity.” (Exhibit 5, [Final Report] at p. 15.) In other words, the general plan would not be amended and updated lot by lot.

This reform of the City’s Charter was not substantially altered during the City’s 1998-1999 charter reform process, especially since no substantive change was ever proposed, discussed at a public meeting, or voted upon by the Charter Reform Commissions that crafted the 2000 Los Angeles City Charter. (Exhibit 6 [Wright Declaration and Unified Charter Report].) Thus, it is unlawful for the City Planning Director, the City Planning Commission, the Mayor, and the City Council to initiate, consider or approve small geographic general plan amendments involving a single or small group of related real estate development projects.

After the People’s 1969 reforms, the problems continued. The first general plans prepared for the City in the 1970s showed potentially devastating environmental impacts if the City were built out at the density set forth in the 1946 zoning code. The City therefore adopted general plans stating it was necessary to reduce densities all over the City to mitigate the impacts. But the City Planning Department and the City Council delayed making the City’s zoning consistent with its general plan.

The Legislature, responding to complaints about the City of Los Angeles, acted on AB 283 and enacted Government Code Section 65680, subdivision (d). This new law mandated that the City make its zoning consistent with its general plan within a set period of a few years. Thus, the state instructed Los Angeles to do what every other general law city in the state was required to do and most charter cities were voluntarily doing: making its general plan and zoning consistent to assure a harmonious planning and zoning process. See, e.g., City of Los Angeles v. State of California (1982) 138 Cal.App.3d 526,534.

The City Council’s response was to defy the Legislature and this new law. The City sued the state Legislature claiming that AB 283 violated the City’s home rule powers. While the City obtained a favorable decision at the Superior Court in Los Angeles County, the Second District Court of Appeal soundly rejected the City’s objection to AB 283. City of Los Angeles v. State of California (1982) 138 Cal.App.3d 526, 534. Finding nothing objectionable with the Court of Appeal decision, the California Supreme Court denied the City Council’s petition for review. Thus, the City was required to comply with AB 283.

After the 1982 Court of Appeal decision, the City Planning Department and City Council continued to drag its feet in the implementation of AB 283. Exasperated by the City’s unwillingness to promptly comply with the law, in 1984 the Center for Law in the Public Interest

sued the City on behalf of a number of homeowner groups in the City seeking a writ of mandate to force the City to comply with its duty to make zoning consistent with the general plans. Federation of Hillside and Canyon Associations v. City of Los Angeles (L.A. Super. Ct. No. 526,616). In January 1985, the Superior Court issued a writ commanding the City to revise its zoning to conform to its general plan within 120 days. Because the City could not accomplish this task within 120 days, it negotiated a settlement agreement. The parties agreed that the City would make its zoning consistent with the general plan within 3 years as a court-appointed monitor oversaw the process and made regular reports to the Court. While the City completed the easiest zoning changes within 3 years, according to Carlyle Hall who litigated this case, it took 10 years for the City to largely complete the general plan consistency process, making its zoning consistent with the general plan.

Unfortunately, however, the City Planning Department had a new “solution” for real estate developers who decided they wanted more density for their individual development projects. In the late 1980s, it had been about 20 years since the 1966-69 pay-to-play bribery scandals tied to zone changes. Perhaps the reforms had receded into the past. Someone in the City Planning Department began to allow real estate developers to propose a general plan amendment in connection with a particular real estate project. This would enable a corresponding zone change and perhaps removal of building height limits.

The processing of general plan amendments began, even though the geographic area of a single project violated the City Charter’s restriction that amendments to the general plan were limited to parts of elements or geographical areas that possess “significant social, economic, or physical identity.” Thus, the City began ignoring the City Charter’s restriction on the size of general plan amendments, and in so doing, reopened the door to a “pay-to-play” culture.

There is no known official compilation of individual project general plan amendments, but their existence recently came to the attention of community leaders in the City when more and more individual projects began requesting general plan amendments to obtain zoning densities far above those authorized by the current general plan. The number of such changes are especially occurring within the Redevelopment Plan area for Hollywood, Downtown, Koreatown, and in the San Fernando Valley. But examples can be found throughout the City. Some weeks, the City Council considers and approves multiple project-oriented general plan amendments. The result is not planning; it is random, chaotic, and politically-driven development of the City – a result specifically condemned in state law and contrary to the City Charter.

The general plan amendment scheme is particularly centered within the Hollywood Redevelopment Plan area of the former Community Redevelopment Agency of the City of Los Angeles ("CRA"). When the CRA adopted its redevelopment plan 1986 and amended it in 2003, it envisioned that enhanced density was appropriate surrounding the coming Red Line Stations at Hollywood and Vine, and Hollywood and Highland. Under the vision of the CRA, while most Hollywood land was zoned at a floor area ratio of 1.5:1, 2:1, 3:1 or even 4.5:1, in order to incentivize substantial public benefit extractions, the CRA crafted a program that enabled developers to obtain as much as a 6:1 density if, and only if, the developer negotiated and entered into an Owner Participation Agreement and giving back some of the wealth created by the CRA's additional FAR allowance.

There were important reasons to require substantial exactions in exchange for the CRA-granted increase in FAR. Environmental review associated with the Redevelopment Plan acknowledged that street capacity, public services infrastructure, and public health and safety issues could overwhelm Hollywood if there was not close monitoring and significant transportation and other improvements required as the average FAR for the entire redevelopment plan area rose above 2.0:1. For this reason, the CRA committed to carefully monitor the FAR development and transportation network in the Redevelopment Plan area each year.

Additionally, the CRA committed to developing a program for how floor area transfers would occur in the Redevelopment Plan area. The CRA committed to enact a transportation program to prevent project densities from overwhelming the City's infrastructure. The CRA committed to enacting a Design for Development program to assure high quality development in the Redevelopment area. The CRA committed to completing a full survey of historic resources and adopt a program to assure preservation of important elements of Hollywood's past. Today, 30 years later, other than completion of an historic resources survey, none of these committed programs are completed.

In 2011, the Legislature abolished community redevelopment agencies and transferred their duties to wind up their programs to successor agencies. Because the City of Los Angeles refused to assume the duties and obligations of its redevelopment agencies, a designated local agency of three board members was appointed by the Governor. The designated local agency is now known as "CRA/LA".

Under state law, the CRA/LA staff continues to review projects within the Redevelopment Plan areas, including Hollywood, to make discretionary determinations if projects comply with the Redevelopment Plan. Additionally, the duty to complete all of the

missing committed plans and programs of the Hollywood Community Plan falls upon the CRA/LA, but the record in this case is devoid of any evidence that the CRA/LA is working to complete these programs. Despite the lack of any transportation monitoring annual reports to the City, despite the lack of a transportation program to require improvements to mitigate cumulative impacts of significant increases of FAR near high capacity transit nodes, the City Planners and real estate developers have filed entitlement applications simply asserting they are now “entitled” to receive an automatic bump up to 6.0:1 FAR even though the former CRA is abolished, and the CRA/LA successor agency has provided no evidence, other than the historic resources survey, that the protective programs committed to by the former CRA will ever be carried out.

What has ensued in the wake of the CRA’s demise is something akin to a “gold rush” of real estate developers rushing forward massive up-zoned and up-sized projects in the Hollywood Redevelopment area to try to grab the 6:1 FAR increase. Under the CRA’s plan, the 6:1 density was supposed to only be centered around the high density transit stations for which users of the project would easily walk to such rapid transit. But City Planners seem to not understand this scam. Instead of protecting the public interest as the former CRA staff did, City Planners are bringing forward general plan amendments for individual projects (which is unlawful under City Charter Section 555, subdivision (a)) that propose to change even more land to the “Regional Center Commercial” land use designation. This designation includes the former CRA incentives to increase FAR up to 6:1. None of these extremely dense developments were envisioned by the former CRA, and a certain bubble of real estate speculation now infects the real estate development community, and the City Planning Department, City Planning Commission, and City Council.

With this prelude of the history of planning and zoning in Los Angeles, we turn to the Palladium Residences Project which openly violates the City Charter’s general plan amendment restriction, refuses to comply with the density in dwelling units imposed by the municipal code, and offers no significant public benefits package and no truly affordable housing in return for an approximate increase in project size of 500,000 square feet of additional development.

We have come full circle, where general plan amendments and rezoning can put an estimated \$50 million in the hands of the developer in exchange for campaign contributions to City officials and a few illusory promises about Palladium preservation that remains to be completed in the developer’s discretion. This process must be reformed.

### III. PROJECT OVERVIEW.

The entire Hollywood business and residential community will be adversely impacted by the Project approvals sought by the applicant because the City Council is asked to violate the Los Angeles City Charter.

The Project as now proposed will be one with condominium towers and street restaurants/retail. None of the project conditions require the applicant to expend any minimum level of funds or commit as a condition of approval to actually preserve, improve, and agree to a minimum period that the historic Palladium building will not be demolished. The Project proposes a massive injection of inappropriate and harmful density onto a very small parcel of land which is improper and unlawful.

Former City Planning Commission President Jane Usher, who spearheaded the project design principles that became "Let's Do Real Planning," famously observed during the Planning Commission hearing on December 13, 2007 regarding another Hollywood proposal: "It's an instance where an applicant asks for the sun, the moon and the stars in a zone where there's no hint or whisper of it being an appropriate request." (City Planning Commission Hearing, <http://planning.lacity.org/InternetCalendar/pdf.aspx?Id=43395> Hearing Tape 2, at 44:33.) The Palladium Project is similarly outrageous, but orders of magnitude greater.

### IV. THE CITY HAS CONDUCTED THE TENTATIVE TRACT MAP APPROVAL PROCESS IN VIOLATION OF THE SUBDIVISION MAP ACT.

Under Government Code Section 66474.61, applicable to the City of Los Angeles, "the advisory agency . . . **shall deny** approval of a tentative map . . . if it makes any of the following findings:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans." (Emphasis added.)

On pages 2 and 3 of the Advisory Agency determination letter, the tract map approval is subject to conditions:

- 7a. “Show compliance with the [Q] and [D] conditions of Ordinance 165,662 as applicable or Department of City Planning approval to amend [Q] or D conditions is required regarding the allowable FAR and the allowable residential uses on the site. **Proposed project does not meet the density and FAR required per the above ordinance.** City Planning approval to be consistent with the Regional Center Commercial requirements.”
- 7b. “Obtain City Planning approval to **designate the entire project site as Regional Center Commercial.**”
- 7c. “Provide a copy of the **Zone Change approval**. Zone change must be enacted and effective prior to obtaining Zoning clearance.” (Emphasis added.)

Thus, the Advisory Agency determination letter itself states that as currently designated under the City’s General Plan set forth in the Hollywood Community Plan, the applicant has no right to develop the Project as proposed because it is inconsistent with those plans.

The inability of the Advisory Agency to make a finding of conformity with the current 1988 Hollywood Community Plan is corroborated by the Hollywood Community Plan CEQA findings at pages 62-63 of the Advisory Agency Determination: “With implementation of the Project, the “Commercial Manufacturing” plan designation and Site zoning on the Selma Avenue Area would be amended to a Regional Center Commercial designation and updated zoning to accommodate the Project’s proposed residential uses with heights and FAR permitted by the Regional Center designation and C4 zoning.”

Thus, only with the grant of a General Plan Amendment, which then makes it possible to rezone the property to remove current restrictions on residential use, height, and the density, could the Advisory Agency make a finding of consistency with the City’s General Plan. But the City Planning Commission has not yet heard a request for those entitlements, so it is pure speculation by the Advisory Agency that the entitlements will be granted. This “*post hoc* rationalization” (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 394) nature of the Project’s entitlement process taints the entire proceedings, and “has the process exactly backward[.]” Berkeley Keep Jets Over the Bay v. Board of Port Commissioners of the City of Oakland (2001) 91 Cal.App.4th 1344, 1371.

On pages 131-135, the Advisory Agency attempts to make the Subdivision Map Act findings, but just as with the Project Conditions and the CEQA findings, the Advisory Agency has no substantial evidence that the proposed tract map or the project proposal is consistent with the City's General Plan.

While the Subdivision Map Act permits the Advisory Agency to conditionally approve a proposed tentative tract map and impose conditions to mitigate environmental and other impacts, the project conditions may not include approval conditionally granted based upon the presumption the applicant subsequently will obtain approval of a General Plan Amendment. Woodland Hills Residents Ass'n., Inc. v. City Council of Los Angeles (1975) 44 Cal.App.3d 825, 838 (failure of Planning Commission or City Council to make the required statutory finding required invalidation of the approval). Because the City cannot make a consistency finding when there is no guarantee that a General Plan Amendment will be (or can be) granted, the Tract Map Approval is unlawful for a failure to proceed in accordance with law.

V. **THE TRACT MAP APPROVAL IS ALSO ILLEGAL BECAUSE IT ASSUMES A GENERAL PLAN AMENDMENT CAN BE LAWFULLY PROCESSED BY THE CITY PLANNING DIRECTOR, THE PLANNING COMMISSION, AND THE CITY COUNCIL AT THE REQUEST OF THE APPLICANT – WHICH IT CANNOT.**

A. **The City Charter And LAMC Bar This Project From Seeking A General Plan Amendment.**

Los Angeles City Charter Section 555 expressly prohibits the City from proposing, considering, or approving any general plan amendment that does not encompass a geographical area with “significant social, economic, or physical identity.” The entire Project as conceived, applied for, and approved by the Advisory Agency is a clear violation of Section 555 because it assumes that the general plan amendment as requested by the applicant for a portion of a single lot, can be granted by the City. It cannot. Because so much rides on the General Plan Amendment, the Palladium Project's house of cards falls.

“In the case of a charter city, “the charter represents the supreme law of the City, subject only to conflicting provisions in the federal and state Constitutions and to preemptive state law. [Citation.] ‘[T]he charter operates . . . as an instrument of *limitation* and *restriction* on the exercise of power over all municipal affairs which the city is assumed to possess. . . .’ [Citations.]” (Domar

Electric, Inc. v. City of Los Angeles (1994) 9 Cal.4th 161, 170, 36 Cal.Rptr.2d 521, 885 P.2d 934 (Domar), italics added.) “[I]t is well settled that a charter city may not act in conflict with its charter. [Citations.] Any act that is violative of or not in compliance with the charter is void. [Citation.]” (Id. at p. 171, 36 Cal.Rptr.2d 521, 885 P.2d 934.) The provisions of the city’s charter thus “supersede all municipal laws, ordinances, rules or regulations inconsistent therewith” (Stuart v. Civil Service Com. (1985) 174 Cal.App.3d 201, 206, 219 Cal.Rptr. 770) and “an ordinance [or resolution] violative of or not in compliance with the city charter is void.” (5 McQuillin Municipal Corporations (3d ed. 2011) § 15:17.)” San Diego City Firefighters, Local 145, AFL-CIO v. Board of Admin. of San Diego City Employees’ Retirement System (2012) 206 Cal.App.4th 594, 608.

As conceded by the applicant and City in the Draft EIR, the applicant seeks to amend the Hollywood Community Plan to designate the back parking lot fronting Selma Avenue at a higher residential dwelling unit density, higher floor area ratio, and higher height than currently permitted by the Community Plan. But Charter Section 555 does not authorize an individual property owner to apply for a general plan amendment to enable rezoning like this. For such a small bit or piece of the City, the Charter bars a general plan amendment because the geographical area involved lacks a “significant social, economic, or physical identity.”

The Mayor, the City Planning Commission, the City Planning Director, and the City Attorney suffer from a misperception of the law that has gone on in this City for too long. They act as though they may engage in what amounts to spot general planning and spot zoning to give to favored development interests what an average resident of this City could not dream of requesting – an individually-tailored amendment of the long-term, comprehensive plan for how the City’s growth is to proceed.

Even more concerning for City residents is the fact that for a number of years, someone at City Hall began to allow developers to apply for general plan amendments, zoning changes, and removal of height limits to accomplish what the City Charter does not allow: a parcel-by-parcel increase in land use density, up-zoning, and removal of height limits outside of a comprehensive planning process embodied in a holistic review of: (1) the entire general plan, (2) an entire element, or (3) a geographic area encompassing a “significant social, economic, or physical identity.”

With increasing frequency, the Mayor, City Planning Commission, the City Planning Director, and the City Attorney have dismantled the concept of a general plan by amending our City's community plans bit-by-bit and piece-by-piece.

The plain language of the Los Angeles City Charter prohibits two things:

1. A landowner has no authority under City Charter Section 555 to request a general plan amendment to allow a project that would otherwise violate the current general plan. By the express language of Section 555, subdivision (b), a general plan amendment may only be requested as follows: **"The Council, the City Planning Commission or the Director of Planning may propose amendments to the General Plan."** (Emphasis added.)
2. Even more significantly, Charter Section 555, subdivision (a), expressly limits amendments of the general plan as follows: **"The General Plan may be amended in its entirety, by subject elements or parts of subject elements, or by geographic areas, provided that the part or area involved has significant social, economic or physical identity."** (Emphasis added.)

These restrictions on the powers of the Mayor, City Planning Commission and City Planning Director were imposed by vote of the People, exercising their home rule powers, so that the City's General Plan would retain its force and integrity to guide the long-term and comprehensive development of the City. It specifically bans what the City and Project developer here seek to accomplish.

Los Angeles Municipal Code Section 11.5.6 contains provisions that implement the City Charter procedures for the general plan. With respect to who may request a general plan amendment and the required minimum scope of a general plan amendment, the LAMC repeats the limitations imposed by Charter Section 555:

**SEC. 11.5.6. GENERAL PLAN. Pursuant to Charter Section 555, the City's comprehensive General Plan may be adopted, and amended from time to time, either as a whole, by complete subject elements, by geographic areas or by portions of elements or areas, provided that any area or portion of an area has significant social, economic or physical identity.**

A. Amendments. **Amendments to the General Plan of the City shall be initiated, prepared and acted upon in accordance with the procedures set forth in Charter Section 555 and this section.**

B. Initiation of Plan Amendment. **As provided in Charter Section 555, an amendment to the General Plan may be initiated by the Council, the City Planning Commission or the Director of Planning.** Initiations by the Council or City Planning Commission shall be by majority vote. If an amendment is initiated by the Council or City Planning Commission, then it shall be transmitted to the Director for report and recommendation to the City Planning Commission. Whether initiated by the Director, the Council or the City Planning Commission, the Director shall prepare the amendment and a report recommending action by the City Planning Commission. The report shall contain an explanation of the reasons for the action recommended. After the Director prepares a Plan amendment and report, the Director shall transmit the file to the City Planning Commission for its action. (Emphasis added.)

Nowhere does the City Charter or the implementing LAMC provisions authorize the City to accept a Master Land Use Permit Application that includes a request by an applicant for a general plan amendment in relation to his or her parcel of land.

In contrast, both the City Charter and the applicable LAMC provisions contemplate that in certain circumstances, an applicant may file an application for a zone change applicable to his or her property, if it is consistent with the currently adopted General Plan. Charter Section 558 provides in relevant part:

(a) **The requirements of this section shall apply to the adoption, amendment or repeal of ordinances, orders or resolutions by the Council concerning:**

(1) the creation or **change of any zones** or districts for the purpose of regulating the use of land;

(2) **zoning or other land use regulations** concerning permissible uses, height, density, bulk, location or use of buildings

or structures, size of yards, open space, setbacks, building line requirements, and other similar requirements, including specific plan ordinances . . . .

(b) Procedures for the adoption, amendment or repeal of ordinances, orders or resolutions described in subsection (a) shall be prescribed by ordinance, subject to the following limitations:

(1) **Initiation.** An ordinance, order or resolution may be proposed by the Council, the City Planning Commission, or Director of Planning or by application of the owner of the affected property if authorized by ordinance.

(2) **Recommendation of the City Planning Commission.** After initiation, the proposed ordinance, order or resolution shall be referred to the City Planning Commission for its report and recommendation regarding the relation of the proposed ordinance, order or resolution to the General Plan and, in the case of proposed zoning regulations, whether adoption of the proposed ordinance, order or resolution will be in conformity with public necessity, convenience, general welfare and good zoning practice. (Emphasis added.)

Thus, while the City Charter contemplates an applicant requesting a zone change that is consistent with the currently adopted general plan, it does not contemplate or authorize an owner of property to propose a piecemeal amendment of the general plan.

LAMC Section 12.32 implements Charter Section 558. In relevant part it provides:

A. **Initiation. The City Council, the City Planning Commission or the Director of Planning may initiate consideration of a proposed land use ordinance.** Any initiation by the Council or the City Planning Commission shall be by majority vote. The Council or the City Planning Commission shall forward the proposed ordinance to the Director of Planning for a report and recommendation.

B. **Application. An owner of property may apply for a proposed land use ordinance if authorized to do so by**

**Subsections F through S relative to that owner's property.** The applicant shall complete the application for that proposed land use ordinance, pay the required fee and file the application with the Department of City Planning on a form provided by the Department. (Emphasis added.)

The language used by the People in the City Charter and the City Council in its implementing ordinances demonstrates that while an applicant might file an application on the City's form for a zoning change that meets certain criteria set forth in the LAMC (and is of course consistent with the currently adopted general plan), there is no authority for the City even to accept for filing a Master Land Use Permit Application Form that includes an applicant-initiated general plan amendment.

Despite the unambiguous limitation on who may apply for a general plan amendment, the City's Planning Department began not only allowing applicants to apply for a general plan amendment so they could develop their property contrary to the City's adopted general plan, but the City Planning Director has instituted a formal policy of accepting general plan amendment applications from applicants. Then, after a review, the Director uses his own power under the City's Charter to initiate parcel-by-parcel general plan amendments on behalf of applicants.

The City has devised procedural memoranda and general plan initiation forms to carry out this process. However, the City Planning Director's memorandum to consultants and developers evidences no assessment of whether or not an applicant's general plan amendment request covers a geographical area that has a significant social, economic, or physical identity, as required by the City Charter. (**Exhibit 7** [Planning Director April 8, 2015 Memo, "General Plan Amendment Initiations, Requests to the Director of Planning".])

In fact, the City Planning Director has implemented an Orwellian wording on forms he requires applicants to sign as a condition of having the City Planning Director "initiate" a general plan amendment. For example, as shown in **Exhibit 8**, "Request for Initiation of an Amendment to the City's General Plan," the "Initiation Request and Time Extension Authorization" attached thereto admits:

By law only the City may initiate a Plan Amendment. Your application is technically for a Zone Change only. Therefore you must request that the City initiate the corresponding Plan Amendment by checking the box below:  I hereby request that the City Planning Commission initiate a Plan Amendment

**consistent with my requested zone change.** (Exhibit 8, emphasis added.)

In other words, the City of Los Angeles Planning Commission and Director have forms stating that what they are doing is amending the General Plan to make it “consistent with my zone change.”

Regardless of the form of the transaction, the substance is that the property owner “initiates” the general plan amendment by asking for a zone change that is inconsistent with the currently adopted General Plan. By this proposed Project, Los Angeles would be violating the integrity of the General Plan process enacted by its voters in 1969. The City Planning Commission and/or City Planning Director then act as if the whole idea to initiate for this particular property at this particular time was the City’s and not the property owner’s as it states in his Master Land Use Application. Our City’s Charter may not be so easily defeated by such an obvious contrivance.

The Palladium Project applicant filed a Master Land Use Permit Application Form “requesting” a general plan amendment involving its recently reconfigured lot. In no way does the Project site meet the definition of minimum size required to process a general plan amendment. The City’s pattern and practice is unlawful, and its use in the instant case illustrates how developers are permitted to violate the law by densifying individual parcels beyond that permitted by the General Plan or ever analyzed in the EIRs supporting the General Plan.

The City Planning Director himself also has no authority to propose a general plan amendment as is sought herein. The language contained in the City Charter prohibits the processing of a general plan amendment unless such proposal involves the entire General Plan, an entire Element, a significant part of an Element, or a geographical area so long as the Element part or geographical area constitutes a “significant social, economic, or physical identity.”

Yet for some time the City Planning Director and City Planning Commission have engaged in changing General Plan land use designations at the mere request of a developer. It has become an accepted assumption that almost any proposed project in Los Angeles can happen because a developer wants it, regardless of the general plan land use designation.

**B. The Current Process Undermines Any Integrity In The Comprehensive General Plan And Feeds The Public’s Cynicism.**

Former City Planning Director Gail Goldberg famously observed on her arrival at the City:

In every city in this country, the zone on the land establishes the value of the land. In Los Angeles, that's not true. The value of the land is not based on what the zone says . . . . It's based on what [the] developer believes he can change the zone to. This is disastrous for the city. Disastrous. Zoning has to mean something in this city. (**Exhibit 9** [LA Weekly article, "Density Hawks"].)

Ms. Goldberg's efforts to change this culture of easy amendment of general plans and zoning failed. She was pushed out in a short time. Mayor Antonio Villaraigosa appointed former Zoning Administrator Michael LoGrande who, unfortunately, carried forward the violations of the City Charter outlined herein.

Several new proposed ordinances once submitted for City Council approval (Master Planned Development Zone Ordinance and Hybrid Industrial Zone Ordinance) directly conflicted with the City Charter by including language that if an applicant's project proposal does not comply with the currently adopted general plan, a plan amendment will be processed to make the City's General Plan "consistent" with the developer's proposed project – in effect an improperly guaranteed, reverse-engineered outcome.

Gail Goldberg's disaster is unfolding before our eyes.

The California Supreme Court has acknowledged that since 1971, a city's general plan is a constitution for future real estate development and all plans, codes, and planning decisions **are subordinate to and must conform with the general plan**. In DeVita v. County of Napa (1995) 9 Cal.4th 763, 772-773, the Supreme Court explained:

Although California law has prescribed that cities and counties adopt general or master plans since 1927 (Stats. 1927, ch. 874, pp. 1899-1913), the general plan prior to 1972 has been characterized as merely an 'interesting study,' and no law required local land use decisions to follow the general plan's dictates. (City of Santa Ana v. City of Garden Grove (1979) 100 Cal.App.3d 521, 532 [].) In 1971 several legislative changes were made to significantly alter the status of the general plan. For the first time, proposed subdivisions and their improvements were required to be consistent with the general plan (Gov. Code, § 66473.5 [formerly in Bus. & Prof. Code, § 11526]), as were zoning ordinances (Gov. Code, § 65860). (Stats. 1971, ch. 1446, §§ 2, 12, pp. 2853, 2858; City of

Santa Ana, *supra*, 100 Cal.App.3d at p. 532.) Moreover, charter cities were no longer completely exempted from the requirements of the planning law; these cities had to at least adopt general plans with the required mandatory elements. (Gov. Code, § 65700, subd. (a); Stats. 1971, ch. 1803, § 2, p. 3904.) Thus after 1971 the general plan truly became, and today remains, a ‘constitution’ for future development’ (Leshar Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531, 540 [] [] located at the top of ‘the hierarchy of local government law regulating land use’ (Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176, 1183 []).

The general plan consists of a ‘statement of development policies . . . setting forth objectives, principles, standards, and plan proposals.’ (Gov. Code, § 65302.) The plan must include seven elements – land use, circulation, conservation, housing, noise, safety and open space – and address each of these elements in whatever level of detail local conditions require (*id.*, § 65301). General plans are also required to be “comprehensive [and] long[]term” (*id.*, § 65300) as well as ‘internally consistent.’ (*Id.*, § 65300.5.) The planning law thus compels cities and counties to undergo the discipline of drafting a master plan to guide future local land use decisions.

The City in this case proposes to amend the general plan to conform with the Palladium Project developer’s desired use of land at a greater height, density, and in derogation of the current general plan land use designation as industrial land use. This is improper. The Supreme Court held in Leshar Communications v. City of Walnut Creek (1990) 52 Cal.3d 535, 541 that the primacy of the general plan cannot be overridden by enacting inconsistent zoning ordinances:

The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan as a pro tanto repeal or implied amendment of the general plan. The general plan stands. A zoning ordinance that is inconsistent with the general plan is invalid when passed [citations omitted] and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. (§ 65860.) The Planning and Zoning Law does not contemplate that general plans will be

amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform.

The result of these Charter violations, apparent in the case of the Project proposed herein, is destructive and far-reaching. The City is up-zoning the density and height of parcels at the requests of developers, and conflicts with the General Plan are wiped away by ignoring the City Charter mandate that the General Plan process does not permit such piecemeal amendment. In fact, because the City has “solved” the density and height desires of developers via the unlawful process outlined above, the City has had no incentive for decades to conduct comprehensive general plan revisions envisioned by both the State Planning law and the City’s own charter. Why engage in a comprehensive and holistic planning process embodied in the General Plan when developers can get the density and increased value by merely asking the City Planning Director, or City Council/Mayor to amend the General Plan for his or her lot?

C. **The City Council Repealed a Section of the Municipal Code Imposing a Duty To Periodically and Comprehensively Review and Amend the General Plan and the City Attorney’s Office Swept this Under the Rug.**

Our research shows that in October 2005, the City Council approved Ordinance 177103 (effective December 18, 2005) to repeal LAMC Section 11.5.8. This law formerly imposed on the City Planning Commission the duty to periodically and comprehensively review, revise and amend the General Plan in accordance with a schedule adopted by the City Council.

Incredibly, head of the Civil Division of the City Attorney’s office signed a memo representing to the public that the changes in the ordinance were merely “technical and clarifying” changes to correct typographical errors and similar matters. (**Exhibit 10** [City Attorney Report No. R05-0317 dated, September 12, 2005].)

We would suggest that a repeal of the City Planning Commission’s legal duty to engage in comprehensive and long-term general planning is not a technical or clarifying change. It was a substantive change, apparently adopted without serious discussion because the City Attorney’s accompanying memorandum erroneously represented it as a non-substantive change. The City Planning Commission was relieved of doing “real planning.” Curiously, we know of no evidence that thereafter anyone on the City Council or the City Planning Commission asked what happened to the general plan comprehensive reviews.

For the last decade, free of the legal obligations of Section 11.5.8, this City's planning activities have been focused on project-by-project General Plan amendments and massive density upzoning schemes rather than on comprehensive and long-term planning.

In this illegally "de-regulated" atmosphere, any project can be approved almost anywhere. With the so called Hybrid Industrial Zone Ordinance, the City proposes to foreclose high-paying industrial jobs in order to inject residential land uses into industrial zones constructed by the same developers who were developing other parts of the City. On the day when the Hybrid Industrial Zone Ordinance was before the Planning and Land Use Management Committee of the City Council, staff explained that once the ordinance was adopted, it would be implemented through more General Plan Amendments, likely on a project-by-project basis. The loss of such industrial land will be incremental until the day will come when the City does not have sufficient industrial land. Most recently, the City Council and Mayor approved a massive skyscraper on quiet Catalina Avenue in Koreatown by allowing a General Plan Amendment to increase the density, to rezone, and to increase height limits. These are examples of serial violations of the People's Charter.

The City's refusal to comply with the plain language of the City Charter and the discovery that it quietly repealed its legal obligation to periodically and comprehensively keep its General Plan up-to-date, led to the formation of a Coalition to propose and gather signatures on an initiative addressing this corrupt practice of City officials. Entitled the "Neighborhood Integrity Initiative," it provides further clarification of the City Charter prohibition against piecemeal general plan amendments, and it restores former LAMC Section 11.5.8 that imposes a duty on the City to periodically and comprehensively update its General Plan on a regular basis, instead of ignoring this vital planning duty for decades. The initiative is a logical expression of community realization that the 1966-69 pay-to-play process has been revived at City Hall and once again must be constrained. The Palladium Residences Project is a poster child for why the initiative is needed to curb open violation of the City's laws.

**D. The History Of The Enactment Of City Charter Section 555 Establishes That Small General Plan Amendments Are Prohibited.**

Sometimes things go full circle. The current state of spot zoning for individual developers looks similar to the crisis that led to the People reforming the City's planning and land use laws in the 1960s – including placement of the geographical limitation clause of City Charter Section 555 in the City Charter.

The crisis became clear when, in November 1966, the Los Angeles Civil Grand Jury issued a report concerning "a complex zoning case in the West Valley section of Los Angeles."

“The evidence before us indicated that a developer had represented to his partners that he could secure favorable zoning treatment from the City of Los Angeles in exchange for payment of monies.” (**Exhibit 2**) Although the Grand Jury was unable to conclusively determine that monies were paid in exchange for the City Council to reverse adverse recommendations from every agency that considered the West Valley zoning proposal from its inception, the Grand Jury observed:

We regretfully report that evidence we heard demonstrated that influence can and has been and in all probability will be exerted through the medium of campaign contributions, political obligations and friendships. (Id.)

Based upon this observation, the Grand Jury made a number of recommendations including conflict of interest legislation, requiring applicants to list campaign contributions made or promised to an elected official under penalty of perjury, that zoning hearings be conducted under oath, and that super majority City Council votes be required to override the conclusions of subordinate land use decision makers in the City.

In the Grand Jury’s conclusion, it strongly urged the City to commence an in-depth study to prevent the poor adherence to the City’s General Plan evidenced in the case before it:

It is apparent that a projected and in-depth study of this field is not only overdue, but one which would be invaluable to the interests of our community. It is our recommendation that such a study should be undertaken as soon as possible. (Id.)

Corruption indictments and convictions of numerous people (**Exhibit 3**) including a City Councilmember (**Exhibit 4**) followed. The City Council then appointed a Blue Ribbon Commission that studied and made recommendations. Known as the “Citizen’s Committee on Zoning Practices and Procedures,” it dealt with abuses that resulted from the City Council routinely ignoring its General Plan to grant developers zoning or exceptions to zoning they wanted – apparently in exchange for campaign contributions, monies given to favorite non-profits of the Councilmember, and free travel/gifts.

As the West Valley Property Owners’ Association observed in its letter to the City Council supporting the charter amendments proposed by the Citizen’s Committee:

In 1966 a mandate was delivered by the Grand Jury to enact proper zoning practice reforms to prevent a re-occurrence [sic] of the

shocking scandals surrounding certain zoning cases. Since that time, we have seen several public officials brought to trial and convicted on various charges. One case, still before the courts, involves a member of the Los Angeles City Council. (**Exhibit 11** [West Valley Property Owners' Assn. February 11, 1969 letter]).

After more than a year of hearings and investigation, in July 1968, the Citizen's Committee issued its First Report to the Mayor and City Council entitled "A Program to Improve Planning and Zoning in Los Angeles." The report contained 36 recommendations for improvement including charter amendments, municipal code amendments, uniform zoning hearing procedures (which 46 years later remain incomplete), and ethics reforms. (**Exhibit 1**).

The findings of the Citizen's Committee will be particularly significant for a reviewing court with regard to the actions proposed to be taken in this case:

The main purpose of defining the General Plan content [in the City's Charter] should be to insure comprehensiveness. We find that there are at least four dimensions of comprehensiveness which should be recognized:

1. Geographic – The entire area of the City should be covered. However, because of the large size and peculiar boundaries of the City, it is not always practical to consider the entire City as a single planning unit. Therefore the City should be divided into smaller units for planning purposes – **but any such unit should be an area of substantial size, with social and economic identity.** (**Exhibit 1**, p. 19.)

And on p. 21 of the First Report where "Area-by-Area Consideration" is set forth in detail, the Committee made this recommendation:

Recommendation 3: Provide for the adoption or amendment of the General Plan on a scheduled area-by-area basis, each area covering less than the entire City, **but must involve comprehensive consideration of a logical planning area.** The General Plan should be reviewed on this regularly scheduled area-by-area basis, such schedule and areas to be established by the City Council upon recommendation of the Director of Planning and the City Planning Commission. (Emphasis added.)

The Committee then acknowledged for local planning that “for many purposes it is necessary to deal with community-size units such as Hollywood, San Pedro, Pacific Palisades and the central business district.” The Committee’s recommendation emphasized the need to assess each general plan amendment within “logical planning units” on the community level:

In view of the size and diversity of the City of Los Angeles, it is apparent that much of the material which should constitute the City’s General Plan can only be adequately maintained through a continuing area-by-area process of study and revision. (**Exhibit 1**, p. 21.)

In support of the recommendation that general plan amendments be conducted on an area-by-area basis, the Citizen’s Committee observed regarding the origin of the language in the City Charter that defines the legal minimum area for a General Plan Amendment:

A completely piecemeal approach to General Plan amendments would defeat the principle of comprehensiveness and destroy the integrity of the Plan. To prevent this, any change in the Plan **should be viewed in at least a community-wide context** Therefore, in the above recommendation we propose that **recognized community areas with social and economic identity be the minimum size units for general plan study and revision.** (**Exhibit 1**, p. 21; emphasis added.)

Following the First Report, there were two joint meetings of the Citizen’s Committee and the City Planning Commission where there was agreement on 21 recommendations.. After the Citizen’s Committee submitted its proposed charter amendments to the City, the City Council revised and weakened some of the amendments and sent it to the voters. On May 25, 1969, the voters adopted the Charter Amendments.

Just prior to the election, the Citizen’s Committee issued its Final Report, which set forth each of the charter amendments proposed to the planning and zoning provisions of the City’s charter. (**Exhibit 5**.) The Citizen’s Committee set forth all new proposed language to implement its recommendations regarding adoption and amendment of the general plan. New City Charter Section 96.5(3)(a) read as follows:

Proceedings pertaining to preparation, consideration, hearings, time limited, approval and adoption of the General Plan, or any of

its parts or amendments thereto, shall be as provided by ordinance, **subject to the following limitations:**

- (a) The General Plan shall be so prepared that the Planning Commission may approve and the Council **may adopt it only as follows:** as a whole; by complete subject elements; **by substantial geographical areas; or by substantial portions of subject elements; provided that any such area or portion has significant social, economic or physical identity.** (Final Report, p. 15; emphasis added.)

This portion of new City Charter Section 96.5 included this explanatory note of the Committee's drafting intent:

To be truly comprehensive, the General Plan must cover the entire City and interrelate all of the pertinent subject matter. However, because Los Angeles is so large and complex, it is necessary as a practical matter to break the Plan into logical units for consideration and adoption. On the other hand, **it would be entirely inconsistent with the comprehensive nature and coordinating purpose of the General Plan for it to be adopted and amended in small bits and pieces. In order to prevent such piecemeal consideration, a limitation must be placed upon the extent to which the Plan can be divided up for purposes of adoption or amendment.** (Emphasis added.)

Under the authority of this section, the City was broken up into 35 community plans based upon characteristics that marked a significant social, economic or physical identity.

In 1999, the draft of the Appointed Charter Reform Commission was adopted by the joint meetings of the Appointed and Elected City Charter Reform Commissions. The redlined changes to the City Charter Section 96.5 were minor and the limiting language is now found in the reorganized 2000 City Charter at Section 555. The portion relevant to the issues involving the Palladium Project is:

**Sec. 555. General Plan - Procedures for Adoption.**

Procedures pertaining to the preparation, consideration, adoption and amendment of the General Plan, or any of its elements or parts, shall be prescribed by ordinance, **subject to the requirements of this section.**

(a) **Amendment in Whole or in Part.** The General Plan may be amended in its entirety, by subject elements or parts of subject elements, **or by geographic areas, provided that the part or area involved has significant social, economic or physical identity.**

(b) **Initiation of Amendments.** **The Council, the City Planning Commission or the Director of Planning may propose amendments to the General Plan.** The Director of Planning shall make a report and recommendation on all proposed amendments. Prior to Council action, the proposed amendment shall be referred to the City Planning Commission for its recommendation and then to the Mayor for his or her recommendation. (Emphasis added.)

The City Planning Department, City Planning Commission, the City Attorney, and City Council have violated the City Charter by allowing project applicants to apply for general plan amendments in the above-described manner. Further, such project applicants have been allowed to apply for a general plan amendment merely for their own parcel(s) of land. City officials are violating the City Charter by allowing project applicants to ask for general plan amendments and to seek such amendments for, in the words of the Citizen's Committee, "small bits and pieces" of the City which is "entirely inconsistent with the comprehensive nature and coordinating purpose of the General Plan."

In a recent Second District Court of Appeal case involving the City of Los Angeles, Schafer v. City of Los Angeles (2015) 237 Cal.App.4th 1250, 1263, the Court of Appeal observed how the grant of an exception from a currently adopted general plan or zoning code would override the public interest in comprehensive zoning.

Zoning laws concern 'a vital public interest – not one that is strictly between the municipality and the individual litigant. All the residents of the community have a protectable property and personal interest in maintaining the character of the area as

established by comprehensive and carefully considered zoning plans in order to promote the orderly physical development of the district and the city and to prevent the property of one person from being damaged by the use of neighboring property in a manner not compatible with the general location of the two parcels. [Citation.] These protectable interests further manifest themselves in the preservation of land values, in esthetic considerations and in the desire to increase safety by lowering traffic volume.' . . . (Pettitt v. City of Fresno (1973) 34 Cal.App.3d 813, 822-823, [parallel cite omitted].” (Emphasis added.)

As shown above, the City’s Advisory Agency cannot approve the tract map because **it has no means to conditionally accept a violation of City Charter Section 555. The applicant has no authority to propose a Charter violation as a means to significantly densify his project. Just because the City’s Advisory Agency regularly engages in these violations does not make it lawful.** The Project must simply comply with the existing zoning and general land use designation of the Hollywood Community Plan. Accordingly, the Advisory Agency erred when it conditionally approved the tract map in this case because it is based upon an unlawful proposed general plan amendment. Since the amendment is unlawful, Government Code Section 66474.61 imposes a mandatory duty upon the City to deny the requested vesting tract map approval.

**VI. ALL OF THE FOREGOING REQUIRES THE CITY COUNCIL TO DENY THE GPA, ZC AND HD ENTITLEMENTS REQUESTED FROM THE CITY.**

The previous sections set forth the substantial evidence showing the Advisory Agency can make no valid finding that the Project as proposed and discussed in the Final EIR can comply with the General Plan because the proposed plan amendment would be unlawful. All of the same evidence set forth above also supports the conclusion that the requested zone change and height district, which directly depend upon the ability to carry out the general plan amendment, must be denied because an attempt to approve such entitlements would violate Charter Section 555 and the current general plan provisions. This conclusion is supported by the fact that nowhere in the Draft or Final EIR did the City disclose or discuss the applicability of Charter Section 555, or how this Project could evade the strict limitation on general plan amendments of small geographic areas.

In fact, appellant's land use expert, retired City of Los Angeles Zoning Administrator Jon Perica, reviewed the City's Draft EIR and Final EIR and failed to find the analysis of Charter Section 555 or its implementing LAMC Section 11.5.6 in any of the documentation. (**Exhibit 12** [Perica Report].) He concluded that if this project were before him, due to the significant omissions of analysis in the EIR, as a zoning administrator he would have to deny the application and return it for consideration of a code compliant project.

The back asphalt parking lot at the Palladium is a separate parcel and separately designated Commercial Manufacturing, zoned Commercial. It has a height limit of 45 feet. It has a development condition that bans residential development. There is not a hint or whisper that a proposal to put a 28-story residential tower on this industrially-designated and residentially restricted parcel is an appropriate request. It is self-evident that an asphalt parking lot has no "significant social identity" nor "significant economic identity" nor "significant physical identity." It is a parking lot. The fact that the Palladium sits in front of this proposed development does not give it this required identity. It is incredible that this argument has been made when there is no meaningful or credible preservation requirement on the very thing that some City Planning Commissioners claimed as a basis to find significance. Such a "finding" has no credibility.

Since the consideration of the Project at the City Planning Commission, there has been an effort to "paper over" this fatal flaw by making rather incredible "findings" that a single asphalt parking lot possesses "significant social, economic, or physical identity" as required by the City Charter. The ludicrousness of these proposed findings drives home the fact that the entire concept of seeking an individual project-oriented general plan amendment is illegal.

The City recently issued a second "errata" for the Project. The City's errata talks about everything except the social identity, the economic identity, or the physical identity of the specific geographic area that lies within the boundaries of the proposed general plan amendment. It is obvious from the history of City Charter Section 555 and LAMC Section 11.5.6 that one does not look at the geographic area outside the boundaries of the proposed general plan amendment, or back into the past regarding what an area might have been a part of at one time. The only relevant question under the City Charter is whether or not the area proposed for general plan amendment is significant enough, i.e., constituting a community-wide area appropriate for comprehensive planning. In this case, to ask the question is to answer it: How does one "comprehensively" plan an asphalt parking lot?

Given this frame of reference, none of the reasons listed below address the central requirement imposed by the voters to prevent general plan amendments for an individual project. Instead, the City stretches credibility beyond the breaking point to try to justify its violation of its own Charter. Here is what the errata said about the merits of the general plan amendment for the back parking lot, which is generically retitled: "The Selma Avenue Area":

**LAMC Section 11.5.6**, General Plan, is the Code Section that implements City Charter Section 555, General Plan – Procedures for Adoption. LAMC Section 11.5.6 is consistent with and further delineates the procedural mechanisms for General Plan Amendments. The criteria in the documents provide that: "... the City's comprehensive General Plan may be adopted and amended from time to time, either as a whole, by complete subject elements, by geographic areas or by portions of elements or areas, provided that any area or portion of an area has significant social, economic or physical identity."

The Selma Avenue Area, alone and in conjunction with the Project Site, meets the requirements for significant social, economic and physical identity. The Selma Avenue Area has a strong social identity use as an entertainment venue dating back to its use as the original Famous Players-Lasky Corporation motion picture studio lot. The Selma Avenue Area then became part of the Hollywood Palladium's use and development, and the hub of society gatherings in Hollywood, from the 1940s onward. As part of the entertainment business, this area also played a vital role in Hollywood's economic growth and development. Finally, the Palladium has been found eligible for the National Register, California Register and as a local Historic-Cultural Monument, and the Selma Avenue Area is part of Palladium site's physical identity, allowing accessibility to and views of the Palladium.

In addition to the Selma Avenue Area having its own significant identity, it also contributes to and is a part of the larger social, economic and physical identity of the area identified by the 1988 Hollywood Community Plan and the General Plan Framework Element. These existing Plans are intended to enhance the

physical identity of Hollywood as an area of regional (worldwide) significance; define a social milieu of mixed-use and entertainment oriented development offering a distinct living experience within a clearly delineated area; and define an area for the focus of economic activity. In so defining the Project vicinity, the 1988 Hollywood Community Plan and the General Plan Framework Element present policies to establish an overall vision for development at the Project Site as well as the larger area.

The 1988 Hollywood Community Plan identifies the Selma Avenue Area as having a social, economic and physical identity as lying within the Hollywood Center. As stated on page HO-2 of the 1988 Hollywood Community Plan, "The focal point of the Community is the Hollywood Center" which is located on both sides of Sunset Boulevard. The Hollywood Center has a distinctive social, economic and physical identity 1) as the commercial center for Hollywood and surrounding communities and 2) as an entertainment center for the entire region." The Selma Avenue Area, within the Project Site and as designated within the Hollywood Center, contributes to this identity as a focal point for entertainment and social gathering within Hollywood, also making it a center of commercial activity.

The proposed plan amendment supports this vision of development within the Hollywood Center. The existing "Commercial Manufacturing" designation on the Selma Avenue Area is not supportive of the overall development vision articulated in the Hollywood Community Plan, and is inconsistent with the Site's C4 zoning designation, while the proposed Regional Center Commercial designation creates consistency with the existing zoning. The current designation reflects past land use on the Project Site and local vicinity when studio/studio support facilities were present and reflects the City's former practice of "footprint zoning" where areas used for parking had zoning designations limited to those uses. Today, the Selma Avenue Area is one of the few remaining isolated pockets within an area dominated by sites with "Regional Commercial" designations, within the Hollywood

Center extending to the north, west and south of the Site. As such, the existing Selma Avenue Area designation is not compatible with the surrounding residential and commercial uses per the Hollywood Center vision laid out in the Hollywood Community Plan. The Plan amendment supports a development pattern based on the focus of mixed commercial/residential uses, neighborhood oriented retail, employment opportunities, and civic and quasi-public uses around urban transit stations, while protecting and preserving surrounding low-density neighborhoods from the encroachment of incompatible land uses. It contributes to a density pattern of low density residential development transitioning to greater density closer to the Metro Station, with intermediate transitional densities in between.

The General Plan Framework likewise identifies the Selma Avenue Area as having a social, economic and physical identity as a component of a Regional Center. A Regional Center is a high-density place, and a focal point of regional commerce, identity, and activity, not inclusive of manufacturing facilities. The designation in the Framework Element provides guidance for the establishment of the Hollywood Center in the Hollywood Community Plan, and ties that center into an overall development pattern for the City as a whole. The Palladium site is a regionally significant venue in Los Angeles that helps establish the Hollywood Center as a distinct physical area within the City providing its unique “Hollywood” blend of social and economic activity. Errata No. 2, Palladium Project pp. D36-D38.

These “findings” are a multi-page non sequitur, scrupulously avoiding the Elephant In The Room: this asphalt parking lot could never constitute an area of “significant social, economic, or physical identity.”

If the Project as proposed is approved, a reviewing court will interpret the restrictive language used by the Citizen’s Committee, and it will regard these new “findings” as evidence of the City’s conscious and willful violation of its Charter. The Citizen’s Committee expressed its specific legislative intent at page 15 of its final report, which bears emphasis:

In order to prevent such piecemeal consideration [of general plan amendments], a limitation must be placed upon the extent to which the Plan can be divided for purposes of adoption or amendment. (Exhibit 12.)

One cannot conceive of a general plan amendment much smaller than a back parking lot. In no way can a back parking lot qualify for rezoning by amending the City's Hollywood Community Plan to be consistent with the applicant's zone change request. For all of the foregoing reasons, the City Council must deny the Project entitlements.

**VII. CITY PLANNING HAS NO VALID RATIONALE FOR HOW THE PROJECT IS ENTITLED TO RECEIVE A DOUBLING OF THE DWELLING UNITS PERMITTED UNDER THE LOT AREA RULES OF THE C4 ZONE.**

Even assuming it is lawful to process a general plan amendment, which it is not, City Planning has no valid basis for its calculation of dwelling units permitted in the C4 zone. The City Planning Department says the residential or dwelling unit density is calculated for a mixed use project like Palladium using the standard of 200 square feet per dwelling unit.

Applying this standard, City Planning says the applicant is entitled to approximately 771 dwelling units on the combined Palladium site. What is the source of this 200 square feet per dwelling unit? The Draft EIR was murky on this point. In both the Project Description and the Land Use sections this statement appears:

The C4 in the zoning designation indicates that the Site is designated for commercial uses, which permits an R5 residential density when the site is designated as a Regional Center, pursuant to Section 12.22.A18 of the code.

But inspection of LAMC Section 12.22 A Use, subdivision 18 does not reveal any language concerning residential or dwelling unit density. LAMC Section 12.22 A. Use, subdivision 18, which by its express language is limited to defining allowable USES (not residential or dwelling unit density), provides:

**18. Developments Combining Residential and Commercial Uses.** Except where the provisions of Section 12.24.1 of this Code apply, notwithstanding any other provision of this chapter to the

contrary, **the following uses shall be permitted in the following zones subject to the following limitations:** (Amended by Ord. No. 163,679, Eff. 7/18/88.)

(a) **Any use permitted in the R5 Zone** on any lot in the CR, C1, C1.5, C2, C4 or C5 Zones provided that such lot is located within the Central City Community Plan Area or within an area designated on an adopted community plan as “Regional Center” or “Regional Commercial”. **Any combination of R5 uses and the uses permitted in the underlying commercial zone shall also be permitted on such lot.** (Amended by Ord. No. 182,452, Eff. 4/4/13.)

(b) Any use permitted in the CR, C1, C1.5, C2, C4 or C5 Zones on any lot in the R5 Zone provided that the lot is located within the Central City Community Plan Area. Any combination of these commercial and residential uses shall also be permitted on the lot. Commercial uses or any combination of commercial and residential uses may be permitted on any lot in the R5 Zone by conditional use pursuant to Section 12.24 W.15. outside the Central City Community Plan Area. (Amended by Ord. No. 182,452, Eff. 4/4/13.)

The three paragraphs above, by their express terms, only apply to the question of what USES are permitted in “Developments Combining Residential and Commercial Uses.” Nowhere in these three paragraphs is there any mention of regulation of residential or dwelling unit density.

Moreover, the next set of paragraphs of LAMC 12.22 A Use, subdivision 18 only relate to yard requirements for lots with combined residential and commercial uses:

(c) **Yards.** Except as provided herein, the yard requirements of the zone in which the lot is located shall apply.

(1) The yard requirements of the C2 Zone shall apply to buildings located on lots in the R5 Zone in a redevelopment project area approved by the City Council if such buildings are used exclusively for commercial uses.

(2) The following yard requirements shall apply to buildings located on lots in the R5 Zone which are used for any combination of commercial and residential uses:

(i) The yard requirements of the C2 Zone shall apply to the portions of such buildings used exclusively for commercial uses.

(ii) No yard requirements shall apply to the portions of such buildings which are used exclusively for residential uses and which abut a street, private street or alley, if the first floor of such buildings at ground level is used for commercial uses or access to the residential portions of such buildings.

(3) No yard requirements shall apply to the residential portions of buildings located on lots in the CR, C1, C1.5, C2, C4, and C5 Zones used for combined commercial and residential uses, if such portions are used exclusively for residential uses, abut a street, private street or alley, and the first floor of such buildings at ground level is used for commercial uses or for access to the residential portions of such buildings.

(4) No yards shall be required along air space lot boundaries within the interior of buildings.

Additionally, the next paragraph of LAMC Section 12.22 A. Use, subdivision 18, expressly prohibits residential or commercial density, FAR or height to be increased simply because a project may involve air space lots. Thus, this paragraph confers no exception to allow increased residential or dwelling unit density increases for the Palladium project:

(d) The residential and commercial density, maximum floor area or height otherwise permitted for any lot shall not be increased by reason of the existence of one or more air space lots.

Finally, these last two paragraphs of LAMC 12.22 A. Use, subdivision 18, by the express language, has no relevance to Palladium.

(e) **Pedestrian Bridges.** Residential uses in a building combining residential and commercial uses shall be limited to the floors above the level of a connecting pedway or pedestrian bridge except that the Director of Planning may modify or waive this requirement if the Director finds unusual topography or other special circumstances justify such modification or waiver.

(f) (Amended by Ord. No. 173,492, Eff. 10/10/00.) In the event of a conflict between the terms of this subdivision and the terms of a specific plan enacted prior to December 31, 1981, the terms of the specific plan shall prevail. The terms of this subdivision shall not apply within the boundaries of the Century City North Specific Plan.

Thus none of the express language of the LAMC Section cited by the Planning Department actually support any suggestion that R5 residential density of 200 square feet per dwelling unit applies.

The Planning staff has suggested it is relying upon a Zoning Administrator memo dated May 18, 2000 as referenced in the LABDS's Zoning Manual. On page 222 of the Manual, the City offers a rationale for applying the twice-as-dense R5 residential or dwelling unit density calculation rather than the normal R4 or R3 because R5 USES are authorized "uses" in a C zone under Section 12.22 A. Use, subdivision 18. Here is the "logic":

One question related to density that arises is whether to apply R5 lot area requirements or R3 / R4 lot area requirements as referenced in the lot area requirements of C zones. In the enforcement of this section, the Zoning Administrator has determined that the lot area requirements of the R5 zone are to be applied to projects subject to this section. **Although it is not explicitly stated in the section,** the last sentence of the section **implies** applying area requirements of R5 zone, not R3 or R4 zone. This interpretation has been confirmed by the Office of Zoning

Administrator who reviewed the original staff report for the ordinance. (**Exhibit 13** [LADBS Zoning Manual], p. 222; emphasis added.)

The Zoning Administrator's interpretation, while novel, is void as an act in excess of his authority. The express language of Lot Area regulations for a C4 zoned lot is as follows:

**12.16. "C4" COMMERCIAL ZONE.**

The following regulations shall apply in the "C4" Commercial Zone:

A. \* \* \*

B. \* \* \*

C. **Area.** (Amended by Ord. No. 148,783, Eff. 10/13/76.) – No building or structure nor the enlargement of any building or structure shall be hereafter erected or maintained unless the following yards, lot areas and loading spaces are provided and maintained in connection with such building, structure or enlargement.

1. **Front Yard.** Not required.

2. **Side and Rear Yards.** Not required for buildings erected and used exclusively for commercial purposes.

For all portions of buildings erected and used for residential purposes, side and rear yards conforming to the requirements of the R4 Zone (Section 12.11-C,2 and 3) shall be provided and maintained at the floor level of the first story used for residential purposes.

3. **Lot Area.** The lot area requirements of the R4 Zone (Section 12.11-C,4) shall apply to all portions of

**buildings erected and used for residential purposes. (Amended by Ord. No. 148,783, Eff. 10/13/76.)**

4. **Loading Space** – As required by Section 12.21-C,6. Exceptions to area regulations are provided for in Section 12.22-C.” (Bold italic emphasis provided.)

LAMC Section 12.11, concerning R4 Lot Area specifies the following calculation:

SEC. 12.11. “R4” MULTIPLE DWELLING ZONE.

The following regulations shall apply in the “R4” Multiple Dwelling Zone:

A. \* \* \*

B. \* \* \*

C. **Area.** No building or structure nor the enlargement of any building or structure shall be hereafter erected or maintained unless the following yards and lot areas are provided and maintained in connection with such building, structure or enlargement.

1. \* \* \*

2. \* \* \*

3. \* \* \*

4. **Lot Area** – (Amended by Ord. No. 174,994, Eff. 1/15/03.) Every lot shall have a minimum width of 50 feet and a minimum area of 5,000 square feet. **The minimum lot area per dwelling unit shall be 400 square feet.**

However, where a lot has a width of less than 50 feet or an area of less than 5,000 square feet and was held under separate ownership or was of record as of September 23, 1956, and the lot was created in conformance with the Subdivision Map Act, the lot may be occupied by any use permitted in this section, except for those uses explicitly requiring more than 5,000 square feet of lot area. In no case, however, shall more than two dwelling units be permitted where a lot has an area of less than 4,000 square feet.

The minimum lot area per guest room shall be 200 square feet.<sup>1</sup>

Exceptions to area regulations are provided for in Section 12.22 C.” (Bold italic emphasis added.)

Based upon the foregoing provisions, the applicable minimum lot area density per dwelling unit is 400 square feet. This language is direct and unambiguous.

The Zoning Administrator, as reported in the ZA/JE joint memo of May 18, 2000, and as reported in the Los Angeles Zoning Manual, attempts to bootstrap a twice-as-dense interpretation into the C zones, including the C4 zone applicable to the Palladium Project.

One key indication that the Zoning Administrator has no authority to do this is the Zoning Manual’s observation that “[a]lthough it is not explicitly stated in the section, the last sentence implies applying area requirements of the R5 zone, not R3 or R4.” (Exhibit 13, p. 222.) The Zoning Administrator has no authority to elevate an “implication” (an implication that in fact is nowhere to be found in LAMC 12.22 A Use, subdivision 18 (a)), over the express language of the applicable C4 zone regulation which states residential or dwelling unit density shall be as provided in R4 (which is expressly stated at 400 square feet per dwelling unit).

One cannot over-emphasize the valuable “gift” to the real estate development industry conferred by this baseless Zoning Administrator “interpretation”. Using this usurpation of the

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<sup>1</sup> This residential or room density applies to hotels. Palladium has abandoned its request for a hotel use as part of the Project.

legislative power of the City Council, the Zoning Administrator purports to double the number of dwelling units permitted in a C zone mixed use project with residential units. Accordingly, there is no authority for the City Council to approve the Palladium project with a residential or dwelling unit density of more than 400 square feet per dwelling unit, or approximately 386 dwelling units – not the approximately 771 dwelling units provided for in the Planning staff recommendation reports or the materially misleading EIR.

**VIII. THE CITY FAILED TO PROCEED IN ACCORDANCE WITH THE LAW IN ITS REVIEW OF ENVIRONMENTAL IMPACTS.**

**A. Courts Review CEQA Procedural Legal Duties Scrupulously.**

Courts apply a de novo or independent judgment standard of review to determine legal errors under CEQA. Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 427. Questions concerning the proper interpretation of CEQA’s requirements are matters of law. As such, “the existence of substantial evidence supporting the agency’s ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA.” Association of Irrigated Residents v. County of Madera (2003) 107 Cal.App.4th 1383, 1392.

“An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” Laurel Heights Imp. Ass’n v. Regents of the University of California (1989) 47 Cal.3d 376, 405 (“Laurel Heights”). In a challenge to the sufficiency of an EIR, a Court’s inquiry extends to whether there was a prejudicial abuse of discretion. Pub. Res. Code § 21168.5. “Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” Id.; Laurel Heights at 392. “Argument, speculation, unsubstantiated opinion or narrative [or] evidence which is clearly erroneous or inaccurate . . . does not constitute substantial evidence.” Guidelines § 15384(a).

The “reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.’ [Citations.]” Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commr’s (2001) 91 Cal.App.4th 1344, 1355. The Court “must ensure strict compliance with the procedures and mandates of [CEQA].” Save Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 118.

**B. The City Violated CEQA's Mandatory Duty To Include Responsible Agency CRA/LA In The NOP And Consultation Process.**

Public Resources Code Section 21080.3 mandates that “[p]rior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and trustee agencies. Public Resources Code Section 21080.4, subdivision (a), provides:

“If a lead agency determines that an environmental impact report is required for a project, **the lead agency shall immediately send notice of that determination** by certified mail or an equivalent procedure to each responsible agency . . .” And, “[u]pon receipt of the notice, **each responsible agency . . . shall specify** to the lead agency **the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency . . .** in connection with the proposed project **and which**, pursuant to the requirements of this division, **shall be included in the environmental impact report.** (Emphasis added.)

CEQA Guideline 15082, subdivisions(a) and (b) carry this same mandatory duty of the lead agency.

Public Resources Code Section 21069 defines a “responsible agency” as “a public agency, other than the lead agency, which has responsibility for carrying out or approving the project.”

In both the Project Description and Land Use sections of the Draft EIR, the City specifically identified the CRA/LA as required to make at least one discretionary decision regarding the Project. In summarizing the “D” Limitation imposed on the Sunset Boulevard front lot, the City reported to the public and decision makers that in order to receive an increase in density above the 3:1 limit imposed by the “D” Limitation, there would have to be “execution of a Disposition and Development Agreement or Owner Participation Agreement executed by the CRA Board.” (Draft EIR, p. 2-6 and pp. 4-H-48 & 4-H-55.)

The City’s Draft EIR stated that any increase in density over 3:1 would also require: “approval of the Project as being consistent with the provisions of the Hollywood Redevelopment

Plan (including any Transportation Program or Designs for Development adopted per that Plan).” What the City failed in the Draft EIR to disclose to the public and decision makers was who issues the determination whether or not the Project is consistent with the Hollywood Redevelopment Plan, Transportation Plan, or Designs for Development. The answer is found in the actual language from the ordinance adopting the “D” Limitation on the Palladium property:

The total floor area of a structure or structures shall not exceed (3) times the buildable area of the lot. A project may exceed the 3:1 floor area ratio provided that:

- a. The Community Redevelopment Agency Board finds that the project conforms to: (1) the Hollywood Redevelopment Plan, (2) a Transportation Program adopted by the Community Redevelopment Agency pursuant to Section 518.1 of the Redevelopment Plan, and if applicable, any Designs for Development adopted pursuant to Section 503 of the Redevelopment Plan; and
- b. A Disposition and Development Agreement or Owner Participation Agreement has been executed by the Community Redevelopment Agency Board, and the Project is approved by the City Planning Commission, or the City Council on appeal, pursuant to the procedures set forth in Municipal Code Section 12.24-B.3”

The City failed to quote to the public anywhere in the Draft EIR or in its staff reports, the precise language of the “D” limitation or provide a reference to the specific ordinance that imposed the “D” limitation. Because the City has consistently obscured who has approval authority over these multiple approvals, an inference arises that the City knew that the CRA/LA had jurisdiction over multiple discretionary decisions, yet failed to include the CRA/LA in the environmental consultation and review process mandated by state law.

Despite this materially misleading information in the Draft EIR, at both places where the City listed the approvals required for the Project, it omitted listing the approvals required from

the CRA/LA. (Draft EIR, pp. 2-22 to 2-23 and 4.H-21.) In the section listing the agencies and persons consulted, the City's Draft EIR fails to list the CRA/LA as an agency consulted. On this basis, AHF asserts that the record is devoid of evidence that the City ever gave CRA/LA, a responsible agency, notice of preparation of the EIR, the CRA/LA was deprived of the proper opportunity and procedure to provide information it directed or sought to be in the Draft EIR at the appropriate time, and the City therefore failed to proceed in accordance with law. The City's avoidance of this mandatory consultation process creates a fatal flaw in the Draft EIR.

In footnotes in the Project Description and Land Use sections, the City asserts that the formal responsibilities of the CRA/LA were in the process of being transferred to the City Planning Department. (Draft EIR, pp. 2-6, 4.H-11, 4.H-55.) However, two years prior to the issuance of the Draft EIR, the outcome of the proposal to transfer responsibility for all planning and permit determinations of the CRA/LA to the City Planning Department was publicly known. The City has not proceeded to transfer CRA/LA land use responsibilities since December 2012. (**Exhibit 14** [City reports and vote].)

Accordingly, the CRA/LA is a responsible agency, and will be for the purposes of this Project. The City's failure to include the CRA/LA in the environmental review process is a failure to proceed in accordance with law.

**C. The Land Use Analysis Is So Deficient And Materially Misleading That Recirculation Of A Legally Compliant Analysis Is Required.**

The City's Land Use section of the Draft EIR was materially deficient in numerous ways that require significant revision, addition of significant missing information, and recirculation so that the public can intelligently comment on the implications of the proposed land use actions in this case.

Instead of listing and analyzing the ways in which the Project was inconsistent with land use policies, plans and programs, the City buried the public with a massive listing of land use policies with which the Project generically allegedly complies. This is not a meaningful Land Use analysis that demonstrates a good faith effort at full disclosure and to comply with CEQA.

The Initial Study requires a direct and truthful analysis of the land use policies adopted to mitigate environmental impacts, and whether the Project complies with them, but the Draft EIR was devoid of such analysis. For instance, the "D" Limitation imposed on the Sunset Boulevard parcels was part of the City's AB 283 general plan consistency compliance, yet there was no

disclosure or discussion of the AB 283 process and the imposition of limitations to prevent adverse environmental impacts. Similarly, the “Q” condition on the Selma Avenue lot prohibiting residential development was imposed as part of a program to preserve industrial land from residential development. Despite the City’s false narrative that this land was not intended for industrial use because it was Regional Center, the 1988 Hollywood Community Plan specifically addressed the need to preserve industrial uses to support the film and television industry. None of the underlying ordinances or documents were disclosed or discussed in the Land Use section, including the fact that the Project as proposed is a wholesale abandonment of the mitigating effects of these development limitations.

As outlined previously, both the Project Description and Land Use sections of the Draft EIR contained descriptions of the zoning regulations and CRA regulations that were misleading and incomplete. They omitted key aspects by failing to directly quote the applicable regulations and failing to provide copies of the ordinances or at least full citations so the public could access them for meaningful review. Instead, the City hid the relevant land use regulations from the public by providing inaccurate summaries. For instance, the description of the “D” limitation omitted the prominent and continuing role that the CRA/LA plays as a responsible agency. Much of this role was not truthfully acknowledged in the Land Use analysis.

With respect to the assertion that the C4 zoning somehow allowed R5 residential dwelling unit density, the Draft EIR’s consistent citation to LAMC Section 12.22 A.18 without more was facially invalid. The plain language of that code provision does not apply to residential dwelling unit density calculations. If the City is relying on a particular Zoning Administrator Interpretation of this code section, the City was obligated to plainly say so, and provide a copy of the interpretation to enable meaningful public participation in the land use process. Having failed to do so, the public participation process was derailed.

The proof of this is found in the Draft EIR comment letter of Hollywood Heritage – a sophisticated land use and preservation organization with numerous real estate development professionals. Even Hollywood Heritage said it could not figure out how the City Planning Department was leaping over laws to increase the density of the Project to such heights. Despite documentation of these deficiencies at the Draft EIR comment stage, the City ignored the comments and failed to recirculate a proper analysis showing an accurate summary of the land use laws, regulations, and required approvals.

The Project is inconsistent with a number of relevant residential policies in the Hollywood Community Plan, the component of the Land Use Element of the General Plan that governs land use on and around the Project site.

For instance, the General Plan calls for development of the industrial area by uses “which are indigenous to Hollywood – motion picture and television production, radio studios, sound and recording studios, film processing studios, and motion picture equipment manufacturing and distribution.” The Project is inconsistent with these objectives because it replaces such land with high density residential uses in an area where they are precluded.

The Hollywood Community Plan encompasses an area totaling 16,121.6 acres, of which a mere 292.2 acres, or 1.81%, is restricted for industrial use. The western starting point of the Hollywood Community Plan’s contiguous Restricted Industrial Zone begins at La Brea, extending north to Santa Monica Blvd. and east beyond Highland Avenue. Intrusion by residential projects into this protected zone would violate, among other provisions, Policy 3.14.6 of the Framework Element of the General Plan, in that it would:

- Create a fragmented pattern of development and reduce the integrity and viability of the existing industrial area;
- Reduce the quantity of industrial land and adversely impact the City’s ability to accommodate sufficient industrial uses to provide jobs for the City’s residents;
- Create a conflict between established industrial uses and new residential tenants, who would potentially object to their adjacency to 24-hour industrial uses.

As the City has been unlawfully processing parcel-by-parcel general plan amendments to destroy this industrial land base of Hollywood, the EIR is deficient because it acknowledges that the proposed Project is inconsistent with the applicable land use designation and zoning restrictions, but proposes to “solve” this inconsistency by amending the City’s general plan to bend to the wishes of the developer. Additionally, the Draft and Final EIR fail to analyze the cumulative impact of further loss of industrial zone land to residential development as a result of this ad hoc conversion of land. The public and decision makers have been denied an opportunity to review and know the extent to which this practice is unfolding throughout Hollywood.

Project applicants and the City naturally gravitate toward wanting to talk about the land use laws, regulations, and programs the Project complies with – even a tiny bit. But that is not

the purpose of the question posed in the Initial Study for Land Use. If the City wants to also prepare a section of the Draft EIR regarding ways the Project is consistent with laws, programs, and policies, it is free to do so. However, the City may not substitute this irrelevant analysis and say that it “complied” with CEQA. Because the Land Use section had multiple deficiencies that individually and cumulatively deprived the public of meaningful evaluation of issues central to the disputes in this case and potential impacts on the environment, the City is required to recirculate a complete and truthful analysis of the Land Use issues.

Finally, in the First Errata, the applicant was permitted to abandon its project concept based upon the PME processed in 2013. In having two lots, the applicant sought floor area transfer and floor area averaging rights. When the appeal letters of Kilroy and this firm undermined the likelihood that those entitlements could be justified, the applicant abandoned those entitlements and stated that prior to issuance of building permits it would merge the two lots back together again. This additional change by the applicant and the City under the circumstances which the Project will be carried out is singly and cumulatively another significant change to the Project. The public has been completely denied the opportunity to comment upon and the decision makers are denied the benefit of seeing analysis of how this new project approach changes the project, or if it forms any legitimate basis for permit floor area averaging and floor area transfer without a City approval. For all these reasons, the recirculation is required.

**C. The City’s Traffic Analysis Fails To Comport With Minimum Requirements.**

Based upon the report of traffic expert Herman Basmaciyen as previously submitted, the traffic analysis of the Draft and Final EIR contains so many failures to study impacts, direct and cumulative, as to be a failure to proceed in accordance with law.

**D. The Proposed Project Will Impose A Negative Impact On The Palladium Cultural Resource.**

Appellant adopts all objections and evidence submitted to the City regarding the deficient environmental review of the impacts on the Palladium. It is particularly significant that the State of California Office of Historic Preservation weighed in to identify how the massive wall of buildings surrounding the Palladium will impair a number of the issues identified by the Secretary of Interior Standards for Historic Resources. See also CEQA Guidelines § 15064.5(b)(1): “Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate

surroundings such that the significance of an historical resource would be materially impaired.” Despite efforts of the City to spin these violations away, the City has failed to follow appropriate procedures for the assessment of impacts on the Palladium cultural resources.

Even more alarming is the fact that the applicant refuses to accept a condition on Project approval to require the applicant to expend a certain minimum amount of funds on rehabilitation of the Palladium or even agree not to demolish the resource for the useful life of the Palladium Project development. City officials, thus far, have refused to impose any condition that actually restrains the applicant from demolishing the Palladium just as soon as the developer obtains an improper transfer for floor area from the Palladium parcel onto the adjoining lot.

Apparently, the comments on the Draft EIR were so critical of the weak or non-existent protections for the Palladium that the Final EIR was substantially amended without recirculation of the EIR to solicit public comment on the Palladium “preservation plan.” The public has been unlawfully deprived of its right to review and comment on the adequacy of this substantial change to the Palladium “preservation.” Recirculation should have been mandated.

In fact, it is an illusory “potential” preservation. On first glance the proposed preservation plan seems to have a long list of improvements until one realizes that a significant number of the preservation items are routine maintenance that anyone would perform on a building, i.e., painting, replace the roof and toilets, etc. However, the preservation plan contains very few things that assure that character defining elements of the building are restored, rehabilitated, or repaired to their period of significance. Closer examination of the language of the Plan and project conditions show the developer retains the right to choose whether to perform any of this long list of maintenance items. Because the developer has the right to choose what and when to perform a single item on the preservation plan list, **the options include a right to choose to do none of the preservation work.** Such a weak commitment to preservation stands in contrast to the case of the Columbia Square Project one block from the Palladium. In that case, the City conditioned the project on the condition that the applicant fully restore the historic CBS Building BEFORE any of the new construction could proceed. The Palladium developer seeks the cheapest possible commitment. In addition to the other issues identified in this letter and previously, the City Council should tell the Palladium’s owner that he gets the same deal as Columbia Square: complete restoration of the Palladium before turning a shovel in the parking lot for any new construction.

Since the Palladium developer has not shown enthusiasm for preserving the Palladium, and to protect the Palladium cultural resource, AIDS Healthcare Foundation filed a nomination

for City Historic Cultural Monument status. This application, pending before the Cultural Heritage Commission, has not been scheduled for a hearing by the City for seven months as other later filed applications have been processed. Only months after the Councilmember initiated a second nomination of the Palladium did the Palladium developer publicly support a nomination over which, AHF surmises, the Palladium will exercise significant influence in determining the character defining features of the Councilmember's nomination.

If the Palladium developer is committed to preservation of the Palladium, why did it want to wait until the City put \$50 million of more density in its pocket before it would nominate the property? Actions (and inaction) speak volumes. The City Council needs to protect the community and the historic resource by conditioning this Project the same as it did in Columbia Square.

**E. Significant Cumulative Impacts Have Not Been Analyzed.**

A cumulative impact consists of an impact which is created as a result of the combination of the project together with other projects causing related impacts. CEQA Guidelines § 15130(a)(1). "One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming dimensions only when considered in light of the other sources with which they interact." Los Angeles Unified School District v. City of Los Angeles (1997) 58 Cal.App.4th 1019, 1025 (internal citations and quotes omitted).

CEQA recognizes the potential for an accumulation of small contributions to a problem to create a cumulative effect, and requires investigation and disclosure of the potential of a project to be the straw that breaks the camel's back. Guidelines § 15065(a)(3). If a lead agency finds a project's incremental effect is not "cumulatively considerable," the agency does need not to consider that effect significant, but it must "briefly describe its basis for [so] concluding. . . ." Guidelines § 15130(a). As with other aspects of CEQA, "cumulative impact analysis must be interpreted so as to afford the fullest protection of the environment within the reasonable scope of the statutory and regulatory language." Citizens To Preserve the Ojai v. County of Ventura (1985) 176 Cal.App.3d 421, 431-432.

**1. Cumulative Traffic Impacts Have Been Ignored.**

As set forth in the traffic analysis as previous provided, the FEIR cumulative impact analysis is deficient for the reasons stated therein.

2. **Hollywood Redevelopment Plan Cumulative Impacts Analysis Was Not Done Or Assured.**

Even if it is assumed that an individual landowner may lawfully request and the City may lawfully dispense a general plan amendment for an individual lot or project site, there is clearly an ongoing significant impact on the General Plan and the City's infrastructure if parcel-by-parcel, the City has been up-zoning and increasing density in the Project vicinity for years without assessing the cumulative impacts as mandated by the Hollywood Redevelopment Plan. The Draft EIR had no analysis of whether the Project was cumulatively significant in conjunction with past, present and reasonably foreseeable future projects given the intense density.

At a minimum, the City was required to tally up all the projects in the vicinity of the Palladium Project to determine if the pace of overly-dense projects that were authorized or are reasonably foreseeable using the general plan amendment scheme described above was exceeding density limitations, or other public service and infrastructure limits of the neighborhood. See also the City's failure here in the Draft and Final EIRs to disclose and analyze impacts to and potential accommodation by the City's overstretched infrastructure, pursuant, *inter alia*, to General Plan Framework Section 3.3.2.

There is no question that the Hollywood Redevelopment Plan requires such a cumulative analysis in connection with the 6:1 density the Project applicant covets. In the Draft EIR, the City expounds page after page of various aspirational policies of the Hollywood Redevelopment Plan which the Project allegedly supports, but the City's analysis of the Hollywood Redevelopment Plan fails to disclose the cumulative impact and overall density limit the Plan places on the Regional Center Commercial density increases.

The City completely omitted from its "analysis" of Section 506.2.3 of the Redevelopment Plan the first sentence which states the overall goal of the program: "Development within the Regional Center Commercial designation shall not exceed the equivalent of an average floor area ratio (F.A.R.) of 4.5:1 for the entire area so designated." (Emphasis added.) This is a very significant restriction on the entire plan, yet the EIR merely states that the Project site is entitled to 6:1 FAR.

Additionally, the City neglected to disclose and analyze in the Draft EIR an important limitation on the entire program, as explained in the final paragraph of Section 506.2.3:

The Agency shall monitor all new development in excess of 50,000 square feet within the Regional Center Commercial designation and make annual reports to the Planning Commission and the City's Department of Transportation on the average floor area ratio, P.M. peak hour trips generated and off-street parking supply, and an assessment of transportation demand management programs within the Regional Center Commercial designation. The Agency will ensure that the average floor area ratio within this designation does not exceed an F.A.R. of 4.5:1. Sites designated on the Redevelopment Plan Map as Public shall not be included in the averaging of the floor area ratio. This shall be done, from time to time, to the extent necessary, by creating an overall balance between new developments which exceed a 4.5:1 site F.A.R. and areas or activities which do not reach a 4.5:1 site F.A.R. such as open spaces or public facilities created or rehabilitated after adoption of the Redevelopment Plan; new developments or redevelopment activities (including historic preservation or rehabilitation) which are below 4.5:1; or any other means the Agency deems appropriate which will maintain the designation's average F.A.R. at or below 4.5:1. When the average F.A.R. for the designation reaches a ratio of 2.0:1 the Agency, within 90 days will submit to the Planning Commission, the City Council, and the Department of Transportation a report analyzing the cumulative impact of Core area development upon the transportation and circulation system in the area, including P.M. peak hour trips generated; further the Agency shall submit to the City Planning Commission and to the City Council a program establishing and identifying specific methods and mechanisms of Agency action to acquire open space or otherwise restrict or decrease density in order to maintain an overall 4.5:1 F.A.R.

Thus, the Agency Plan calls for careful and detailing monitoring of the cumulative impact of all of the Projects where the Agency granted the big bump up to 6:1 density, including

corrective action including buying new open space land in order to maintain the overall program goal of 4.5:1 F.A.R.

The City's Draft EIR completely failed to disclose and discuss the fact that the program's goal is to maintain 4.5:1 FAR average on Regional Center Commercial land upon which 6:1 FAR is permitted upon Agency authorization. There was no discussion of the cumulative impact analysis activity for this program in the Draft EIR. There was no compilation in the Draft EIR of all projects for which the Agency has granted 6:1 density, including the unknown number of projects where the City unlawfully processed a general plan amendment to up-zone more and more land to Regional Center Commercial so that more real estate developers could boost density and profits. Also, the Draft EIR failed to report the existence of any prior studies and reports of the Agency in compliance with this monitoring requirement. How many studies of Transportation Demand Programs have been completed? With the large number of projects within the Plan area seeking and getting general plan amendments to densify, has the 2:1 F.A.R. been triggered? The City, the successor agency which retains this duty, and the public have no idea.

All of these important elements of the Regional Center Commercial section of the Redevelopment Plan were unreported, unanalyzed, and unmitigated by the City as part of the environmental review of the Project.

Developers cannot rush in the door clamoring for the Agency (or replacement City staff) to sign off on their huge "CRA density bonus," without analyzing the cumulative impact of all of these projects in the Hollywood Redevelopment Plan area. The Plan calls for monitoring and analysis. The Draft EIR contained none of this. This is a failure to proceed in accordance with law.

There is a further problem for the claim in this particular case that the Palladium Project is entitled to obtain authorization to increase density to 6:1. To assure the Agency's plan to keep control over beneficiaries of density increases, the Agency required enforceable conditions:

**No development in excess of 4.5:1 shall be permitted without a binding written agreement with the Agency** which ensures that the proposed development will occur in conformity to the Redevelopment Plan and this Section by providing for, among other things, Agency review and approval of all plans and specifications, the compliance with all conditions applicable to the development in excess of a 4.5:1 site F.A.R. and the provision of

adequate assurance and considerations for the purpose of effectuating the objectives of the Plan. (Plan at p. 29, emphasis added.)

The City failed to list in the Draft EIR the “written agreement with the Agency” as one of the entitlements it needed to carry out for the Project. In fact, redevelopment agencies and their negotiating powers were abolished in 2012, and successor agencies are empowered only to wind down the affairs of enforceable obligations. Thus, the Project assumes and would implicate a number of violations of the new Redevelopment Dissolution Law of the Health & Safety Code. Hollywood Heritage raised similar problems in the context of inability to comply with the Development “D” condition on this land. (**Exhibit 15** [Hollywood Heritage DEIR comment letter].)

It appears the entire Regional Center Commercial Density program, due to inability of the Agency (or City) to monitor, purchase vacant land, or take other corrective actions to assure the FAR for the Plan Area remains under 2:1, is dead. There is no authority to seek an increase in density to 6:1 because neither the successor agency nor the City has the authority to address the monitoring, 2:1 ratio trigger, and remedial actions to keep the density from exploding and imposing significant negative impacts on the Hollywood community.

**F. The Alternatives Analysis Is Flawed.**

The Draft EIR did not analyze an appropriate mix or reasonable range of feasible project alternatives. By way of example, simply looking at traffic impacts, it appears that all of the project alternatives made traffic worse than the selected alternative. By examining such a limited group of alternatives, the City has failed to proceed in accordance with law.

**IX. THE D LIMITATION CANNOT BE SATISFIED BECAUSE THE CRA/LA FAILED TO PREPARE A TRANSPORTION PROGRAM WHICH IS A PREREQUISITE TO AUTHORITY TO GRANT DENSITY INCREASES.**

The “D” Limitation imposed upon a portion of the Project site includes a restrictive provision requiring a determination that the Project is consistent with a Transportation Program adopted by the CRA/LA in conformity with the Hollywood Redevelopment Plan.

“The total floor area of a structure or structures shall not exceed (3) times the buildable area of the lot. A project may exceed the 3:1 floor area ratio provided that:

The Community Redevelopment Agency Board finds that the project conforms to: (1) the Hollywood Redevelopment Plan, (2) a Transportation Program adopted by the Community Redevelopment Agency pursuant to Section 518.1 of the Redevelopment Plan, **and if applicable**, any Designs for Development adopted pursuant to Section 503 of the Redevelopment Plan . . . .” (Emphasis added.)

Even though the Transportation Program was a commitment of the predecessor of the CRA/LA for at least a decade, the agency failed to prepare the Transportation Program. As worded, the “D” Limitation requires not only that a project conform to the Transportation Program, it requires that there be one before cumulative density increases are approved by the agency. Having failed to ever prepare the Transportation Plan that was supposed to provide protections against overwhelming the community’s infrastructure, the CRA/LA will have no authority to approval the requested density increase.

Contrast the wording of the Transportation Program with the wording related to the Design for Development requirement. That language is conditional. If the CRA/LA developed Design for Development regulations, they would become a requirement of approval. By contrast, the Transportation Program requirement is not similarly conditioned. Therefore, it must be exist before the CRA/LA, or anyone, has the authority to approve an increase in density above 3:1.

**X. CONDUCT OF THE ENTITLEMENT HEARINGS AT THE CITY COUNCIL BEFORE CONDUCTING THE HEARINGS REQUIRED ON AHF’S HISTORIC-CULTURAL MONUMENT APPLICATION DENIES AHF CIVIL RIGHTS.**

On March 10, 2016, AIDS Healthcare Foundation submitted an objection that the City’s Cultural Heritage Commission was conducting hearings and designating monument status on buildings nominated after AHF nominated the Palladium on or about July 17, 2015. Contrary to the March 14, 2016, letter of Latham and Watkins cheering the City’s “taking charge” of the nomination process with the November 17, 2015 motion of Councilmember Mitch O’Farrell, there is no such “taking charge” process provided in the LAMC permitting a City initiation. The City’s historic cultural monument nomination process permits two means to start a nomination. Having prepared a nomination and paid a fee to be heard on the application, nothing in the municipal code states that a mere Councilmember motion denies a private applicant the right to a hearing on its application.

Given the shocking lack of commitment by the project developer to accept project commitments to pay for meaningful restoration of the Palladium building, it will not be surprising if there is a marked difference between the Councilmember's nomination and AHF's. For instance, the AHF application may have identified all of the character-defining elements of the Palladium, and the one prepared at the behest of the Councilmember may have significantly fewer character-defining elements.

The historic-cultural monument process is not a game. AHF has not withdrawn its application and it is constitutionally entitled to the hearing process provided in the City's own laws. The refusal to conduct a timely hearing raises an inference that AHF has been denied a hearing for reasons related to its status as a land use appellant, or as the proponent of reforms of the City land use and zoning processes. For these reasons, AHF's civil rights will be denied if the City decides the project entitlements without first considering designation of the Palladium as a Monument pursuant to AHF's application.

**XI. A MAJORITY OF THE CITY PLANNING COMMISSION MEMBERS DEMONSTRATED BIAS BY CONDUCTING EX PARTE MEETINGS WITH THE APPLICANT AND ITS REPRESENTATIVES.**

The proceedings before the City Planning Commission were highly irregular and prejudicial. During the December 10, 2015 hearing, a majority of the City Planning Commissioners conceded that they each had been contacted outside the quasi-judicial process by the developer, its attorneys, consultants or lobbyists. Four of the City Planner Commissioners conducted private meetings or telephone conversations with the applicant or its representatives, despite knowing that this proceeding includes a quasi-judicial appeal where all evidence is required to be received as part of the public administrative record and process.

The Commission's meeting agenda or hearing notice states that applicants and appellants will be given "equal time" to present their appeal arguments and evidence. However, the City Planning Commission violated its own procedural due process rule by allowing the developer and its representative time periods of unknown length, but clearly significantly more than the number of minutes allowed AHF in its presentations before the Commission.

In fact, testimony by a majority of the City Planning Commission members conceded that meetings with the developer or its representatives occurred at the Project site or at coffee shops or restaurants. Neither appellant AHF nor its attorneys were invited or present at any of these

meetings. Additionally, unlike the City Planning Commission hearing room, no time clock was ticking down at these meetings. The conduct of City Planning Commission members tainted the hearing with bias in favor of the applicant and against AHF, because AHF was not afforded the same special handling and treatment as the owner of the Project.

As shown in the objection letters attached to the tract map appeal in the related case, AHF raised this violation of due process prior to the City Planning Commission's December 10, 2015 hearing. In response, the President of the Commission asked each Commissioner, including himself, to verbally describe their private meetings with the developer and its representatives. No matter how well-intentioned these belated disclosures may have been, AHF and the public can never know if each Commissioner gave a true and accurate description of each and every topic discussed with the developer and its representatives. Additionally, upon hearing the new disclosures, AHF and the public were not given any time to prepare and present written evidence and testimony to counter the content of the disclosures. It was simply improper for ex parte communications to take place, particularly hour-long or more meetings as described by the Commission members. The only cure for this violation of fundamental due process would be for new commission members to be appointed and a hearing process not tainted with such bias to start again.

Despite raising this point, the President of the Commission and the three other members who displayed bias in favor of the developer by engaging in ex parte communications failed to recuse themselves, participated in the deliberations, and voted to approve the Project. Accordingly, the Commission's denial of AHF's Tract Map appeal, approval of the Tract Map entitlements in the attached letter of determination, and approval of the project were unlawful and void. The City Planning Commission's recommendations to the City Council do not constitute legally valid recommendations to the City Council for its consideration under provisions of the City Charter.

## **XII. CONCLUSION.**

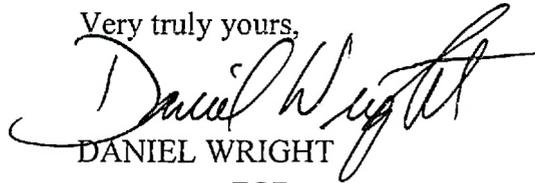
For all of the foregoing reasons, the Project application and requested approvals are not supported by law and must be denied. In addition, the appeals of the Advisory Agency approvals of the vesting tract map must be granted and the approvals overturned.

Los Angeles City Council  
March 15, 2016  
Page 54

The Project is not consistent with the City's Charter, General Plan, Municipal Code, or state law, including CEQA. We respectfully request that you reject the Project as proposed.

Thank you for your courtesy and attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel Wright". The signature is written in a cursive, flowing style with a large initial "D".

DANIEL WRIGHT

FOR

THE SILVERSTEIN LAW FIRM, APC

Attachments

cc: Client

**Exhibit 1** [First Report and Summary July 1968]

**Exhibit 2.** [Grand Jury Report]

**Exhibit 3** [News clips]

**Exhibit 4** [Shepard sentenced]

**Exhibit 5** [Final Report]

**Exhibit 6** [Wright Declaration and Unified Charter Report]

**Exhibit 7** [Planning Director April 8, 2015 Memo, "General Plan Amendment Initiations, Requests to the Director of Planning"]

**Exhibit 8** [Request for Initiation of an Amendment to the City's General Plan]

**Exhibit 9** [LA Weekly article "Density Hawks"]

**Exhibit 10** [City Attorney Report No. R05-0317 dated September 12, 2005]

**Exhibit 11** [West Valley Property Owners' Assn. February 11, 1969 letter]

**Exhibit 12** [Perica Report]

**Exhibit 13** [LADBS Zoning Manual]

**Exhibit 14** [City Reports and Vote]

**Exhibit 15** [Hollywood Heritage DEIR comment letter]

# Exhibit 1

# **A PROGRAM TO IMPROVE PLANNING AND ZONING IN LOS ANGELES**

**CITIZENS COMMITTEE ON ZONING PRACTICES AND PROCEDURES  
FIRST REPORT TO THE MAYOR AND CITY COUNCIL**

**LOS ANGELES, CALIFORNIA / JULY 1968**

**MAYOR**  
Sam Yorty

**CITY COUNCIL**

First District	Louis R. Nowell
Second District	James B. Potter, Jr.
Third District	Thomas D. Shepard
Fourth District	John Ferraro
Fifth District	Edmund D. Edelman
Sixth District	L. E. Timberlake, Council President
Seventh District	Ernani Bernardi
Eighth District	Billy G. Mills
Ninth District	Gilbert W. Lindsay
Tenth District	Thomas Bradley
Eleventh District	Maryin Braude
Twelfth District	Robert M. Wilkinson
Thirteenth District	Paul H. Lamport
Fourteenth District	Arthur K. Snyder
Fifteenth District	John S. Gibson, Jr.

**MEMBERS OF THE CITIZENS COMMITTEE  
ON ZONING PRACTICES AND PROCEDURES**

Fletcher Bowron, Chairman

Mayor, City of Los Angeles, 1938-1953

Judge, Superior Court, 1926-1938, 1956-1962

Rudolph Ostengaard, Vice Chairman

Vice President, United California Bank

Dr. John C. Bollens

Professor of Political Science, University of California, Los Angeles

Director, Study of Los Angeles City Charter and Government, 1962-1963

J. Robert King

President, King Nutronics Corporation, aerospace research and development

Mrs. Robert Kingsley

Member, 1955 and 1966 Los Angeles County Grand Juries

Volunteer, Legal Aid Foundation of Los Angeles, 1952-1968

Director, Women's Division, Los Angeles Chamber of Commerce, 1951-1959

Averill H. Munger

President, Munger Oil Information Service

Foreman, 1966 Los Angeles County Grand Jury

Gordon Whitnall

Planning Consultant

Instructor of Planning, University of Southern California, 1921 to present

First Director of Planning, City of Los Angeles, 1920-1930

July 1968

Honorable Sam Yorty, Mayor  
Honorable Council  
City of Los Angeles

Council File No. 132,460

Gentlemen:

The 1966 Los Angeles County Grand Jury, at the completion of its year's work, submitted a special report entitled, "Zoning Study Report and Recommendations." Referring to its investigation of a complex zoning case in the West Valley section of Los Angeles, the report stated that:

... evidence we heard demonstrated that influence can and has been and in all probability will be exerted through the medium of campaign contributions, political obligations and friendships.

In the spirit of hope for continuing progress in the field of efficient and honest governmental practices, the Grand Jury made eight specific recommendations relating to the subject matter and reached the following conclusion:

In conclusion, the Grand Jury has heard much evidence that demonstrates existing wrongs in the field of zoning administration which are subject to correction. Yet our study was one limited to evidence growing out of only one case. It is apparent that a projected and in-depth study of this field is not only overdue, but one which would be invaluable to the interests of our community. It is our recommendation that such a study be undertaken as soon as possible. While it is not within our purview to set forth guidelines for such a study, common sense dictates that such a study should be undertaken by an agency which is in no way answerable to any of the city agencies which are objects of the study itself.

On December 20, 1966, Mayor Yorty filed a message with the City Council inviting the attention of that body to the report of the Grand Jury. He requested "such a study be instituted to undertake a review of present zoning and planning practices, procedures, and policies and that a report and recommendation on this subject be made to the Mayor and the City Council."

Subsequently, on January 19, 1967, the City Council adopted the recommendation of its Planning Committee "that a citizen committee consisting of seven members, three to be appointed by the Mayor and four to be appointed by the President of the City Council from names submitted to him by individual Councilmen, be established and that the 1966 Los Angeles County Grand Jury report entitled 'Zoning Study Report and Recommendations' be referred to such citizen committee for report and recommendations." Upon appointment of Committee members, the Committee held its initial meeting on April 25, 1967.

This is the Committee's first report, which contains general recommendations to the Mayor and Council, arrived at unanimously by the Committee after many months of conducting hearings, sifting evidence, receiving suggestions for improved zoning practices, and holding discussions with individuals and organizations. We have listed these individuals and their affiliations in Appendix F to this report.

We have also set forth in detail in Appendix A a description of the background and organization of the Committee with the reasons for its establishment, together with a section summarizing the discussions between elected officials and the Committee. After these discussions, the Committee issued a public statement of its objectives:

The Committee considers that the reasons for its existence are to inquire into the entire subject of zoning in the City of Los Angeles, including the adequacy or inadequacy of applicable law, policies and practices whether legally sanctioned or not; to identify and reveal, if possible, the original purposes that motivated establishing the practice of zoning; to determine, if possible, whether these purposes are being realized or not and, if not, why; and, finally, to recommend such changes in law or practice as it believes necessary to justify public confidence in the practice of zoning, but equally important, to make available to the public an understanding of the subject so clear and comprehensible as to make it increasingly difficult for anyone, serving in any capacity, to deviate from proper and effective policies and practices.

As a result of our investigation, it has become clear that the basic solution to the problem of improper zoning practices is an adherence to the principles of planning and zoning and the adoption

of laws and procedures which clearly differentiate between the legislative, administrative, and quasi-judicial processes of government. Many of the present problems result from deviations from these basic principles. There can be no adequate consideration of zoning practices without considering, at the same time, the principles and practices of city planning in general. Our findings and recommendations take into account this essential relationship.

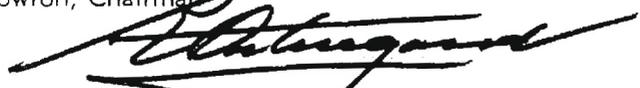
We have not gone into the over-all subject of organization and administration within the City Planning Department since this type of examination is not within the scope of the Committee's work; such examinations are conducted periodically under the management audit program of the City Administrative Officer. Nevertheless, because of certain proposals and criticisms received by the Committee, a few of our recommendations touch upon aspects of this subject.

The Committee believes that this first report will provide the general guidelines which will insure good planning and zoning practices in the City of Los Angeles. In one or more later reports, the Committee will present suggested texts of proposed Charter amendments and a few significant new or amendatory ordinances calculated to carry into effect the various recommendations herein set forth.

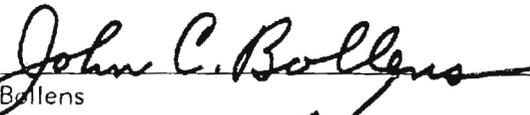
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Zoning Practices and Procedures



Fletcher Bowron, Chairman



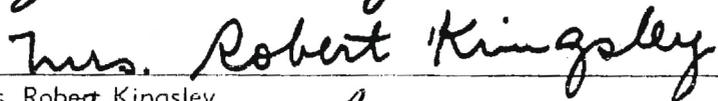
Rudolph Ostengaard, Vice Chairman



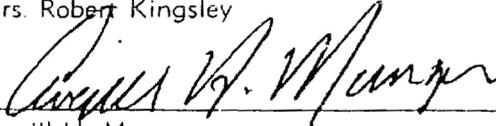
John C. Bollens



J. Robert King



Mrs. Robert Kingsley



Averill H. Munger



Gordon Whitnall

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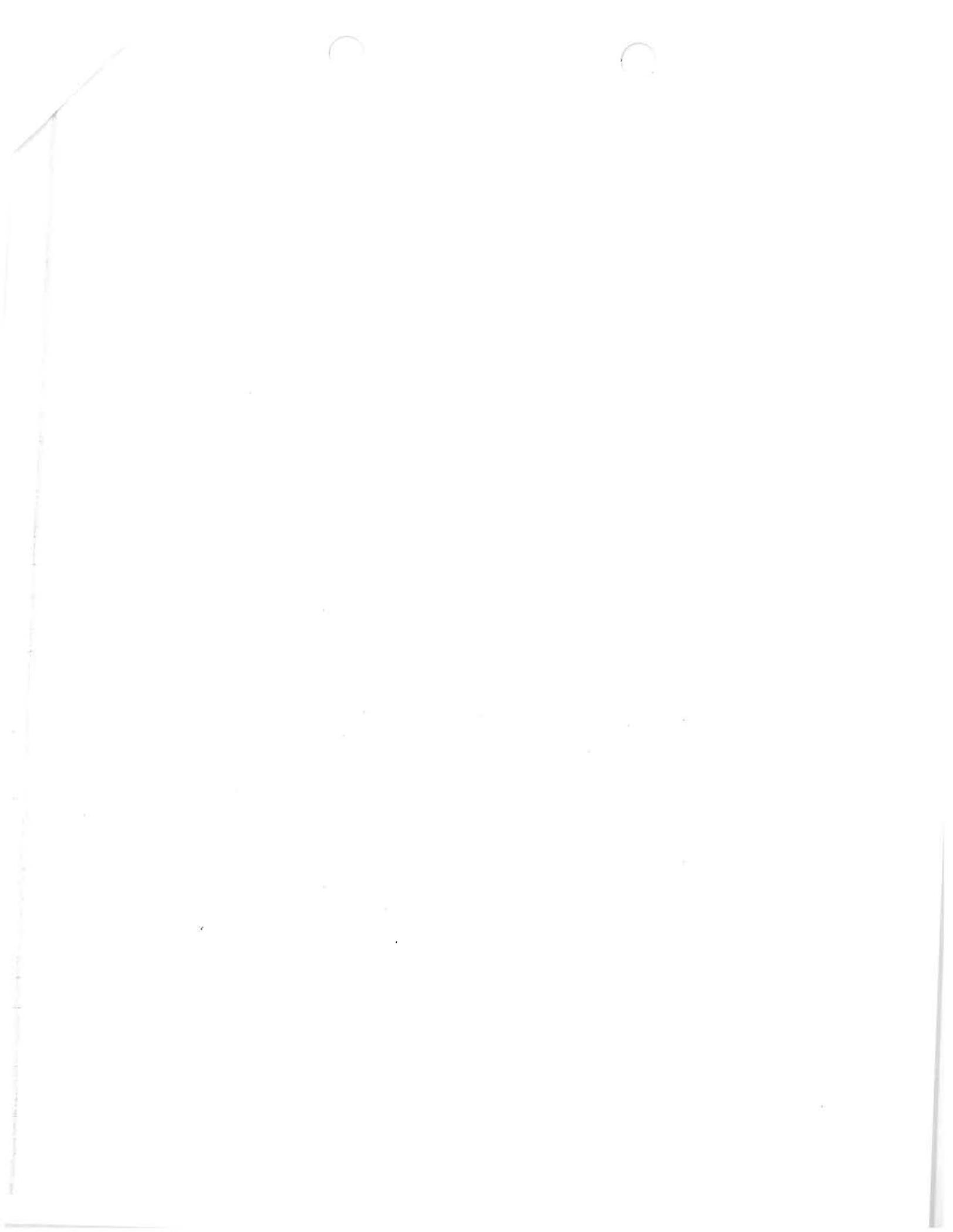
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## INTRODUCTION

### GENERAL CONCLUSIONS

After an in-depth study, we agree with the report of the 1966 Grand Jury that "... influence can and has been and in all probability will be exerted through the medium of campaign contributions, political obligations, and friendships," and that there are "... existing wrongs in the field of zoning administration which are subject to correction."

We conclude that the public welfare will be better served by not enumerating the many reported charges of suspicious illegal actions, but rather to recommend changes in administrative procedures, the enactment of ordinances and the submission to voters of certain Charter changes which will make favoritism in planning and zoning matters very difficult.

Elected and appointed officials having responsibilities in planning and zoning must be relieved of the great pressures exerted upon them; they must be afforded more time and opportunity for constructive planning; and rezoning should be accomplished by districts, rather than by piecemeal or spot zoning which the courts of practically every state condemn as against the public interest and, in most instances contrary to the basic legal provisions for planning and zoning.

We find that there is a widespread public belief that favoritism occurs in the granting of appeals for variances and conditional use permits. Whether or not money has been passed, directly or through intermediaries, we have reached the inescapable conclusion that

public confidence in the administration of City government in Los Angeles must be restored by prompt and major changes in planning and zoning practices. No doubt many accusations and innuendoes regarding zoning improprieties cannot be proven. But there is no doubt that great, even tremendous, wealth can be accrued from zoning actions. Thus, the opportunity and incentive to grant zoning favors—whether in the form of variances from the provisions of the zoning ordinance, issuance of conditional use permits or approval of spot zone changes—present a fertile field for corruption.

While we do not say that criminal acts have gone unpunished, the requirements of the law that one cannot be convicted on the uncorroborated testimony of accomplices makes it very difficult for the District Attorney to make a case for presentation to the County Grand Jury. Necessary corroborating evidence is almost impossible to develop. One who gives and one who receives a bribe, and any go-betweens are equally guilty; and, even if two or more persons would come forward and agree to testify against the third, the requirements of the law would not be met, because those who would be willing to turn State's evidence are accomplices. In the history of Los Angeles County, there is only one case where bribery has been established entirely by circumstantial evidence (People v. Graves, 137 C.A. 1).

The term **zoning** has lost its significance in the City of Los Angeles, for it has come to mean promiscuous changes in a zoning pattern

rather than adherence to consistent comprehensive zoning. Procedures in actual practice have become so loose that even the requirements of the City Charter have not been met in numerous variance cases. Most complaints reaching us have concerned the actions of the Board of Zoning Adjustment in reviewing decisions of the Office of Zoning Administration.

The practice in Los Angeles is not unique in this respect. In cities of almost every state, cases are reported where owners of property seek to increase the value of their property by approval of zone changes, variances or conditional use permits, in a great many instances to the detriment of other property. In many cases the approval of a change in permitted use constitutes a special privilege.

In an article entitled "Opening Pandora's Box—the Property Tax and Planning," which appeared in the March 1965 issue of Nation's Cities, Marion Gaffney, a well-known economist says:

When the Planning Commission and the Zoning Board flit about sprinkling little golden showers here, rather than there, they make millionaires of some, and social reformers of others.

In the proceedings of the 1967 annual meeting of the American Society of Planning Officials (Planning 1967), there is a pertinent article by Sheldon J. Plager, Professor of Law at the University of Wisconsin, entitled "The XYZ's of Zoning." The title suggests that, perhaps, zoning as it is now practiced in many communities has reached the end of the road. A large part of the problem stems from the way zoning is administered at the local level. Professor Plager points out that zoning is intended to implement a pre-existing plan for the community's development and growth. Obviously, the more careful and thorough the planning, the better the foundation for zoning decisions.

Planning authorities agree that individual zoning actions by the legislative body must have reference to an over-all zoning plan, and such a plan must, in turn, relate to a master plan—the newer, more descriptive term for which is **comprehensive general plan**—for the future physical development of a city.

A comprehensive general plan deals with intermediate and long-range goals and objectives. It is a frame of reference which should be used to guide the future physical development and growth of the city. The general plan should be the result of a complete and detailed analysis of the city. Its content should include not only maps showing the desirable trend in future development, but also statements of policy with respect to each element of the plan.

Zoning, on the other hand, is a tool which is used to regulate specifically the use of land and to put into effect the principles and patterns set forth in the general plan. Zoning cannot take the place of planning—it must be based upon the results of sound plans carefully developed.

Zoning is the process of authorizing, by districts, the uses to which land may be put. Uniform regulations within a zone are fundamental to proper and legal zoning. The courts have held that the essence of zoning is territorial division according to the character of land and buildings particularly suitable for particular uses, and the establishment of uniform regulations for uses within the zone. There are several outstanding authorities on the law of zoning, and their books are frequently quoted by the courts. One of these is James Metzenbaum, a distinguished member of the Cleveland Bar who represented the prevailing party in the famous case of Euclid Village v. Amber Realty Company, an Ohio case which reached the U.S. Supreme Court. The Court rendered an epic decision in 1926 (272 U.S. 365). In his latest volume, Law of Zoning, Metzenbaum says:

Zoning now means a comprehensive zoning ordinance. Zoning ordinances do not aim to prevent mere harmful uses, but, on the contrary, they are comprehensive in that they concern all uses—good, bad, and indifferent—and generally throughout the entire community.<sup>1</sup>

A comprehensive zoning ordinance must consider all uses. But too often incompatible uses have unnecessarily been introduced into areas and gravely affect the character of a neighborhood. Such abuses are well described

<sup>1</sup>James Metzenbaum, Law of Zoning (Barker, Voorhis & Co., Inc.: New York, 1955).

by Professor Plager in his previously mentioned article:

Another short circuit occurs when the board of appeals (or board of adjustment) starts reading its variance power as authority to waive the rules in an appealing case, and by waiving the rules they really mean waving goodbye to them. By granting a use variance the board in effect rezones property from one use classification to another, but without recognizing the policy implications of what it is doing and without the procedural safeguards that are part of the adjudication or target selection process. The board thus assumes a policy-making function which it is neither qualified for nor properly entitled to exercise. In addition to involving an improper assumption of authority and a complete confusion of function, a seldom recognized evil in the use variance is that the man who buys property in a residential zone, for example, in reliance on the zoning map where undeveloped land is involved may very well discover to his dismay that he bought next to property that is in fact business or industrial property, even though the zoning had never been changed from the pre-existing residential classification. A use variance had been granted and there was no known record except among the few who knew what was happening when it happened.<sup>2</sup>

We find that since the adoption of the comprehensive zoning ordinance for Los Angeles in 1946 the many changes in zoning effected by various means and procedures have produced a general bypassing of the intent and purpose of sound zoning, which is to provide uniform provisions within each zoning district. Over a period of twenty years, the bad, if not entirely illegal, practice of piecemeal or spot changing of zoning patterns has evolved, resulting in a hodge-podge of land uses in various districts, with encroachment into residential sections and other areas contrary to basic principles of sound city planning.

Some of the improper piecemeal changes in zoning patterns have been accomplished by incorrect employment of the procedure referred to in the City of Los Angeles as **conditional uses** and in other jurisdictions as **zoning exceptions**, **special exceptions**, or **special exception uses**. A great number of abuses have come through actions of the Board of Zoning Adjustment on appeals from decisions of the Zoning Administrator.

The Office of Zoning Administration, created by the 1941 Charter amendment and the first such office in the nation, has consistently recognized the prerequisites to the granting of variances as prescribed by Section 98 of the Charter and related ordinances. Through the years, the Office has earned a reputation as a model zoning agency with particular reference to variances.

For many years comparatively few appeals were made from decisions of the Chief Zoning Administrator and his Associates. Within recent years a different attitude apparently has been introduced by the Board of Zoning Adjustment. Particularly during the period from 1963 to the end of 1967 a substantial increase in the number of reversals occurred.

The Board of Zoning Adjustment, in actual practice, has frequently disregarded the findings of fact and reasons set forth in the decision of the Zoning Administrator. It has, in effect, acted as an agency to consider many cases de novo (anew), taking evidence not presented earlier to the Zoning Administrator. Based upon our inquiries during the calendar year 1967, we find the Board has disregarded legal requirements to observe the same limitations as are placed upon Zoning Administrators by Section 98 of the Charter. The end result of such action in terms of what develops on the land creates a condition contrary to the intent of the City Council as expressed in the Zoning Code.

#### COMPLAINTS RECEIVED BY THE COMMITTEE

We have received complaints of and our investigations show evidence that the Board of Zoning Adjustment disregarded the record of evidence received at hearings before the Zoning Administrator as well as his findings. Complainants stated that in the final determination the identities of the appellant and the expediter (the appellant's professional representative) were apparently more important than were the facts of the case. We heard charges that (1) determinations were made by conference in advance of hearings before the Board; (2) some hearings were a mere sham; (3) the Board heard evidence not presented at

<sup>2</sup>Sheldon J. Plager, "The XYZ's of Zoning," *Planning* 1967 (American Society of Planning Officials: 1967).

the hearing before the Zoning Administrator; and (4) the Board often did not receive adequate, if any, evidence on which to base findings of fact as required by the Charter to support the granting of a variance or to reverse the determination of the Zoning Administrator. Frequently, it was alleged, statements of expeditors were accepted without supporting evidence.

It was further charged that the Board, in various ways, acted arbitrarily and capriciously, and the effect of its decisions was to grant favors to individuals, firms or corporations. It was also pointed out that, in frequent cases, citizens who appeared to protest the granting of variances were not afforded equal opportunity to present facts, and were treated with disrespect by the then presiding officer of the Board, who, almost without exception, exercised arbitrary control over the conduct of the hearings.

We are particularly concerned that actions of the Board of Zoning Adjustment have provided an alternative to legislative action by the City Council, thus allowing an applicant to select his forum. There are too many instances in which an application for rezoning has been denied by the Planning Commission and by the City Council on appeal, followed by a request to a Zoning Administrator for a variance, which was denied but subsequently reversed by the Board of Zoning Adjustment and the use granted. The net effect is a rezoning which constitutes a misappropriation of the legislative power which legally is possessed only by the Mayor and Council. The Committee concludes that there should be only one correct route to follow for each type of zoning action. There are at present two such routes, either legislative or quasi-judicial. The quasi-judicial route (variance) should never be used to produce an end result that should properly only be accomplished by a legislative change. A variance should not (and cannot legally) be a substitute for a legislative zone change.

We also received complaints concerning the actions of the City Council, particularly with reference to conditional use matters. The complainants maintained that in some cases the action of the Council was taken in disre-

gard of the facts and recommendations presented. The Committee points out that the Council, in reserving to itself the right of administrative review, is clearly obligated to exercise this power without favoritism and within the guidelines of its adopted regulations as set forth in the zoning ordinance. The recommendations of this Committee will relieve the Council of this criticism.

### **SOME BASIC PRINCIPLES UNDERLYING THE RECOMMENDATIONS IN THIS REPORT**

The purpose and justification for the planning function in government, including zoning, are to develop plans, programs and standards that will permit utilization of lands to achieve the greatest potential benefits for the community as a whole. Through this planning process, an environment conducive to the highest level of living, commerce and industry can be produced. In the final analysis, the extent to which these objectives are attained or lost must be the measurement by which the success or failure of employing the planning function must be judged.

Basically, there are three principal means for the operation of municipal government in the regulatory field. They are (1) the legislative process for prescribing regulations and fixing policy, (2) the administrative process for applying the policies and (3) the quasi-judicial process for reviewing and adjusting matters equitably under the policies.

Specifically, in the City of Los Angeles, in the field of zoning, there are basic questions that need answers. Providing these answers represents one of our major assignments.

The first question is whether the basic land use pattern, represented initially by a comprehensive zoning map, reflects the intended land use based on the functional pattern of the City as defined by the comprehensive General Plan, economics and social interests of the people.

The City Planning Department is currently engaged in revising elements of the General Plan which are out of date and in developing new elements of the Plan which have heretofore been missing. Land use plans

have been progressively adopted for some areas of the City, and plans are in process for other areas. Completion of the General Plan should be a matter of high priority for the Department if the City is to have the necessary guide for better zoning.

The second question is whether zoning actions, either for zone changes, conditional uses or variances, stabilize the comprehensive land use pattern. Or do they represent an abandonment of the principles of comprehensiveness and substitute therefor isolated grants of special privilege, the effect of which is to destroy public confidence in the reliability of zoning and severely reduce any real value that zoning may have?

Another question is whether basic policies of land use control have been defined, including matters of procedure, and, if so, whether the administration of zoning has adhered to such policies. If adequately defined policies appear not to exist, how can they be established? In the event that adequate policies have been established, has the administrative process strengthened the policies or undermined them?

Whatever may be done with reference to amending the Charter and ordinances or through administrative action as a result of this report, every effort should be made to clearly distinguish between the areas of legislation, administrative direction and quasi-judicial review.

It must be recognized that the many criticisms which have been brought to our attention do not apply to all elected and appointed officials. To a large extent, it is the system which is at fault rather than the people involved. In particular, we find that over the years the Planning Department's career staff has performed its duties with competence, dedication and persistence. The staff has met the unprecedented rapid growth of this City with a consistently high quality of research, analysis, plan preparation and planning administration—the essential foundations for sound city planning efforts.

The City of Los Angeles pioneered in the regulation of land use. Through the years there have been many significant court cases resulting in decisions of the Supreme Court of Cali-

fornia and of the United States Supreme Court that have upheld imaginative zoning procedures originating in Los Angeles. But this community in recent years has fallen behind in practical and farsighted municipal control of land uses. Los Angeles is now the third largest city in the country and the center of the second largest metropolitan area, with constantly growing potentialities. It should be second to none in planning and zoning policies and procedures.

After fourteen months of exhaustive hearings, meetings, research and analysis of resulting information, we are making thirty-six recommendations for the improvement of planning and zoning in Los Angeles. They are set forth in the Summary of Recommendations grouped according to chapter headings. The recommendations are repeated together with supporting explanation and discussion in the chapters which constitute the body of this report.

Chapter 1 is concerned with the basic laws and policies for planning and zoning and the processes by which the City Council, Mayor and the City Planning Commission establish and maintain these laws and policies—particularly the General Plan and the Zoning Code.

Chapter 2 relates to the need to clearly identify the legislative, administrative and quasi-judicial functions of government in zoning matters and makes recommendations for strengthening the administrative and quasi-judicial zoning processes. A new concept of, and procedure for, conditional use permits is recommended.

Chapter 3 deals in detail with the procedures for acting upon zoning requests and appeals to insure that the principles of law and democratic processes are observed.

The recommendations of Chapter 4 are designed to insure that each of the elected officials and appointed citizen boards—Mayor, Council, Planning Commission and Board of Zoning Appeals—assumes its intended role in representing the citizenry so that the distinct but interrelated actions of each will achieve the best possible interpretation of the public interest.

In Chapter 5 we seek to strengthen the protections against private influences entering into public decision-making except through open democratic process.

Chapter 6 summarizes the Committee's recommendations related to the 1966 County Grand Jury's recommendations.

Finally, Chapter 7 presents a suggested schedule of actions for effecting our recommendations.

Appendixes provide the reader with additional information concerning the Committee's investigations.

## SUMMARY OF RECOMMENDATIONS

### A SOUND LEGISLATIVE AND POLICY BASE FOR PLANNING AND ZONING

(A summary of the recommendations contained in Chapter 1)

#### GENERAL PLAN

##### CHARTER AND CODE AMENDMENTS

**Recommendation 1:** Amend the Charter to set forth the purpose, comprehensive nature and essential procedural requirements for the development and adoption of the General Plan of the City. Supplement this by a section of the Municipal Code defining the required content and form of the General Plan and prescribing the specific procedure for its adoption and amendment.

##### PROCEDURE

**Recommendation 2:** Provide by ordinance for adoption and amendment of the General Plan according to the following pattern:

1. Study initiated by the Director of Planning, City Planning Commission or City Council.
2. Preparation of General Plan proposals by the Director of Planning with the advice of the General Plan Advisory Board and the City Planning Commission.
3. Public notice and hearing on the Director's recommendations to be conducted by the City Planning Commission or a Hearing Examiner.

4. Recommendations by the City Planning Commission. Any changes from the recommendations of the Director shall be referred to the Director for report prior to action by the Commission.

5. Transmittal of the City Planning Commission's recommendations to the City Council with a copy to the Mayor. The Mayor may send comments or recommendations to the Council within thirty days.

6. Public notice and hearing by the City Council (or the Planning Committee of the Council) not less than thirty days after receipt of the Commission's recommendations.

7. Prior to Council adoption, any proposed changes from the Commission's recommendations must be referred back to the Director of Planning for report through the Commission with copy to the Mayor. Such report must be received within forty days or such longer period as the Council may designate.

8. Final action by the City Council within thirty days after conclusion of its public hearing if no changes are

made, or within thirty days after receipt of the Commission's report if changes are being considered. Adoption of the General Plan or any part shall be by majority vote if in accord with the recommendations of both the Commission and the Mayor. A two-thirds vote shall be required to deviate from the recommendations of the Commission or Mayor after resubmission.

9. Publication of General Plan as adopted.

### **AREA-BY-AREA CONSIDERATION**

**Recommendation 3:** Provide for the adoption or amendment of the General Plan on a scheduled area-by-area basis, each area covering less than the entire City, but must involve comprehensive consideration of a logical planning area. The General Plan should be reviewed on this regularly scheduled area-by-area basis, such schedule and areas to be established by the City Council upon recommendation of the Director of Planning and the City Planning Commission.

## **ZONING**

### **GENERAL PLAN RELATIONSHIP**

**Recommendation 4:** Amend the City Charter to require that in adopting or amending any zoning regulations or zoning maps, the City

Planning Commission and City Council shall make specific findings showing that the action is in substantial conformance with the purposes and intent of the General Plan. If the City Council does not adopt the Commission's findings, the Council shall adopt specific findings showing that its action is in conformance with the General Plan.

### **ZONING CODE REVISION**

**Recommendation 5:** A complete revision of the Zoning Code should be promptly initiated. However, since two years or more will be required for this revision, certain changes as recommended in this report should be enacted as soon as possible, pending the completion of the over-all revision.

### **ZONING MAP—REVISIONS BY AREA**

**Recommendation 6:** Establish a procedure for review and revision of the Zoning Map of the City on a regularly scheduled area-by-area basis, such schedule and areas to be established by the City Council upon recommendation of the Director of Planning and the City Planning Commission. Provide in the Charter and Zoning Code, that, unless there are exceptional circumstances affecting the public interest, requests for zone changes should be processed for a given area only during the regularly scheduled review of the area in which the property lies.

## **UNRAVELING THE LEGISLATIVE, ADMINISTRATIVE AND QUASI-JUDICIAL FUNCTIONS**

(A summary of the recommendations contained in Chapter 2)

### **ADMINISTRATIVE FUNCTIONS**

#### **CONDITIONAL USE PERMITS**

**Recommendation 7:** Amend the Zoning Code to establish uniform regulations and criteria for specific uses named in the Code as being subject to review and approval with conditions. The consideration and approval of such

conditional uses should be an administrative matter under the jurisdiction of the office of Zoning Administration with appeal to the Board of Zoning Appeals and any further appeal to the courts. (The Committee intends to submit more detailed recommendations and proposed legislation concerning conditional use permits in a subsequent report.)

## SUMMARY OF RECOMMENDATIONS

### UNCLASSIFIABLE USES

**Recommendation 8:** Amend the Zoning Code to provide for individual legislative consideration and approval of those few land uses which because of their unusual nature cannot be listed as permitted—either automatically or as conditional uses—in particular zones. Provide in the Code the criteria for the approval of such uses and require that specific written findings showing how the criteria are met must be adopted before approving any such use. Approval of such uses should be by ordinance, with specific conditions or requirements, after recommendation by the Planning Commission in the same manner as for zone changes. The unclassifiable category should be limited to uses such as airports, cemeteries, higher educational institutions, land reclamation projects and natural resource developments.

### PLANNED DEVELOPMENTS

**Recommendation 9:** Planned developments should be treated under the type of conditional use provisions recommended in this report, and not as unclassifiable or supplemental uses.

### "Q"-QUALIFIED ZONE

**Recommendation 10:** The Committee strongly opposes the "Q"-qualified zone concept. The desired objective should be met through conditional use provisions as recommended in this report and through revision of the list of uses permitted in the various zoning classifications. If action is deemed necessary before revision of the Code as set forth in Recommendation 5, the procedure suggested should be followed.

### ZONING ENFORCEMENT

**Recommendation 11:** Provide adequate staff in the Building and Safety Department for regular inspections and follow-up on compli-

ance with zoning regulations, particularly the special requirements of conditional use and variance approvals. The City Planning Department should assist in enforcement by checking compliance with zoning requirements during area planning surveys and referring violations to the Building and Safety Department.

## QUASI-JUDICIAL FUNCTIONS

### VARIANCES

**Recommendation 12:** Clarify and strengthen the Charter limitations on the granting of variances as follows:

1. Set forth the quasi-judicial nature of variance determinations and prohibit use of the variance to accomplish purposes which should properly be accomplished through legislation.
2. State the over-all intent and purpose of the variance provisions as a means of insuring equal application of zoning regulations to property in similar situations but prohibiting the use of the variance to grant special privileges.
3. Clarify and add to the requirements for the finding which must be made in order to grant a variance. Retain the basic principles contained in the present four requirements, but make them more specific. These tests for granting of a variance should be capable of realistic but strict application.
4. Provide that, in granting a variance, self-imposed hardships are not a proper consideration.
5. Include more specific limitations on the circumstances under which variances from permitted land uses are justifiable.

## OFFICE OF ZONING ADMINISTRATION

**Recommendation 13:** Retain the present powers, relationship and civil service status of the positions of Chief Zoning Administrator and Associate Zoning Administrators.

**Recommendation 14:** Amend the City Charter to clearly define the authority of a Zoning Administrator as quasi-judicial, making it clear that no actions shall be taken which usurp legislative authority.

## BOARD OF ZONING APPEALS

**Recommendation 15:** Amend the Charter to change the title of the Board of Zoning Adjustment to its original designation as the Board of Zoning Appeals and to limit the jurisdiction of the Board to appeals from determinations of Zoning Administrators. The Board should not have jurisdiction over matters outside the proper scope of its appellate function.

## INSURING FAIR, UNDERSTANDABLE AND EFFECTIVE PROCEDURES

(A summary of the recommendations contained in Chapter 3)

### PROCEDURES

#### UNIFORM REQUIREMENTS

**Recommendation 16:** Amend the Municipal Code to provide simple and uniform procedural requirements governing applications, notices, hearings, time limits and appeals for all types of planning and zoning cases. Also provide that each agency having jurisdiction in such matters must formally adopt and publish any rules of procedure which are used.

#### PUBLIC NOTIFICATION

**Recommendation 17:** Provide timely and effective notification to all interested parties concerning hearings on planning and zoning cases through improvements in the record keeping and data processing procedures of the departments involved.

**Recommendation 18:** Establish a subscription service to provide notification to any interested individuals and organizations not otherwise notified.

#### CONDUCT OF HEARINGS

**Recommendation 19:** Require that all testimony and other statements of fact be given under oath at all hearings held by or on behalf of the City Planning Commission, Office of Zoning Administration and Board of Zoning Appeals.

**Recommendation 20:** Make a verbatim record of the testimony at each hearing and retain such records for three years.

### FINDINGS IN ZONING CASES

**Recommendation 21:** Amend the Charter and the Zoning Code to clearly require that specific written findings of fact based upon competent evidence of record, and showing conformance or nonconformance to the required criteria, must be adopted in acting upon all zoning matters other than slight modifications as defined in the Charter and the Zoning Code.

### APPEALS

**Recommendation 22:** Amend the Zoning Code to standardize appeal procedures for all types of planning and zoning cases, and include the following provisions:

1. Allow a twenty-day period following the original determination for the filing of appeals.
2. Provide that those eligible to file an appeal include an applicant, any person aggrieved, the Director of Planning and the Planning Commission.
3. The written appeal must show specifically wherein the original findings

## SUMMARY OF RECOMMENDATIONS

and determination are not supported by the facts.

4. Appeals to the Board of Zoning Appeals, involving as they do interpretations of the provisions of the Charter and ordinances, are to be considered only upon the record of the original hearing and determination. No new evidence may be introduced. If new evidence is offered the case shall be returned to the agency having original jurisdiction for rehearing and redetermination.
5. Any modification or reversal on appeal must include written reasons detailing wherein the original determination is not supported by the findings of fact, and must set forth specific revised findings.
6. Failure of the appellate body to act within fifty days after filing of an appeal (or longer period when an extension of time is authorized) shall constitute denial of the appeal.

## TRANSFERS OF JURISDICTION

**Recommendation 23:** Amend the Zoning Code to standardize the procedure for transfer of jurisdiction to an appellate body when the original body fails to act, and include the following provisions:

1. Failure of the original authority to act within the fifty-day time limit (or longer period when an extension of time is authorized) constitutes neither approval nor denial but permits transfer upon written request of the applicant. The appellate body then assumes all responsibilities and duties imposed upon the original authority, and must act within fifty days of transfer of jurisdiction (or longer period when extended by mutual consent).
2. Upon transfer of jurisdiction, public notification shall be made and a hearing held in the same manner as required for an original hearing.

## RESOLVING THE PUBLIC INTEREST — A DEFINITION OF ROLES

(A summary of the recommendations contained in Chapter 4)

### CITY PLANNING COMMISSION AND BOARD OF ZONING APPEALS

#### APPOINTMENTS

**Recommendation 24:** In making and confirming appointments to the City Planning Commission and the Board of Zoning Appeals, the Mayor and the City Council must assume full and equal responsibility for insuring that persons of the highest integrity, competence and interest in civic and public affairs are selected.

### ORIENTATION

**Recommendation 25:** Furnish new appointees with a written manual covering the nature of the planning and zoning functions, the role of the Planning Commission and Board of Zoning Appeals, and the legal, policy and ethical limitations within which they must operate. (The Committee will make more specific recommendations on this in a subsequent report.)

## **POLICY REVIEWS**

**Recommendation 26:** The Director of Planning should arrange periodic meetings with members of the Planning Commission, the Board of Zoning Appeals, the City Attorney, Zoning Administrators and key staff members to review over-all operations, consider basic policies, examine the relationship of zoning actions to such policies and reevaluate established procedures and policies in the light of advancements elsewhere.

## **TERMS OF OFFICE**

**Recommendation 27:** Amend the Charter to strengthen the system of overlapping terms of service on the City Planning Commission and the Board of Zoning Appeals as intended by the City Charter. This should be accomplished by providing that:

1. Appointments can only be made when an office becomes vacant.
2. Vacancy in an office occurs only upon:
  - a. Expiration of the term.
  - b. Removal accomplished by either:
    - 1) Request of the Mayor approved by simple majority vote of the Council.
    - 2) On initiative of the Council by a two-thirds vote. If disapproved by the Mayor, a four-fifths vote required to sustain removal.

c. By a commissioner or board member filing a resignation with the City Clerk.

3. Appointments will be deemed approved if not acted upon by the Council within sixty days.
4. In the event the Mayor does not make an appointment within sixty days after a vacancy in an office occurs, the President of the City Council shall make the appointment, subject to confirmation by the Council as in the case of appointment by the Mayor.

## **COUNCIL ACTION**

**Recommendation 28:** Provide by Charter or ordinance that, for planning and zoning matters where time limits are not otherwise provided, each such matter must appear on the Council agenda each ninety days from the date of transmittal to the Council, until Council action is completed.

## **MAYOR'S VETO**

**Recommendation 29:** Identify in the Charter and Code those matters that are legislative in character (as distinguished from administrative and quasi-judicial matters) and therefore to be adopted by ordinance with the right of veto by the Mayor.

## **PROTECTING THE PUBLIC INTEREST**

(A summary of the recommendations contained in Chapter 5)

### **PUBLIC INFORMATION**

**Recommendation 30:** Strengthen the City's program of keeping the general public adequately informed as to the purposes, requirements and procedures of sound planning and zoning and as to the activities and decisions of City government in planning and zoning matters. This program should include the following:

1. Make available to the public simple and clear explanations of adopted objectives, policies, plans, regulations and procedures.
2. Place capable personnel in public contact positions and provide adequate training for such personnel.
3. Provide adequate records and staff at each branch office of the City Planning Department.

## SUMMARY OF RECOMMENDATIONS

4. Prepare a statement to be available for use at public hearings and meetings which explains clearly and simply the procedures which will be followed in the matters to be considered.

### **CODE OF ETHICS**

**Recommendation 31:** The Committee recommends that the City Council adopt a code of ethics for City officials and employees involved in planning and zoning matters. Prior to such action the Council should undertake further study of this broad area including consideration of recent constructive developments elsewhere.

### **CONFLICTS OF INTEREST**

**Recommendation 32:** Require by ordinance and amplification of the Charter that prior to consideration of any planning or zoning matter, each member of the City Planning Commission or Board of Zoning Appeals who has a private or personal interest in the matter must so state. If at any time during the consideration of a matter it becomes evident to a member that a conflict exists, he shall at that time so indicate. (The Committee will submit additional recommendations concerning conflict of interest in a subsequent report.)

### **PRIVATE COMMUNICATIONS**

**Recommendation 33:** Enact an ordinance requiring that communications between interested parties and members of the City Planning Commission or Board of Zoning Appeals concerning any matter pending before the Commission or Board shall be limited to oral statements in open public meeting and written statements addressed to the Commis-

sion or Board as a whole. Engaging in private oral or written communications concerning such matters shall constitute a misdemeanor by all of the parties involved and misconduct in office by City officials.

### **FIELD INSPECTIONS — BOARD OF ZONING APPEALS**

**Recommendation 34:** With respect to the Board of Zoning Appeals, field inspections by its members should be made only as an adjourned meeting of the Board and in the company of representatives of both sides of the issue. Findings of fact based upon inspections must be on the basis of such inspections by the Board as a whole.

### **CAMPAIGN CONTRIBUTIONS**

**Recommendation 35:** Amend the Charter and enact municipal legislation to supplement State law concerning campaign contributions, including consideration of gifts and gratuities, which may affect planning and zoning, with a view to requiring itemized reports from all elected officials and candidates for elective office listing donors and amounts from each donor. Such reporting should include indirect contributions handled through campaign committees campaign management firms or other individuals or organizations. (Further details on this subject are to be developed in a subsequent Committee report.)

### **GRAND JURIES**

**Recommendation 36:** The Committee recommends that the Mayor and Council request the State legislature to expand the powers of grand juries to permit investigation of municipal planning and zoning matters on their own initiative.

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# CHAPTER 1

## A SOUND LEGISLATIVE AND POLICY BASE FOR PLANNING AND ZONING

### GENERAL OBJECTIVES

- To establish and maintain adequate legal authority for planning.
- To establish and maintain an adequate legislative and policy basis for land use control.

During the present century, zoning has become the primary legal means for regulating the use of land in the United States. Its purposes are to control the pattern of land utilization in a community so as to promote the best possible over-all community environment, to prevent unnecessary conflicts between land uses and to provide for a generally efficient functioning of the community. Zoning is accomplished at the municipal level under the principle of law known as the police power—the right of the body politic to regulate its members for the general welfare of all. To be enforceable, zoning must be stated in specific terms of permitted uses within defined areas (or zones). It is not practical for the zoning law itself to explain in detail the reasons for the regulations.

Many private and public activities other than zoning influence the land use pattern of the community. These include various forms of regulation, the provision of public utilities and services, the operation of the real estate market, the effects of taxation and general social and cultural attitudes. To be effective, city planning must recognize and be concerned with all of these forces affecting urban develop-

ment. In fact, city planning may be defined as the effort to coordinate these various influences, including zoning, and direct them toward a common public goal. This need for a sense of unity of purpose is vital to meaningful planning.

As a means of setting forth the basic objectives of a community for its physical development, including its land use pattern, an instrument called the comprehensive general plan<sup>3</sup> is utilized. The general plan is the basis for effective city planning. As a coordinating, direction-setting document, a general plan is a policy statement in written and map form, not a set of precise rules, and therefore is not itself suitable for enactment as law. It is intended as a basis for specific local laws such as zoning. As Charles Haar, a former professor

<sup>3</sup>The term **master plan** has been commonly used in Los Angeles and elsewhere but the growing practice throughout the United States and now recognized in California law is to use the term **general plan**. A general plan should always be comprehensive in the sense that all relevant factors and territory are considered in preparing and presenting the plan. The term **general plan** will be used in this report except where specific reference is made to existing documents which use the term **master plan**.

at Harvard Law School, has described it,<sup>4</sup> a general plan should be "an impermanent constitution" under which implementing regulations are enacted. Thus, the general plan is the primary statement of the purposes, principles and objectives which zoning and other regulations are designed to accomplish. Clearly, sound zoning must be based on a comprehensive general plan or some equivalent policy base.

The legal basis for the general plan and for zoning, and their proper interrelationship, must be provided through enabling legislation. The City Charter is the basic enabling law for Los Angeles while the California Planning and Zoning Law is controlling law for non-chartered cities. We find that the present Charter provisions are vague and limited in laying the legal foundation for planning and zoning in Los Angeles. Although there are also deficiencies in the State law, it has been more frequently and consistently updated through the efforts of the planning and legal professions, and we believe it provides at least a guide for consideration.

Thus we are concerned in this chapter with (1) recommendations for adequate and sound provisions in the City Charter governing both the general planning and zoning processes, (2) the effectiveness of the General Plan as the City's guiding policy for the development of the City and (3) the implementation of City policy through the regulations of the Zoning Code. It is obvious that the basic legislation of the City needs to be improved to define properly the respective roles and interrelationship of the General Plan and the Zoning Code (see Figure 1).

<sup>4</sup>Charles M. Haar, "The Master Plan: An Impermanent Constitution," *Law and Contemporary Problems*, Vol. 20, No. 3 (Summer 1955), 353-418. See also Haar's comments in the article "In Accordance With A Comprehensive Plan," *Harvard Law Review*, Vol. 68, No. 7 May, 1955, 1154-1175.

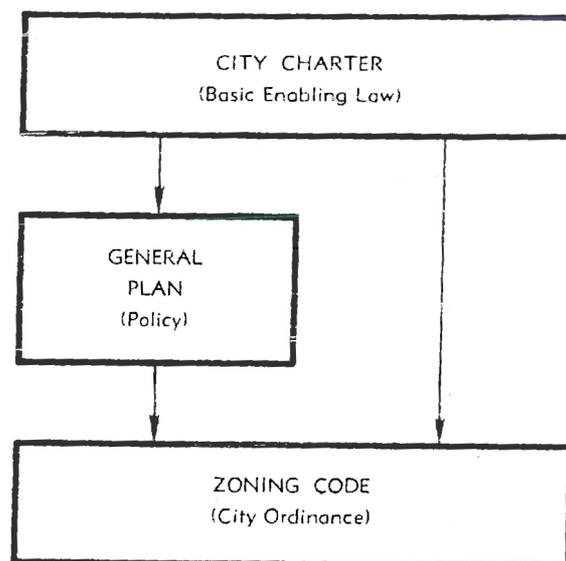


Figure 1. Relationships Among City Charter, General Plan and Zoning Code

## GENERAL PLAN

### CHARTER AND CODE AMENDMENTS

The General Plan should be recognized as an important City document providing the basic policy guide for City development activities.

**Recommendation 1: Amend the Charter to set forth the purpose, comprehensive nature and essential procedural requirements for the development and adoption of the General Plan of the City. Supplement this by a section of the Municipal Code defining the required content and form of the General Plan and prescribing the specific procedure for its adoption and amendment.**

Among the points to be included in such changes are:

1. Use of the term **general plan** in place of **master plan**. This change would conform with State law and the growing trend throughout the United States.
2. Statement of purpose along the lines of coordinating the physical development of the City to contribute to the

public health, safety and general welfare and to serve the economic, social and individual needs of the population. Adherence to this purpose then would justify police power regulation by zoning and other laws to implement the General Plan.

3. Definition of intended scope. The required comprehensive nature of the General Plan should be clearly set forth so that: (a) the land use element and all other major functional elements are encompassed; (b) the complete range of public objectives is recognized; (c) all possible time spans into the future for which plans can reasonably be made are covered (probably with varying degrees of generality); and (d) all of these aspects are coordinated over the entire territory of the City (although the Plan may be adopted in logical area units from time to time).

We find three general areas of confusion relating to the preparation and use of the General Plan in Los Angeles: confusion about its purpose and importance; confusion about its content; and confusion about procedures for its adoption (discussed under Recommendation 2). As to confusion about the purpose and importance of the General Plan, there is evidence that the confusion exists among City employees, commissioners and legislators, as well as in the minds of the general public. The statement "the General Plan is only a guide" is often heard, and may be literally true, but the implication is that the General Plan can be ignored when it is convenient to do so. The General Plan should be given full consideration in all planning and zoning actions. To ignore it is to waste the resources used in the preparation of the Plan.

This confusion may result from changing concepts over the years, due in part to the lack of any clear statement of purpose in the Charter. In the past, some people may have considered a General Plan to be merely a working tool of the Planning Commission and not something of direct concern outside of the deliberations of that body. That this view is no longer valid is confirmed by the City Ad-

ministrative Officer in his June 1965 Management Audit Report of the City Planning Department:

... it is the City's master plan and not the property of any one department. General City interest and participation is necessary if the plan is to be complete and practicable.<sup>5</sup>

The concept of the General Plan as a policy statement of the City government is supported by the opinion of the City Attorney<sup>6</sup> that under the present Charter the Master Plan is official only when adopted by the City Council. And the recent revitalization of the Master Plan Advisory Board (consisting of City department heads and other key officials) demonstrates the growing recognition of this principle. Yet no statement of the basic purpose of the Master or General Plan appears in the City Charter, leaving the door open to disagreement and misunderstanding concerning its proper role.

A second area of confusion concerns the content of the General Plan. The present Master Plan document consists of a great variety of maps, reports, elements and area plans prepared and presented in various ways and with varying degrees of formal endorsement. Legally (that is, as adopted by the City Council) the present Master Plan consists essentially of area land use plans covering approximately two-thirds of the City and of City-wide public facilities plans for highways and freeways, libraries, fire stations and three civic centers. By way of contrast, the State law requires a general plan to consist of a statement of development policies: it must include land use, circulation, population and housing elements and may include any number of additional elements such as conservation, recreation, transportation, transit, public services, public buildings and safety.<sup>7</sup>

We find that a General Plan has not been suitably prepared to serve as a basis or guide

<sup>5</sup>C. Erwin Piper, City Administrative Officer, *Management Audit Report of City Planning Department*, June, 1965, p. 14.

<sup>6</sup>Roger Arnebergh, City Attorney, "Opinion re Master Plan City of Los Angeles; Law Governing and Procedure to be Followed in Adoption or Amendment Thereof; Notice and Hearing in Connection Therewith," April 16, 1966.

<sup>7</sup>California Government Code, Sections 65302-65303.

for zoning. In some parts of the City, the land use element of the Plan is nothing more than a generalization of the previously adopted zoning pattern as it existed in the late 1940's. In other parts of the City, the adopted land use element of the Plan consists of precise zoning maps serving as a guide for piecemeal zoning changes. In still others areas of the City, progress has been made in recent years in adopting plans, for communities or larger areas, which more nearly approach the proper concept of a general plan as an over-all policy guide designed to serve as a basis for implementation by zoning and other official actions, rather than being merely a reflection of previous zoning decisions.

The present City Charter is of little help in defining what the content of the General Plan should be. It refers to the State law definition of the term **master plan**, now more commonly called the **general plan**.<sup>8</sup> The City Attorney, however, has indicated that this definition does not apply except as all or part of the State law definition might be accepted by the City Planning Commission.<sup>9</sup> In an action on August 14, 1967, the City Planning Commission determined that the Master Plan shall include circulation and transportation elements as defined in the State law. The **Master Plan Advisory Board**, which should be renamed the **General Plan Advisory Board**, has considered a list of the elements which might be included in the General Plan, but apparently no complete outline of the desired content of the General Plan has yet been officially adopted.

The main purpose of defining the General Plan content should be to insure comprehensiveness. We find that there are at least four dimensions of comprehensiveness which should be recognized:

1. **Geographic**—The entire area of the City should be covered. However, because of the large size and peculiar boundaries of the City, it is not always practical to consider the entire City as a single planning unit. Therefore the City should be divided into smaller units for planning purposes—but any such

unit should be an area of substantial size, with social and economic identity. An area-by-area planning procedure is suggested in a succeeding section of this chapter. It should always be recognized, however, that all city planning activities must be carried on within a regional planning context.

2. **Subject Matter**—If effective coordination is to be achieved, all physical elements of the City must be recognized and included.

3. **Objectives**—All public goals including those for social and economic achievement as well as for the improvement of the physical environment must be considered and inter-related.

4. **Time**—A useful general plan cannot be just a picture of what is to be achieved at a date in the future such as twenty years; it must also indicate the intermediate steps or sequence of changes as they are proposed to occur over the period of time extending from the present into the foreseeable future.

The City Planning Department has been making progress over the past several years in moving toward a truly comprehensive general plan. However, its work has been hampered by a lack of common understanding as to the content of a general plan. Pending amendment of the City Charter this problem could be solved by a suitable definition adopted by the City Planning Commission.

To the extent possible and found desirable, the Charter and Code provisions concerning the General Plan should be similar to those contained in the State Planning and Zoning Law, Sections 65300 to 65402 of the California Government Code.

To implement Recommendation 1, the Charter preferably should have a separate section on the General Plan. Its provisions should not be too detailed and should establish minimum procedural requirements only. However, it should be sufficiently clear to make the Plan a guide or standard which must be recognized as a basic consideration in all legislative, administrative and quasi-judicial acts relating to planning, zoning and other city development matters. In addition, a General Plan Code should be provided as part of the Municipal Code, setting forth more detailed requirements on form, content and procedure.

<sup>8</sup>Los Angeles City Charter, Section 95(a), and California Government Code, Sections 65302-65303.

<sup>9</sup>City Attorney, "Opinion," *op. cit.*

## PROCEDURE

Pursuant to the Charter amendment under Recommendation 1, more detailed procedure should be provided for as follows:

**Recommendation 2: Provide by ordinance for adoption and amendment of the General Plan according to the following pattern:**

1. Study initiated by the Director of Planning, City Planning Commission or City Council.
2. Preparation of General Plan proposals by the Director of Planning with the advice of the General Plan Advisory Board and the City Planning Commission.
3. Public notice and hearing on the Director's recommendations to be conducted by the City Planning Commission or a Hearing Examiner at a certain time and place.
4. Recommendations by the City Planning Commission. Any changes from the recommendations of the Director shall be referred to the Director for report prior to action by the Commission.
5. Transmittal of the City Planning Commission's recommendations to the City Council with a copy to the Mayor. The Mayor may send comments or recommendations to the Council within thirty days.
6. Public notice and hearing by the City Council (or the Planning Committee of the Council) not less than thirty days after receipt of the Commission's recommendations.
7. Prior to Council adoption, any proposed changes from the Commission's recommendations must be referred back to the Director of Planning for report through the Commission with copy to the Mayor. Such report must be received within forty days or such longer period as the Council may designate.

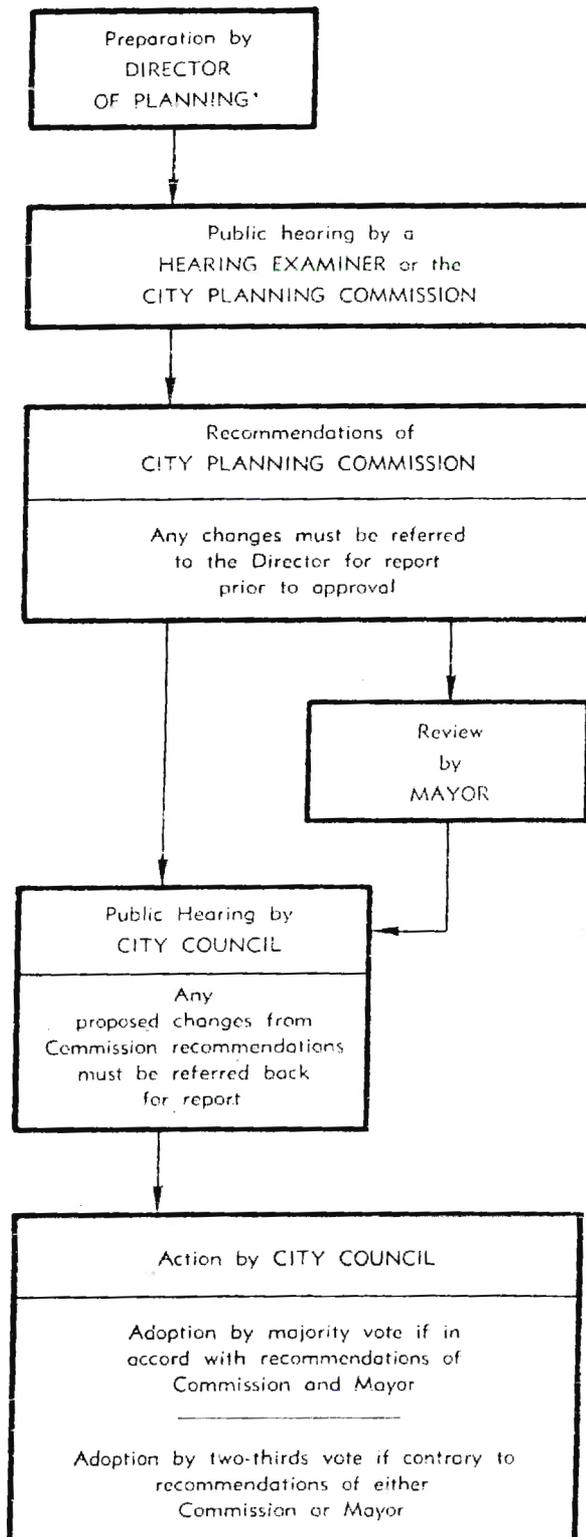
**8. Final action by the City Council within thirty days after conclusion of its public hearing if no changes are made, or within thirty days after receipt of the Commission's report if changes are being considered. Adoption of the General Plan or any part shall be by majority vote if in accord with the recommendations of both the Commission and the Mayor. A two-thirds vote shall be required to deviate from the recommendations of the Commission or Mayor after resubmission.**

### **9. Publication of General Plan as adopted.**

The above recommendation is designed to improve procedures for adoption and amendment of the General Plan—the third area of confusion with reference to the General Plan. The proposed procedure is illustrated in Figure 2. The Charter is sketchy on this subject and there has never been a supplementing ordinance.

Under present provisions, the Director of Planning prepares the Master Plan with the advice of both the Master Plan Advisory Board and the City Planning Commission. Provision is made for adoption by the City Planning Commission followed by transmittal to the City Council. There is no requirement for public notification or hearing, and the responsibility of the City Council to take final action is not clear. No provision is made for participation by the Mayor other than as a member of the Master Plan Advisory Board.

Because the General Plan is an important public policy statement, it needs to be considered and adopted by resolution of the City Council after public hearing. A definite procedure should be established to notify the public of such public hearing. All responsible public officials should provide the leadership and resources to make the Plan effective, and the responsibilities of the Mayor and Council for the General Plan should not be left in doubt.



\* With advice of the Master Plan Advisory Board and the City Planning Commission.

Figure 2. Recommended General Plan Procedure

### AREA-BY-AREA CONSIDERATION

**Recommendation 3:** Provide for the adoption or amendment of the General Plan on a scheduled area-by-area basis, each area covering less than the entire City, but must involve comprehensive consideration of a logical planning area. The General Plan should be reviewed on this regularly scheduled area-by-area basis, such schedule and areas to be established by the City Council upon recommendation of the Director of Planning and the City Planning Commission.

For a city the size of Los Angeles, planning must be carried on at several levels of geographic coverage. At the broadest level, the entire City must be seen as a whole, but in many respects this can only be done by participating in regional planning for the larger urban area of which the City is a part. Such regional planning should provide a general framework within which somewhat more detailed planning can be done for smaller areas which form logical and workable local planning units.

For some purposes, subregional areas such as the entire San Fernando Valley constitute logical planning units, but for many purposes it is necessary to deal with community-size units such as Hollywood, San Pedro, Pacific Palisades and the central business district.

Effective planning must be a continuing process. A general plan which no longer reflects the aims of the people, the realities of existing situations or the latest reliable social, economic and technological forecasts is a useless plan. In view of the size and diversity of the City of Los Angeles, it is apparent that much of the material which should constitute the City's General Plan can only be adequately maintained through a continuing area-by-area process of study and revision.

A completely piecemeal approach to General Plan amendments would defeat the principle of comprehensiveness and destroy the integrity of the Plan. To prevent this, any change in the Plan should be viewed in at least a community-wide context. Therefore, in the above recommendation we propose that recognized community areas with social and economic identity be the minimum size units for general plan study and revision.

## ZONING

### GENERAL PLAN RELATIONSHIP

It should be made clear that implementation of the General Plan is a required component of acceptable zoning practice.

**Recommendation 4: Amend the City Charter to require that in adopting or amending any zoning regulations or zoning maps, the City Planning Commission and City Council shall make specific findings showing that the action is in substantial conformance with the purposes and intent of the General Plan. If the City Council does not adopt the Commission's findings, the Council shall adopt specific findings showing that its action is in conformance with the General Plan.**

All too frequently zoning regulations have been established without the prior adoption of a general plan or without reference to a general plan. Los Angeles has not always avoided this unfortunate tendency to ignore a cardinal principle of sound city planning.

Among the long-established legal principles upon which zoning should be based is that it must be consistent and nondiscriminatory; that is, property in like situations must be treated similarly. Also, zoning must be reasonable; that is, the restriction on individual rights must be logically related to the attainment of a valid public purpose. A general plan, among other things, should serve as a means of defining and demonstrating the fairness and logic of the zoning restrictions applied.

Too often, however, the General Plan has not been brought to bear in the legislative adoption of zoning regulations. Testimony before the Committee pointed out numerous cases where zoning actions were apparently influenced far more by individual arguments, circumstances and pressures than by a consistent and logical rationale for achieving a long-range community plan.

One reason for this situation lies in the vague and permissive language of the City Charter regarding the nature and purpose of the General Plan and the relationship of zoning to the General Plan. Section 97(2)(a) of the Charter merely requires that proposed

zoning legislation be referred to the City Planning Commission for report and recommendation as to its relation to and effect upon the Plan, but contains no requirement that zoning legislation should in fact be consonant with the Plan.

In addition, the Zoning Code is silent on the overall relationship between zoning and the General Plan.

Thus, we find that the proper relationship between zoning and the General Plan has not been adequately recognized either in law or in practice.

Amending the Charter as proposed would (1) firmly establish the relationship between zoning and the General Plan as a matter of law, (2) require that zone change applicants and City officials recognize this essential relationship and (3) aid the courts in determining if challenged actions have deviated from the requirements of contributing to the public welfare in a reasonable and fair manner.

### ZONING CODE REVISION

**Recommendation 5: A complete revision of the Zoning Code should be promptly initiated. However, since two years or more will be required for this revision, certain changes as recommended in this report should be enacted as soon as possible, pending the completion of the over-all revision.**

With respect to present zoning ordinances or the Zoning Code of the City, the Committee has received considerable testimony regarding its patchwork nature—both as to the text of the regulations and the Zoning Map.

In 1946, after several years of concentrated study, a completely new zoning ordinance and map were prepared and adopted—covering the entire City for the first time. Although it was an outstanding piece of work, it has subsequently undergone more than 300 amendments to the text and several thousand changes to the Map. Practically none of these changes has involved a comprehensive study and revision of a major section of the text or a major portion of the Map. Rather, each amendment has been designed to meet a specific situation or a change in circumstances as they arose.

There is now scarcely a paragraph of the Code that has not been amended. Some sections have been repealed and some sections added to cover subjects new and different from those contemplated in the original ordinance. The result is that the Code has become more and more confusing, apparent inconsistencies have increased and the applicable provisions on any given subject are difficult to locate and apply because a logical and orderly structure to the Code no longer prevails.

More basic, however, are the problems which arise because of the significant technological, social and economic changes which have occurred over the last two decades. These changes in turn have given rise to advances in planning and zoning concepts and in legal attitudes reflected in court decisions throughout the country; but many of these advances have not yet been adopted in Los Angeles.

Perhaps the most telling evidence of the inadequacy of the present Zoning Code is simply to look at the development which has occurred in recent years. We have in mind the low-rise, box-like apartment houses which are simply designed to use up all the space which the zoning ordinance allows, without regard to the desirability of open space and some semblance of privacy. Or we can view the jumbled commercial areas where different kinds of businesses have no functional relationships with each other. And we are concerned about the growing ugliness of these areas with their profusion of signs and the vast expanses of parking lots devoid of landscaping.

Complete review and redrafting of the Zoning Code are long overdue. A thorough study should be initiated as soon as possible, utilizing the best available consultants together with technical and legal assistance from City departments. This study should be carried forward in a concerted and expeditious manner until a comprehensive revision of the zoning regulations is achieved.

The Mayor's request for funds for such a study has been approved in the 1968-69 Budget. To aid in the study we suggest the City Attorney assign one of his assistants

on a continuing basis to provide legal advice on the drafting of the new Zoning Code.

We have particularly noted the following suggestions or areas of concern which should be considered, in addition to points recommended elsewhere in this report for more immediate action:

1. The term **comprehensive zoning plan** should be dropped because it is sometimes confused with the **comprehensive general plan**, and may lead to the inference that individual actions such as variances, conditional uses and piecemeal zone changes may be considered apart from comprehensive zoning. The term **Zoning Code** should be used for the entire section of the Municipal Code dealing with zoning, and the term **Zoning Map** should be used for the maps or plans adopted as part of the Code to show the zoning of the City.

2. The grouping of land uses into the various classifications should be established to insure compatibility with each other, including a consideration of performance standards, which are now being used in many jurisdictions.

A part of the difficulty in Los Angeles is attributable to the fact that the uses permissible in any one of the zones, particularly the commercial zones, operate almost totally contrary to those criteria or principles that determine relative compatibility. For instance, in a commercial zone, an auto body repair plant is permitted even though adjacent to apartments. Also, the permitted uses include such businesses as second-hand car operations, a use which involves large open spaces—dead spaces which are inappropriate among a group of shopping facilities—where shoppers might have to go a block or two blocks to get to the next retail store. In the past, Los Angeles has largely ignored this line of reasoning and it should be considered when the zoning ordinance is revised.

Classifying uses on the basis of performance standards has become increasingly prominent in recent years in zoning practice. By giving consideration to characteristics of uses such as population density, hours of operation, traffic flow, physical hazard, noise and pollution, the level of performance should be an important factor in determining the zoning classification for each use.

3. A provision should be considered that in the revised Zoning Code there should be a designation on the Zoning Map of intended future zoning classifications. This technique, which has been successfully employed elsewhere, gives official recognition to anticipated changes of land use in the affected areas. Such changes are not to be permitted until some time in the future or until their exact location and extent are determined. By this means, spotty or piecemeal changes can be avoided. Putting everyone on notice that a change is contemplated will help to avoid the creation of barriers to such change and may encourage joint action by owners to accomplish the change at the appropriate time. It would also tend to promote a suitable sequence of development or redevelopment.

4. Incorporate in appropriate ordinance form up-to-date development standards for signs, parking areas, open space, landscaping, commercial outdoor displays of merchandise and other such matters.

5. The present standards for lot size, setbacks, etc., which are applicable to individual lot-by-lot development should be supplemented with density and open-space standards which will apply to group developments on large parcels.

6. Provide means for tighter control over compliance with special limitations or conditions which are imposed under variances or conditional uses.

7. Clarify the provisions for termination of conditional uses and variances, including a review of the provisions for revocations of variance and conditional use approvals under circumstances of noncompliance.

8. Provide for a simplified procedure to consider certain limited types of temporary conditional uses under criteria and standards specified by ordinance. Conditional approval of such uses should require written findings by a Zoning Administrator and a hearing could be held but would not be required.

This suggestion is intended to provide for the authorization of certain types of temporary land use under conditions which will protect surrounding property. Under the present situation many short-term land uses, such as Christmas tree sales, on-site contractors'

yards, fairs, carnivals or other special events, are likely to occur as zoning violations with no control. This is because the conditional use or variance procedures are too cumbersome and time-consuming in relation to the time period over which the use exists. At present, effective zoning enforcement action against such violations is difficult, if not impossible, for the same reasons. Uses eligible for temporary conditional use approval should be limited to types specified in the Code and should involve no permanent construction or change in the terrain. A definite maximum time limit should be established for all such uses.

9. Eliminate any overlapping of authority between the Office of Zoning Administration and the Building and Safety Department concerning slight modification variances.

10. Clarify the role of the Office of Zoning Administration as the quasi-judicial agency of the City responsible for resolving any uncertainties as to the application of the zoning regulations, subject to appeal to the Board of Zoning Appeals. This authority should include:

- a. Appeals from Building and Safety Department orders as now provided for in Section 12.27A of the Code.
- b. Maintenance of the extended list of land uses permitted in the various zones as now provided for in Section 12.21A2.
- c. Minor zone boundary adjustments, now assigned to the City Planning Commission under Section 12.30G, H, J and K.
- d. Yard and fence adjustments as provided for in Section 12.27C.
- e. Such other determinations as are necessary to clarify and apply the provisions of the Zoning Code.

11. Strengthen the provisions for termination of nonconforming uses. This should be accomplished in a realistic manner so as to avoid the unreasonable confiscation of property rights on the one hand, and to avoid delays in accomplishing the intended result on the other hand.

12. Permit following the provisions of the California Planning and Zoning Law insofar as possible and appropriate.

13. Where possible and appropriate, establish terminology and format generally uniform with other local jurisdictions.

14. The Zoning Code should be organized and written in a style that is easy to understand and apply. The published Code should be supplemented with illustrations and diagrams which clarify the intent and application of the regulations.

We are making a number of other recommendations, found elsewhere in this report, which involve amendment of the Zoning Code. These other recommendations are of such importance that they should be adopted at an early date as amendments to the present Code and not be left for consideration as part of the overall study and revision of the Zoning Code recommended in this section—a study which may require two years or more.

#### **ZONING MAP—REVISIONS BY AREA**

**Recommendation 6: Establish a procedure for review and revision of the Zoning Map of the City on a regularly scheduled area-by-area basis, such schedule and areas to be established by the City Council upon recommendation of the Director of Planning and the City Planning Commission. Provide in the Charter and Zoning Code, that, unless there are exceptional circumstances affecting the public interest, requests for zone changes should be processed for a given area only during the regularly scheduled review of the area in which the property lies.**

We find that the Zoning Map of the City is indeed in need of over-all review and updating. Since the City-wide rezoning in 1946, the City has relied almost entirely on individual applications from property owners to initiate changes in the Zoning Map.

A feature unique to present-day zoning legislation is that the individual property owner is given the relatively unrestricted privilege of applying for a legislative change and then is able to force consideration of his particular request through the entire legislative process. Although valid reasons can be found for this arrangement, it is doubtful that it was originally intended to be more than a rarely used provision which would serve to

protect the individual property owner from grossly unfair zoning. The fact that zone changes by owners' applications rather than by City initiative has become so prevalent is substantial evidence that the City is failing in its responsibility to keep its zoning legislation up to date.

In Los Angeles, however, it must be recognized that the problems of very rapid and large-scale growth and the need to insure that adequate street and utility improvements are made as development occurs has led to this system of allowing the Zoning Map to lag rather than lead development pressures. In effect, the individual zone change is being used as a development permit rather than having zone changes by large areas which would serve as a development guide. By withholding final action on zone changes until subdivision maps are approved, evasion of the subdivision map approval process with its improvement requirements is prevented. This distortion of zoning procedure has been partially corrected with the adoption of the "T"—tentative classification concept. However, owner applications are still relied upon to initiate most zone changes.

This system of using the zoning itself as a development permit device has led in turn to distortion of the General Plan for many areas of the City. In response to the need for some statement of the over-all zoning pattern likely to evolve out of the piecemeal zoning map changes being made, the adopted land use element of the General Plan has tended in some areas to become a rather detailed pre-zoning map.

Particularly in rapidly changing areas, reliance upon the owners' applications to initiate zone changes often results in inefficient, repetitious consideration of the same areas. For example, three separate zone change applications might be filed within a few weeks and involve properties within a few blocks of each other. Unless a special study of the whole area has been initiated, the Department staff and Commission have no choice but to make separate field investigations and reports, hold separate hearings and make separate decisions on these three cases even though most of the information and issues involved are the same.

More importantly, there is not always the opportunity to consider all three matters for their combined interrelationships and impact upon the community before making a decision on any one of them. Obviously with this piecemeal procedure the public is unnecessarily inconvenienced and less able to grapple effectively with the basic community issues which may be involved than would be the case if all the changes for an area could be considered at one time.

Because the City is failing to keep its Zoning Map up to date unless property owners file applications, the imposition of a substantial application fee, to say nothing of the outside costs in time and money for the applicant to present and support his case, produces an additional inequity upon a single small property owner. The large landowner or developer or prospective commercial or industrial land user is not likely to be deterred by such costs, while the individual resident or small businessman will be likely to accept and live with the existing zone pattern in view of the costs, the difficulties of organizing one's neighbors and the uncertainty of the outcome.

It will be impractical to attempt to revise the Map for the entire City at one time. Also, in recognition of the need for the Zoning Map to be more effectively related to the General Plan and of the proposal that community general plans should be regularly prepared and revised on a scheduled area-by-area basis, changes to the Zoning Map should be accomplished on a similar area-by-area basis. By coordinating General Plan and Zoning Map studies, the same field surveys, basic research and analysis could be applied to both, with resulting efficiency, economy and comprehensiveness in Planning Department operations.

The City Planning Department should propose standards for the minimum size and characteristics to be considered in determining such zoning study areas—normally they should correspond to or be logical subunits of General Plan study areas. The Department should also immediately undertake a study to divide the City into appropriate areas for this purpose, develop a proposed schedule and estimate the budget and personnel required to support this activity. The City Council should then adopt

such a schedule and provide the necessary support for the program.

Further details concerning policy for the bounding and scheduling of areas to be considered will need to be worked out. There probably should be a minimum and maximum time between the reviews of any given area. It may be desirable to have overlapping boundaries of the adjacent areas so that fringe area adjustments can be made when changes occur in the basic pattern of any one of two or more nearby communities. However, in order to prevent gerrymandering of boundaries, the boundaries of an area should probably be reviewed following each Zoning Map revision and then must not be changed until after the next revision.

A corollary to this area-by-area procedure is the need to delay action on individual zone change requests until the area as a whole is considered. At present, delays up to 180 days are possible.<sup>10</sup> It is recommended that this time limit be broadened to require withholding of action on individual requests until the next regularly scheduled area review, regardless of the length of delay involved. However, this procedure should not preclude acting on special cases on an individual basis when unusual and acceptable reasons to do so are present. Criteria should be established by ordinance to assist in determining when these exceptional circumstances exist. Such out-of-turn zone change proceedings should only occur to meet pressing public needs and not for the special convenience of particular property owners. Upon request, a determination as to whether or not the required public interest criteria are met in order to justify out-of-turn consideration of a zoning case should be made by the Planning Commission after staff report. Such determination would be appealable to the City Council.

The experience in Pasadena, where zoning applications are only received and considered on a semiannual basis, provides an indication of the benefits of this proposed

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<sup>10</sup>Los Angeles Municipal Code, Section 12.32D2.

area-by-area procedure. In that city, the number of zone change requests is relatively small and the procedure is readily accepted by the public. There seems to be a tendency for requests to cover block-sized areas rather than one or two lots, and for the requests to be considered more on the basis of community needs rather than solving individual problems and satisfying individual desires.

Once an area-by-area procedure is fully operative, we believe the number of separate zone change cases processed in Los Angeles will be substantially reduced and the result will be better and more stable zoning.

## CONCLUSION

In summary, we believe that in order to create a sound legal basis for land use control, the City of Los Angeles needs (1) a more definite foundation in the City Charter and Municipal Code for general planning, (2) the completion and maintenance of a suitable General Plan as the policy basis for the zoning regulations, the Zoning Map and other specific plans, (3) the passage of enabling legislation for zoning to clearly establish this relationship between the General Plan and the Zoning Code, and (4) the complete revision, updating, and maintenance of the Zoning Code and Map so as to lead rather than follow the future development of the City.

## CHAPTER 2

# UNRAVELING THE LEGISLATIVE, ADMINISTRATIVE AND QUASI-JUDICIAL FUNCTIONS

### GENERAL OBJECTIVES

- To clearly establish the proper distinction between legislative, administrative and quasi-judicial functions as they pertain to planning and zoning matters.
- To prevent improper deviations from the land use plan and standards established by the General Plan and the Zoning Code.

Zoning regulations are established legislatively, must be applied by administrative action, and are subject to quasi-judicial adjustment to assure equal treatment for all citizens.

As a use of the police power, zoning must be reasonable, fair and consistent. Yet, because zoning is concerned with a great variety of uses of land located on parcels of various sizes, shapes and characteristics and because substantial sums of money are often involved in land development, a strong tendency emerges to depart from the principle of fair and equal treatment. When individual requests are made for zoning actions of one sort or another, the stage is set for treating the individual property as a separate case rather than as a part of a whole—in short, to substitute the rule of men for the rule of law. Giving way to this tendency would inevitably lead to complete chaos as far as land use planning and control are concerned, and zoning would become a mockery of the principle of equality before the law.

In our system of government, the basic protection against this tendency lies in the maintenance of the separation of powers among the three branches of government — legislative, executive and judicial — with each

exercising checks and balances in relation to the others. Unfortunately, in local government, particularly in the zoning field, the distinction between these powers has become seriously blurred.

Once a zoning pattern and regulations have been established on an over-all basis, modifications to the basic requirements may occur in three ways:

1. **Legislatively** — Amending the zoning map or the text of the zoning regulations by ordinance.

2. **Administratively** — Determining the application of the ordinance to specific situations within whatever limits and according to whatever guidelines are provided by ordinance.

3. **Quasi-Judicially** — Applying judgment to achieve equal treatment within the intent of the regulations although some deviation from the literal requirements may be involved.

When an administrator overlooks the law or interprets it in a certain way for one property owner and in another way for a different property owner, or when a quasi-judicial body with the power to grant variances uses that authority to grant special privilege rather than to prevent discrimination, then legislative authority is being usurped. When a legislative

body establishes special regulations applying to one piece of property but not to other similar properties without a substantial reason in terms of serving the general community welfare, the legislative body is going beyond its legally granted power.

In smaller cities the city council, in addition to its legislative responsibilities, often acts as both the final administrative and quasi-judicial authority in zoning matters—a situation which tends to perpetuate confusion concerning the legal powers involved. In Los Angeles the City Charter vests certain administrative powers in the City Planning Commission and the City Planning Department, and quasi-judicial powers in the Office of Zoning Administration and the Board of Zoning Adjustment. However, the City Council retains some administrative authority, some administrative decisions have been transferred from the City Planning Commission to the Board of Zoning Adjustment, and the Board of Zoning Adjustment has at times acted as if it had legislative authority. Thus, although the original intent in Los Angeles was to establish separate agencies for the legislative, administrative and quasi-judicial functions, their powers have become mixed, and confusion has been compounded.

### **LEGISLATIVE FUNCTIONS**

In the recommendations of Chapter 1 we sought to strengthen the proper role of the legislative body by providing for the adoption of all zoning regulations in the light of comprehensive, community-wide considerations, and for the constant balancing of individual requests against these public interest considerations. It is then the responsibility of the administrative and quasi-judicial agencies of government to see that the legislative policies and standards are reasonably and equitably applied.

### **ADMINISTRATIVE FUNCTIONS**

Administrative authority can be exercised at several levels which have different degrees of latitude and discretion.

### **PERMITS AND INSPECTION**

Where a zoning code is clear in its standards and requirements, its provisions can be equitably applied to all property and can be administered directly through the administrative agencies issuing licenses and permits. In Los Angeles, the Building and Safety Department is assigned the responsibility for zoning enforcement. If the recommendations of our Committee are carried through, we find no reason for recommending changes in this area of administration.

### **INTERPRETATION OF THE ZONING CODE<sup>11</sup>**

A second level of administrative action arises when the Zoning Code is ambiguous, causing uncertainty as to its meaning in some situations. In Los Angeles the Building and Safety Department, as the enforcing agency, has the initial responsibility to interpret the Zoning Code. However, its decisions are appealable to the Office of Zoning Administration, with further appeal possible to the Board of Zoning Adjustment. In addition, the Office of Zoning Administration is specifically charged with making certain types of interpretations, such as augmenting the list of land uses permitted in each zoning classification.

We are not aware of specific complaints in this area of administration although there is the possibility that inconsistency between the interpretations of the Building and Safety Department and the Office of Zoning Administration does exist. This possible duplication of interpretive authority should be examined in connection with the revision of the Zoning Code as recommended in Chapter 1.

<sup>11</sup>Because of the judgmental factors involved, interpretations and conditional use permits are, in a sense, quasi-judicial as well as administrative matters. For the purposes of this report, they are classified as administrative because of the emphasis we place upon limiting such actions by detailed legislative requirements.

## CONDITIONAL USE PERMITS

**Recommendation 7: Amend the Zoning Code to establish uniform regulations and criteria for specific uses named in the Code as being subject to review and approval with conditions. The consideration and approval of such conditional uses should be an administrative matter under the jurisdiction of the Office of Zoning Administration with appeal to the Board of Zoning Appeals and any further appeal to the courts.** (The Committee intends to submit more detailed recommendations and proposed legislation concerning conditional use permits in a subsequent report.)

The board is presently named the "Board of Zoning Adjustment," but is recommended for change of title to "Board of Zoning Appeals" under a succeeding recommendation of this report.

A third level of administrative decision-making occurs when the Zoning Code intentionally provides for the exercise of discretion in certain specified situations. If the legislative body authorizes administrative discretion without supplying legislated standards to guide the administrator, the authorization is an unwarranted and presumably illegal delegation of legislative power. For an administrative body or the City Council acting in a review capacity to abuse such discretion by going beyond the limits of the legislated standards is equally improper and illegal.

This kind of administrative power is involved in conditional use<sup>12</sup> matters. We find that in some instances serious abuses of the conditional use authority have developed in Los Angeles. This is a subject of major concern to the Committee. There are valid reasons for the proper application of the conditional use technique for controlling certain problem uses and some public service uses, but the serious dangers of discriminatory action must be recognized and avoided.

<sup>12</sup>In other jurisdictions, terms such as **special use permit**, **unclassified use permit**, **zoning exception**, or **special exception**, are sometimes used instead of the term **conditional use permit**. We believe **conditional use permit** is the more accurate and descriptive term except for the limited group of uses discussed in the next section as **unclassifiable uses**.

The correct view of the conditional use procedure is that it provides for administrative action within legislative guidelines.<sup>13</sup> This necessary and proper emphasis on conditional use decisions being limited by definite guidelines or criteria within the Code is a completely different approach from the wide open provisions of the present Code.

The conditional use section of the Zoning Code provides for consideration of certain types of land uses<sup>14</sup> which because of unusual characteristics are neither automatically permitted in, nor absolutely prohibited from, some zone classifications, and for which definite standards of development have not been written into the Zoning Code. In effect, the City has said such a use may or may not be allowed in a given district, that each case will be treated individually, and that the City will write a special set of regulations or conditions for each such use if and when permitted. The Committee condemns this practice.

The present Code provisions on conditional uses are confusing since some types are under the original jurisdiction of the City Planning Commission appealable to the City Council, while others are handled directly by the Office of Zoning Administration. Of those handled by the Office of Zoning Administration, all are appealable to the Board of Zoning Adjustment, but some of these are further appealable to the City Council while others by implication are reviewable only by the courts (see Figure 3).

The present requirements of the Code for approval of conditional uses are stated too broadly. For a few uses one or two limiting standards are prescribed but for the most part administrative discretion is unfettered.

For those conditional uses to be considered by the City Planning Commission and for those assigned to the Office of Zoning Administration but eventually appealable to the City

<sup>13</sup>Section 65901 of the State Planning and Zoning Law provides that: "The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining such matters. . . ." (emphasis added).

<sup>14</sup>As designated in Sections 12.24B1, 12.24C1 and 12.24C1.5 of the present Zoning Code.

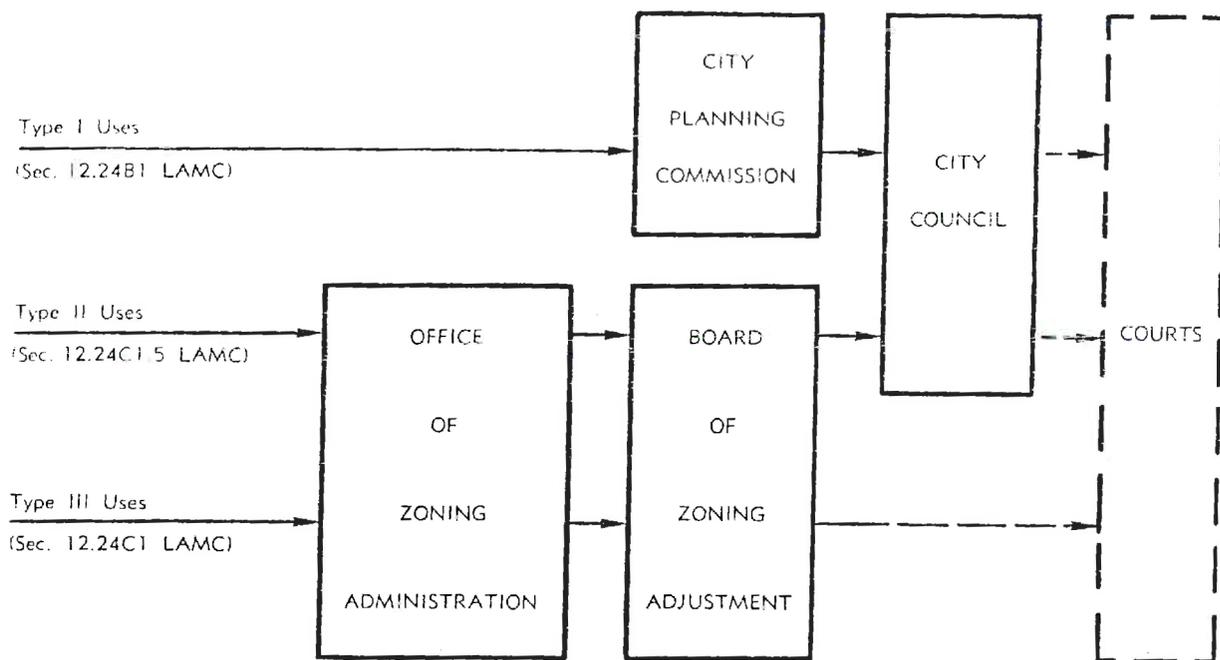


Figure 3. Present Conditional Use Procedures

Council, the only criteria prescribed in the Zoning Code are:

... that the proposed location will be desirable to the public convenience or welfare and will be in harmony with the various elements and objectives of the Master Plan.<sup>15</sup>

For the conditional uses assigned to the Office of Zoning Administration and appealable only to the Board of Zoning Adjustment, the Code requirements are:

... that the location is proper in relation to adjacent uses or the development of the community and to the various elements and objectives of the Master Plan, and that the use will not be materially detrimental to the character of the development in the immediate neighborhood.<sup>16</sup>

We find these vague requirements to be manifestly inadequate as standards for the equitable and consistent exercise of administrative authority. The regulatory intent and standards must be provided by law; but, because the application of these standards to individual complex situations requires analysis

and judgment, the specific rules or conditions to be followed in a given situation must be applied administratively. When the legislation authorizing conditional use procedures is either lacking or inadequate to serve as a sufficient guideline concerning the standards to be applied by the administrative authority (whether that authority is a department, commission or the City Council itself), legislative power is being improperly delegated. This is a flagrant violation of the basic legal requirement that legislative power can reside only in the elected legislative body. Moreover, the Council is required to act in accordance with its own ordinances.

The State of New York dealt with this problem a number of years ago when it advised local governments that:

The inclusion of only general language to the effect that the special use must be in character with the surrounding area, harmoniously developed, or that the public welfare shall be served, in the opinion of the Board of Appeals or other reviewing agency, has not proved to be an acceptable standard, and has been criticized by the courts. Therefore, in justice to the applicant and the Board of Appeals, every effort should be made to

<sup>15</sup>Los Angeles Municipal Code, Sections 12.24B1 and 12.24C1.5.

<sup>16</sup>Ibid; Section 12.24C1.

public health, safety and general welfare and to serve the economic, social and individual needs of the population. Adherence to this purpose then would justify police power regulation by zoning and other laws to implement the General Plan.

3. Definition of intended scope. The required comprehensive nature of the General Plan should be clearly set forth so that: (a) the land use element and all other major functional elements are encompassed; (b) the complete range of public objectives is recognized; (c) all possible time spans into the future for which plans can reasonably be made are covered (probably with varying degrees of generality); and (d) all of these aspects are coordinated over the entire territory of the City (although the Plan may be adopted in logical area units from time to time).

We find three general areas of confusion relating to the preparation and use of the General Plan in Los Angeles: confusion about its purpose and importance; confusion about its content; and confusion about procedures for its adoption (discussed under Recommendation 2). As to confusion about the purpose and importance of the General Plan, there is evidence that the confusion exists among City employees, commissioners and legislators, as well as in the minds of the general public. The statement "the General Plan is only a guide" is often heard, and may be literally true, but the implication is that the General Plan can be ignored when it is convenient to do so. The General Plan should be given full consideration in all planning and zoning actions. To ignore it is to waste the resources used in the preparation of the Plan.

This confusion may result from changing concepts over the years, due in part to the lack of any clear statement of purpose in the Charter. In the past, some people may have considered a General Plan to be merely a working tool of the Planning Commission and not something of direct concern outside of the deliberations of that body. That this view is no longer valid is confirmed by the City Ad-

ministrative Officer in his June 1965 Management Audit Report of the City Planning Department:

... it is the City's master plan and not the property of any one department. General City interest and participation is necessary if the plan is to be complete and practicable.<sup>5</sup>

The concept of the General Plan as a policy statement of the City government is supported by the opinion of the City Attorney<sup>6</sup> that under the present Charter the Master Plan is official only when adopted by the City Council. And the recent revitalization of the Master Plan Advisory Board (consisting of City department heads and other key officials) demonstrates the growing recognition of this principle. Yet no statement of the basic purpose of the Master or General Plan appears in the City Charter, leaving the door open to disagreement and misunderstanding concerning its proper role.

A second area of confusion concerns the content of the General Plan. The present Master Plan document consists of a great variety of maps, reports, elements and area plans prepared and presented in various ways and with varying degrees of formal endorsement. Legally (that is, as adopted by the City Council) the present Master Plan consists essentially of area land use plans covering approximately two-thirds of the City and of City-wide public facilities plans for highways and freeways, libraries, fire stations and three civic centers. By way of contrast, the State law requires a general plan to consist of a statement of development policies: it must include land use, circulation, population and housing elements and may include any number of additional elements such as conservation, recreation, transportation, transit, public services, public buildings and safety.<sup>7</sup>

We find that a General Plan has not been suitably prepared to serve as a basis or guide

<sup>5</sup>C. Erwin Piper, City Administrative Officer, **Management Audit Report of City Planning Department**, June, 1965, p. 14.

<sup>6</sup>Roger Arnebergh, City Attorney, "Opinion re Master Plan City of Los Angeles; Law Governing and Procedure to be Followed in Adoption or Amendment Thereof; Notice and Hearing in Connection Therewith," April 16, 1966.

<sup>7</sup>California Government Code, Sections 65302-65303.

for zoning. In some parts of the City, the land use element of the Plan is nothing more than a generalization of the previously adopted zoning pattern as it existed in the late 1940's. In other parts of the City, the adopted land use element of the Plan consists of precise zoning maps serving as a guide for piecemeal zoning changes. In still others areas of the City, progress has been made in recent years in adopting plans, for communities or larger areas, which more nearly approach the proper concept of a general plan as an over-all policy guide designed to serve as a basis for implementation by zoning and other official actions, rather than being merely a reflection of previous zoning decisions.

The present City Charter is of little help in defining what the content of the General Plan should be. It refers to the State law definition of the term **master plan**, now more commonly called the **general plan**.<sup>8</sup> The City Attorney, however, has indicated that this definition does not apply except as all or part of the State law definition might be accepted by the City Planning Commission.<sup>9</sup> In an action on August 14, 1967, the City Planning Commission determined that the Master Plan shall include circulation and transportation elements as defined in the State law. The **Master Plan Advisory Board**, which should be renamed the **General Plan Advisory Board**, has considered a list of the elements which might be included in the General Plan, but apparently no complete outline of the desired content of the General Plan has yet been officially adopted.

The main purpose of defining the General Plan content should be to insure comprehensiveness. We find that there are at least four dimensions of comprehensiveness which should be recognized:

1. **Geographic**—The entire area of the City should be covered. However, because of the large size and peculiar boundaries of the City, it is not always practical to consider the entire City as a single planning unit. Therefore the City should be divided into smaller units for planning purposes—but any such

unit should be an area of substantial size, with social and economic identity. An area-by-area planning procedure is suggested in a succeeding section of this chapter. It should always be recognized, however, that all city planning activities must be carried on within a regional planning context.

2. **Subject Matter**—If effective coordination is to be achieved, all physical elements of the City must be recognized and included.

3. **Objectives**—All public goals including those for social and economic achievement as well as for the improvement of the physical environment must be considered and inter-related.

4. **Time**—A useful general plan cannot be just a picture of what is to be achieved at a date in the future such as twenty years; it must also indicate the intermediate steps or sequence of changes as they are proposed to occur over the period of time extending from the present into the foreseeable future.

The City Planning Department has been making progress over the past several years in moving toward a truly comprehensive general plan. However, its work has been hampered by a lack of common understanding as to the content of a general plan. Pending amendment of the City Charter this problem could be solved by a suitable definition adopted by the City Planning Commission.

To the extent possible and found desirable, the Charter and Code provisions concerning the General Plan should be similar to those contained in the State Planning and Zoning Law, Sections 65300 to 65402 of the California Government Code.

To implement Recommendation 1, the Charter preferably should have a separate section on the General Plan. Its provisions should not be too detailed and should establish minimum procedural requirements only. However, it should be sufficiently clear to make the Plan a guide or standard which must be recognized as a basic consideration in all legislative, administrative and quasi-judicial acts relating to planning, zoning and other city development matters. In addition, a General Plan Code should be provided as part of the Municipal Code, setting forth more detailed requirements on form, content and procedure.

<sup>8</sup>Los Angeles City Charter, Section 95(a), and California Government Code, Sections 65302-65303.

<sup>9</sup>City Attorney, "Opinion," *op. cit.*

## PROCEDURE

Pursuant to the Charter amendment under Recommendation 1, more detailed procedure should be provided for as follows:

**Recommendation 2: Provide by ordinance for adoption and amendment of the General Plan according to the following pattern:**

1. Study initiated by the Director of Planning, City Planning Commission or City Council.
2. Preparation of General Plan proposals by the Director of Planning with the advice of the General Plan Advisory Board and the City Planning Commission.
3. Public notice and hearing on the Director's recommendations to be conducted by the City Planning Commission or a Hearing Examiner at a certain time and place.
4. Recommendations by the City Planning Commission. Any changes from the recommendations of the Director shall be referred to the Director for report prior to action by the Commission.
5. Transmittal of the City Planning Commission's recommendations to the City Council with a copy to the Mayor. The Mayor may send comments or recommendations to the Council within thirty days.
6. Public notice and hearing by the City Council (or the Planning Committee of the Council) not less than thirty days after receipt of the Commission's recommendations.
7. Prior to Council adoption, any proposed changes from the Commission's recommendations must be referred back to the Director of Planning for report through the Commission with copy to the Mayor. Such report must be received within forty days or such longer period as the Council may designate.

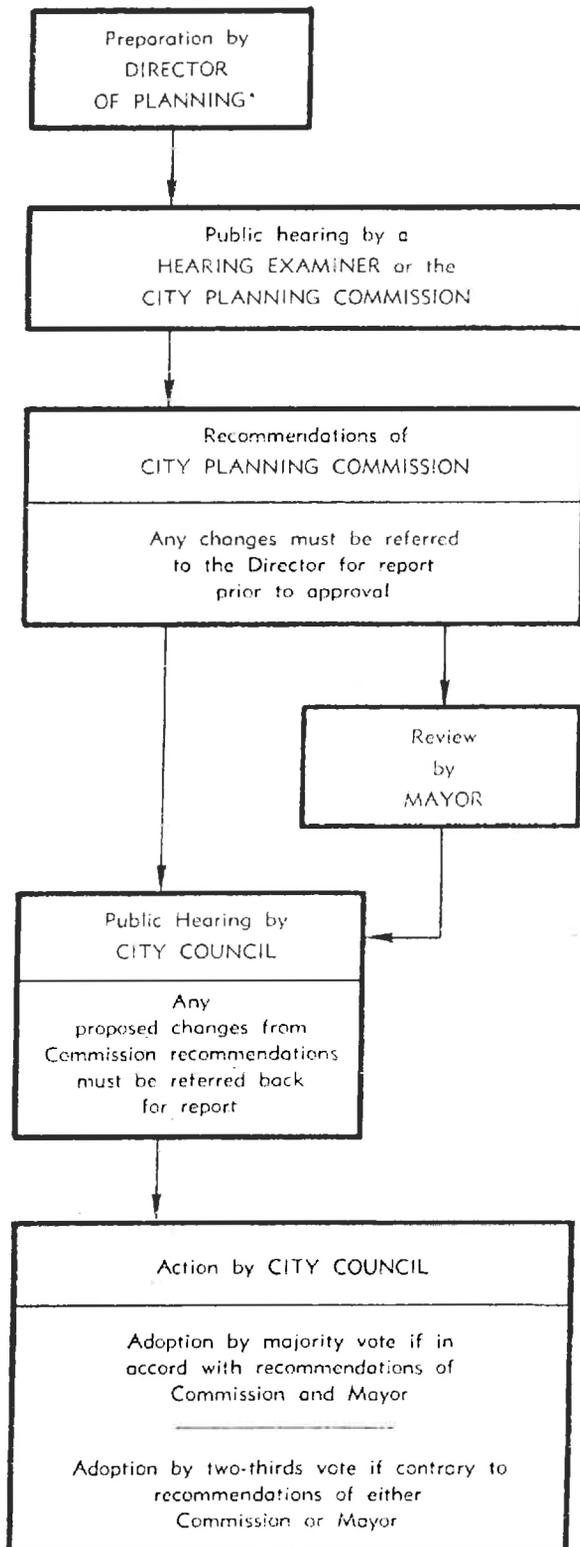
**8. Final action by the City Council within thirty days after conclusion of its public hearing if no changes are made, or within thirty days after receipt of the Commission's report if changes are being considered. Adoption of the General Plan or any part shall be by majority vote if in accord with the recommendations of both the Commission and the Mayor. A two-thirds vote shall be required to deviate from the recommendations of the Commission or Mayor after resubmission.**

## **9. Publication of General Plan as adopted.**

The above recommendation is designed to improve procedures for adoption and amendment of the General Plan—the third area of confusion with reference to the General Plan. The proposed procedure is illustrated in Figure 2. The Charter is sketchy on this subject and there has never been a supplementing ordinance.

Under present provisions, the Director of Planning prepares the Master Plan with the advice of both the Master Plan Advisory Board and the City Planning Commission. Provision is made for adoption by the City Planning Commission followed by transmittal to the City Council. There is no requirement for public notification or hearing, and the responsibility of the City Council to take final action is not clear. No provision is made for participation by the Mayor other than as a member of the Master Plan Advisory Board.

Because the General Plan is an important public policy statement, it needs to be considered and adopted by resolution of the City Council after public hearing. A definite procedure should be established to notify the public of such public hearing. All responsible public officials should provide the leadership and resources to make the Plan effective, and the responsibilities of the Mayor and Council for the General Plan should not be left in doubt.



\*With advice of the Master Plan Advisory Board and the City Planning Commission.

Figure 2. Recommended General Plan Procedure

## AREA-BY-AREA CONSIDERATION

**Recommendation 3:** Provide for the adoption or amendment of the General Plan on a scheduled area-by-area basis, each area covering less than the entire City, but must involve comprehensive consideration of a logical planning area. The General Plan should be reviewed on this regularly scheduled area-by-area basis, such schedule and areas to be established by the City Council upon recommendation of the Director of Planning and the City Planning Commission.

For a city the size of Los Angeles, planning must be carried on at several levels of geographic coverage. At the broadest level, the entire City must be seen as a whole, but in many respects this can only be done by participating in regional planning for the larger urban area of which the City is a part. Such regional planning should provide a general framework within which somewhat more detailed planning can be done for smaller areas which form logical and workable local planning units.

For some purposes, subregional areas such as the entire San Fernando Valley constitute logical planning units, but for many purposes it is necessary to deal with community-size units such as Hollywood, San Pedro, Pacific Palisades and the central business district.

Effective planning must be a continuing process. A general plan which no longer reflects the aims of the people, the realities of existing situations or the latest reliable social, economic and technological forecasts is a useless plan. In view of the size and diversity of the City of Los Angeles, it is apparent that much of the material which should constitute the City's General Plan can only be adequately maintained through a continuing area-by-area process of study and revision.

A completely piecemeal approach to General Plan amendments would defeat the principle of comprehensiveness and destroy the integrity of the Plan. To prevent this, any change in the Plan should be viewed in at least a community-wide context. Therefore, in the above recommendation we propose that recognized community areas with social and economic identity be the minimum size units for general plan study and revision.

## ZONING

### GENERAL PLAN RELATIONSHIP

It should be made clear that implementation of the General Plan is a required component of acceptable zoning practice.

**Recommendation 4: Amend the City Charter to require that in adopting or amending any zoning regulations or zoning maps, the City Planning Commission and City Council shall make specific findings showing that the action is in substantial conformance with the purposes and intent of the General Plan. If the City Council does not adopt the Commission's findings, the Council shall adopt specific findings showing that its action is in conformance with the General Plan.**

All too frequently zoning regulations have been established without the prior adoption of a general plan or without reference to a general plan. Los Angeles has not always avoided this unfortunate tendency to ignore a cardinal principle of sound city planning.

Among the long-established legal principles upon which zoning should be based is that it must be consistent and nondiscriminatory; that is, property in like situations must be treated similarly. Also, zoning must be reasonable; that is, the restriction on individual rights must be logically related to the attainment of a valid public purpose. A general plan, among other things, should serve as a means of defining and demonstrating the fairness and logic of the zoning restrictions applied.

Too often, however, the General Plan has not been brought to bear in the legislative adoption of zoning regulations. Testimony before the Committee pointed out numerous cases where zoning actions were apparently influenced far more by individual arguments, circumstances and pressures than by a consistent and logical rationale for achieving a long-range community plan.

One reason for this situation lies in the vague and permissive language of the City Charter regarding the nature and purpose of the General Plan and the relationship of zoning to the General Plan. Section 97(2)(a) of the Charter merely requires that proposed

zoning legislation be referred to the City Planning Commission for report and recommendation as to its relation to and effect upon the Plan, but contains no requirement that zoning legislation should in fact be consonant with the Plan.

In addition, the Zoning Code is silent on the overall relationship between zoning and the General Plan.

Thus, we find that the proper relationship between zoning and the General Plan has not been adequately recognized either in law or in practice.

Amending the Charter as proposed would (1) firmly establish the relationship between zoning and the General Plan as a matter of law, (2) require that zone change applicants and City officials recognize this essential relationship and (3) aid the courts in determining if challenged actions have deviated from the requirements of contributing to the public welfare in a reasonable and fair manner.

### ZONING CODE REVISION

**Recommendation 5: A complete revision of the Zoning Code should be promptly initiated. However, since two years or more will be required for this revision, certain changes as recommended in this report should be enacted as soon as possible, pending the completion of the over-all revision.**

With respect to present zoning ordinances or the Zoning Code of the City, the Committee has received considerable testimony regarding its patchwork nature—both as to the text of the regulations and the Zoning Map.

In 1946, after several years of concentrated study, a completely new zoning ordinance and map were prepared and adopted—covering the entire City for the first time. Although it was an outstanding piece of work, it has subsequently undergone more than 300 amendments to the text and several thousand changes to the Map. Practically none of these changes has involved a comprehensive study and revision of a major section of the text or a major portion of the Map. Rather, each amendment has been designed to meet a specific situation or a change in circumstances as they arose.

There is now scarcely a paragraph of the Code that has not been amended. Some sections have been repealed and some sections added to cover subjects new and different from those contemplated in the original ordinance. The result is that the Code has become more and more confusing, apparent inconsistencies have increased and the applicable provisions on any given subject are difficult to locate and apply because a logical and orderly structure to the Code no longer prevails.

More basic, however, are the problems which arise because of the significant technological, social and economic changes which have occurred over the last two decades. These changes in turn have given rise to advances in planning and zoning concepts and in legal attitudes reflected in court decisions throughout the country; but many of these advances have not yet been adopted in Los Angeles.

Perhaps the most telling evidence of the inadequacy of the present Zoning Code is simply to look at the development which has occurred in recent years. We have in mind the low-rise, box-like apartment houses which are simply designed to use up all the space which the zoning ordinance allows, without regard to the desirability of open space and some semblance of privacy. Or we can view the jumbled commercial areas where different kinds of businesses have no functional relationships with each other. And we are concerned about the growing ugliness of these areas with their profusion of signs and the vast expanses of parking lots devoid of landscaping.

Complete review and redrafting of the Zoning Code are long overdue. A thorough study should be initiated as soon as possible, utilizing the best available consultants together with technical and legal assistance from City departments. This study should be carried forward in a concerted and expeditious manner until a comprehensive revision of the zoning regulations is achieved.

The Mayor's request for funds for such a study has been approved in the 1968-69 Budget. To aid in the study we suggest the City Attorney assign one of his assistants

on a continuing basis to provide legal advice on the drafting of the new Zoning Code.

We have particularly noted the following suggestions or areas of concern which should be considered, in addition to points recommended elsewhere in this report for more immediate action:

1. The term **comprehensive zoning plan** should be dropped because it is sometimes confused with the **comprehensive general plan**, and may lead to the inference that individual actions such as variances, conditional uses and piecemeal zone changes may be considered apart from comprehensive zoning. The term **Zoning Code** should be used for the entire section of the Municipal Code dealing with zoning, and the term **Zoning Map** should be used for the maps or plans adopted as part of the Code to show the zoning of the City.

2. The grouping of land uses into the various classifications should be established to insure compatibility with each other, including a consideration of performance standards, which are now being used in many jurisdictions.

A part of the difficulty in Los Angeles is attributable to the fact that the uses permissible in any one of the zones, particularly the commercial zones, operate almost totally contrary to those criteria or principles that determine relative compatibility. For instance, in a commercial zone, an auto body repair plant is permitted even though adjacent to apartments. Also, the permitted uses include such businesses as second-hand car operations, a use which involves large open spaces—dead spaces which are inappropriate among a group of shopping facilities—where shoppers might have to go a block or two blocks to get to the next retail store. In the past, Los Angeles has largely ignored this line of reasoning and it should be considered when the zoning ordinance is revised.

Classifying uses on the basis of performance standards has become increasingly prominent in recent years in zoning practice. By giving consideration to characteristics of uses such as population density, hours of operation, traffic flow, physical hazard, noise and pollution, the level of performance should be an important factor in determining the zoning classification for each use.

3. A provision should be considered that in the revised Zoning Code there should be a designation on the Zoning Map of intended future zoning classifications. This technique, which has been successfully employed elsewhere, gives official recognition to anticipated changes of land use in the affected areas. Such changes are not to be permitted until some time in the future or until their exact location and extent are determined. By this means, spotty or piecemeal changes can be avoided. Putting everyone on notice that a change is contemplated will help to avoid the creation of barriers to such change and may encourage joint action by owners to accomplish the change at the appropriate time. It would also tend to promote a suitable sequence of development or redevelopment.

4. Incorporate in appropriate ordinance form up-to-date development standards for signs, parking areas, open space, landscaping, commercial outdoor displays of merchandise and other such matters.

5. The present standards for lot size, setbacks, etc., which are applicable to individual lot-by-lot development should be supplemented with density and open-space standards which will apply to group developments on large parcels.

6. Provide means for tighter control over compliance with special limitations or conditions which are imposed under variances or conditional uses.

7. Clarify the provisions for termination of conditional uses and variances, including a review of the provisions for revocations of variance and conditional use approvals under circumstances of noncompliance.

8. Provide for a simplified procedure to consider certain limited types of temporary conditional uses under criteria and standards specified by ordinance. Conditional approval of such uses should require written findings by a Zoning Administrator and a hearing could be held but would not be required.

This suggestion is intended to provide for the authorization of certain types of temporary land use under conditions which will protect surrounding property. Under the present situation many short-term land uses, such as Christmas tree sales, on-site contractors'

yards, fairs, carnivals or other special events, are likely to occur as zoning violations with no control. This is because the conditional use or variance procedures are too cumbersome and time-consuming in relation to the time period over which the use exists. At present, effective zoning enforcement action against such violations is difficult, if not impossible, for the same reasons. Uses eligible for temporary conditional use approval should be limited to types specified in the Code and should involve no permanent construction or change in the terrain. A definite maximum time limit should be established for all such uses.

9. Eliminate any overlapping of authority between the Office of Zoning Administration and the Building and Safety Department concerning slight modification variances.

10. Clarify the role of the Office of Zoning Administration as the quasi-judicial agency of the City responsible for resolving any uncertainties as to the application of the zoning regulations, subject to appeal to the Board of Zoning Appeals. This authority should include:

- a. Appeals from Building and Safety Department orders as now provided for in Section 12.27A of the Code.
- b. Maintenance of the extended list of land uses permitted in the various zones as now provided for in Section 12.21A2.
- c. Minor zone boundary adjustments, now assigned to the City Planning Commission under Section 12.30G, H, J and K.
- d. Yard and fence adjustments as provided for in Section 12.27C.
- e. Such other determinations as are necessary to clarify and apply the provisions of the Zoning Code.

11. Strengthen the provisions for termination of nonconforming uses. This should be accomplished in a realistic manner so as to avoid the unreasonable confiscation of property rights on the one hand, and to avoid delays in accomplishing the intended result on the other hand.

12. Permit following the provisions of the California Planning and Zoning Law insofar as possible and appropriate.

13. Where possible and appropriate, establish terminology and format generally uniform with other local jurisdictions.

14. The Zoning Code should be organized and written in a style that is easy to understand and apply. The published Code should be supplemented with illustrations and diagrams which clarify the intent and application of the regulations.

We are making a number of other recommendations, found elsewhere in this report, which involve amendment of the Zoning Code. These other recommendations are of such importance that they should be adopted at an early date as amendments to the present Code and not be left for consideration as part of the overall study and revision of the Zoning Code recommended in this section—a study which may require two years or more.

#### **ZONING MAP—REVISIONS BY AREA**

**Recommendation 6: Establish a procedure for review and revision of the Zoning Map of the City on a regularly scheduled area-by-area basis, such schedule and areas to be established by the City Council upon recommendation of the Director of Planning and the City Planning Commission. Provide in the Charter and Zoning Code, that, unless there are exceptional circumstances affecting the public interest, requests for zone changes should be processed for a given area only during the regularly scheduled review of the area in which the property lies.**

We find that the Zoning Map of the City is indeed in need of over-all review and updating. Since the City-wide rezoning in 1946, the City has relied almost entirely on individual applications from property owners to initiate changes in the Zoning Map.

A feature unique to present-day zoning legislation is that the individual property owner is given the relatively unrestricted privilege of applying for a legislative change and then is able to force consideration of his particular request through the entire legislative process. Although valid reasons can be found for this arrangement, it is doubtful that it was originally intended to be more than a rarely used provision which would serve to

protect the individual property owner from grossly unfair zoning. The fact that zone changes by owners' applications rather than by City initiative has become so prevalent is substantial evidence that the City is failing in its responsibility to keep its zoning legislation up to date.

In Los Angeles, however, it must be recognized that the problems of very rapid and large-scale growth and the need to insure that adequate street and utility improvements are made as development occurs has led to this system of allowing the Zoning Map to lag rather than lead development pressures. In effect, the individual zone change is being used as a development permit rather than having zone changes by large areas which would serve as a development guide. By withholding final action on zone changes until subdivision maps are approved, evasion of the subdivision map approval process with its improvement requirements is prevented. This distortion of zoning procedure has been partially corrected with the adoption of the "T"-tentative classification concept. However, owner applications are still relied upon to initiate most zone changes.

This system of using the zoning itself as a development permit device has led in turn to distortion of the General Plan for many areas of the City. In response to the need for some statement of the over-all zoning pattern likely to evolve out of the piecemeal zoning map changes being made, the adopted land use element of the General Plan has tended in some areas to become a rather detailed pre-zoning map.

Particularly in rapidly changing areas, reliance upon the owners' applications to initiate zone changes often results in inefficient, repetitious consideration of the same areas. For example, three separate zone change applications might be filed within a few weeks and involve properties within a few blocks of each other. Unless a special study of the whole area has been initiated, the Department staff and Commission have no choice but to make separate field investigations and reports, hold separate hearings and make separate decisions on these three cases even though most of the information and issues involved are the same.

More importantly, there is not always the opportunity to consider all three matters for their combined interrelationships and impact upon the community before making a decision on any one of them. Obviously with this piecemeal procedure the public is unnecessarily inconvenienced and less able to grapple effectively with the basic community issues which may be involved than would be the case if all the changes for an area could be considered at one time.

Because the City is failing to keep its Zoning Map up to date unless property owners file applications, the imposition of a substantial application fee, to say nothing of the outside costs in time and money for the applicant to present and support his case, produces an additional inequity upon a single small property owner. The large landowner or developer or prospective commercial or industrial land user is not likely to be deterred by such costs, while the individual resident or small businessman will be likely to accept and live with the existing zone pattern in view of the costs, the difficulties of organizing one's neighbors and the uncertainty of the outcome.

It will be impractical to attempt to revise the Map for the entire City at one time. Also, in recognition of the need for the Zoning Map to be more effectively related to the General Plan and of the proposal that community general plans should be regularly prepared and revised on a scheduled area-by-area basis, changes to the Zoning Map should be accomplished on a similar area-by-area basis. By coordinating General Plan and Zoning Map studies, the same field surveys, basic research and analysis could be applied to both, with resulting efficiency, economy and comprehensiveness in Planning Department operations.

The City Planning Department should propose standards for the minimum size and characteristics to be considered in determining such zoning study areas—normally they should correspond to or be logical subunits of General Plan study areas. The Department should also immediately undertake a study to divide the City into appropriate areas for this purpose, develop a proposed schedule and estimate the budget and personnel required to support this activity. The City Council should then adopt

such a schedule and provide the necessary support for the program.

Further details concerning policy for the bounding and scheduling of areas to be considered will need to be worked out. There probably should be a minimum and maximum time between the reviews of any given area. It may be desirable to have overlapping boundaries of the adjacent areas so that fringe area adjustments can be made when changes occur in the basic pattern of any one of two or more nearby communities. However, in order to prevent gerrymandering of boundaries, the boundaries of an area should probably be reviewed following each Zoning Map revision and then must not be changed until after the next revision.

A corollary to this area-by-area procedure is the need to delay action on individual zone change requests until the area as a whole is considered. At present, delays up to 180 days are possible.<sup>10</sup> It is recommended that this time limit be broadened to require withholding of action on individual requests until the next regularly scheduled area review, regardless of the length of delay involved. However, this procedure should not preclude acting on special cases on an individual basis when unusual and acceptable reasons to do so are present. Criteria should be established by ordinance to assist in determining when these exceptional circumstances exist. Such out-of-turn zone change proceedings should only occur to meet pressing public needs and not for the special convenience of particular property owners. Upon request, a determination as to whether or not the required public interest criteria are met in order to justify out-of-turn consideration of a zoning case should be made by the Planning Commission after staff report. Such determination would be appealable to the City Council.

The experience in Pasadena, where zoning applications are only received and considered on a semiannual basis, provides an indication of the benefits of this proposed

<sup>10</sup>Los Angeles Municipal Code, Section 12.32D2.

area-by-area procedure. In that city, the number of zone change requests is relatively small and the procedure is readily accepted by the public. There seems to be a tendency for requests to cover block-sized areas rather than one or two lots, and for the requests to be considered more on the basis of community needs rather than solving individual problems and satisfying individual desires.

Once an area-by-area procedure is fully operative, we believe the number of separate zone change cases processed in Los Angeles will be substantially reduced and the result will be better and more stable zoning.

## CONCLUSION

In summary, we believe that in order to create a sound legal basis for land use control, the City of Los Angeles needs (1) a more definite foundation in the City Charter and Municipal Code for general planning, (2) the completion and maintenance of a suitable General Plan as the policy basis for the zoning regulations, the Zoning Map and other specific plans, (3) the passage of enabling legislation for zoning to clearly establish this relationship between the General Plan and the Zoning Code, and (4) the complete revision, updating, and maintenance of the Zoning Code and Map so as to lead rather than follow the future development of the City.

## CHAPTER 2

# UNRAVELING THE LEGISLATIVE, ADMINISTRATIVE AND QUASI-JUDICIAL FUNCTIONS

### GENERAL OBJECTIVES

To clearly establish the proper distinction between legislative, administrative and quasi-judicial functions as they pertain to planning and zoning matters.

To prevent improper deviations from the land use plan and standards established by the General Plan and the Zoning Code.

Zoning regulations are established legislatively, must be applied by administrative action, and are subject to quasi-judicial adjustment to assure equal treatment for all citizens.

As a use of the police power, zoning must be reasonable, fair and consistent. Yet, because zoning is concerned with a great variety of uses of land located on parcels of various sizes, shapes and characteristics and because substantial sums of money are often involved in land development, a strong tendency emerges to depart from the principle of fair and equal treatment. When individual requests are made for zoning actions of one sort or another, the stage is set for treating the individual property as a separate case rather than as a part of a whole—in short, to substitute the rule of men for the rule of law. Giving way to this tendency would inevitably lead to complete chaos as far as land use planning and control are concerned, and zoning would become a mockery of the principle of equality before the law.

In our system of government, the basic protection against this tendency lies in the maintenance of the separation of powers among the three branches of government — legislative, executive and judicial — with each

exercising checks and balances in relation to the others. Unfortunately, in local government, particularly in the zoning field, the distinction between these powers has become seriously blurred.

Once a zoning pattern and regulations have been established on an over-all basis, modifications to the basic requirements may occur in three ways:

1. **Legislatively** — Amending the zoning map or the text of the zoning regulations by ordinance.

2. **Administratively**—Determining the application of the ordinance to specific situations within whatever limits and according to whatever guidelines are provided by ordinance.

3. **Quasi-Judicially**—Applying judgment to achieve equal treatment within the intent of the regulations although some deviation from the literal requirements may be involved.

When an administrator overlooks the law or interprets it in a certain way for one property owner and in another way for a different property owner, or when a quasi-judicial body with the power to grant variances uses that authority to grant special privilege rather than to prevent discrimination, then legislative authority is being usurped. When a legislative

body establishes special regulations applying to one piece of property but not to other similar properties without a substantial reason in terms of serving the general community welfare, the legislative body is going beyond its legally granted power.

In smaller cities the city council, in addition to its legislative responsibilities, often acts as both the final administrative and quasi-judicial authority in zoning matters—a situation which tends to perpetuate confusion concerning the legal powers involved. In Los Angeles the City Charter vests certain administrative powers in the City Planning Commission and the City Planning Department, and quasi-judicial powers in the Office of Zoning Administration and the Board of Zoning Adjustment. However, the City Council retains some administrative authority, some administrative decisions have been transferred from the City Planning Commission to the Board of Zoning Adjustment, and the Board of Zoning Adjustment has at times acted as if it had legislative authority. Thus, although the original intent in Los Angeles was to establish separate agencies for the legislative, administrative and quasi-judicial functions, their powers have become mixed, and confusion has been compounded.

### LEGISLATIVE FUNCTIONS

In the recommendations of Chapter 1 we sought to strengthen the proper role of the legislative body by providing for the adoption of all zoning regulations in the light of comprehensive, community-wide considerations, and for the constant balancing of individual requests against these public interest considerations. It is then the responsibility of the administrative and quasi-judicial agencies of government to see that the legislative policies and standards are reasonably and equitably applied.

### ADMINISTRATIVE FUNCTIONS

Administrative authority can be exercised at several levels which have different degrees of latitude and discretion.

### PERMITS AND INSPECTION

Where a zoning code is clear in its standards and requirements, its provisions can be equitably applied to all property and can be administered directly through the administrative agencies issuing licenses and permits. In Los Angeles, the Building and Safety Department is assigned the responsibility for zoning enforcement. If the recommendations of our Committee are carried through, we find no reason for recommending changes in this area of administration.

### INTERPRETATION OF THE ZONING CODE<sup>11</sup>

A second level of administrative action arises when the Zoning Code is ambiguous, causing uncertainty as to its meaning in some situations. In Los Angeles the Building and Safety Department, as the enforcing agency, has the initial responsibility to interpret the Zoning Code. However, its decisions are appealable to the Office of Zoning Administration, with further appeal possible to the Board of Zoning Adjustment. In addition, the Office of Zoning Administration is specifically charged with making certain types of interpretations, such as augmenting the list of land uses permitted in each zoning classification.

We are not aware of specific complaints in this area of administration although there is the possibility that inconsistency between the interpretations of the Building and Safety Department and the Office of Zoning Administration does exist. This possible duplication of interpretive authority should be examined in connection with the revision of the Zoning Code as recommended in Chapter 1.

<sup>11</sup>Because of the judgmental factors involved, interpretations and conditional use permits are, in a sense, quasi-judicial as well as administrative matters. For the purposes of this report, they are classified as administrative because of the emphasis we place upon limiting such actions by detailed legislative requirements.

## CONDITIONAL USE PERMITS

**Recommendation 7: Amend the Zoning Code to establish uniform regulations and criteria for specific uses named in the Code as being subject to review and approval with conditions. The consideration and approval of such conditional uses should be an administrative matter under the jurisdiction of the Office of Zoning Administration with appeal to the Board of Zoning Appeals and any further appeal to the courts.** (The Committee intends to submit more detailed recommendations and proposed legislation concerning conditional use permits in a subsequent report.)

The board is presently named the "Board of Zoning Adjustment," but is recommended for change of title to "Board of Zoning Appeals" under a succeeding recommendation of this report.

A third level of administrative decision-making occurs when the Zoning Code intentionally provides for the exercise of discretion in certain specified situations. If the legislative body authorizes administrative discretion without supplying legislated standards to guide the administrator, the authorization is an unwarranted and presumably illegal delegation of legislative power. For an administrative body or the City Council acting in a review capacity to abuse such discretion by going beyond the limits of the legislated standards is equally improper and illegal.

This kind of administrative power is involved in conditional use<sup>12</sup> matters. We find that in some instances serious abuses of the conditional use authority have developed in Los Angeles. This is a subject of major concern to the Committee. There are valid reasons for the proper application of the conditional use technique for controlling certain problem uses and some public service uses, but the serious dangers of discriminatory action must be recognized and avoided.

<sup>12</sup>In other jurisdictions, terms such as **special use permit**, **unclassified use permit**, **zoning exception**, or **special exception**, are sometimes used instead of the term **conditional use permit**. We believe **conditional use permit** is the more accurate and descriptive term except for the limited group of uses discussed in the next section as **unclassifiable uses**.

The correct view of the conditional use procedure is that it provides for administrative action within legislative guidelines.<sup>13</sup> This necessary and proper emphasis on conditional use decisions being limited by definite guidelines or criteria within the Code is a completely different approach from the wide open provisions of the present Code.

The conditional use section of the Zoning Code provides for consideration of certain types of land uses<sup>14</sup> which because of unusual characteristics are neither automatically permitted in, nor absolutely prohibited from, some zone classifications, and for which definite standards of development have not been written into the Zoning Code. In effect, the City has said such a use may or may not be allowed in a given district, that each case will be treated individually, and that the City will write a special set of regulations or conditions for each such use if and when permitted. The Committee condemns this practice.

The present Code provisions on conditional uses are confusing since some types are under the original jurisdiction of the City Planning Commission appealable to the City Council, while others are handled directly by the Office of Zoning Administration. Of those handled by the Office of Zoning Administration, all are appealable to the Board of Zoning Adjustment, but some of these are further appealable to the City Council while others by implication are reviewable only by the courts (see Figure 3).

The present requirements of the Code for approval of conditional uses are stated too broadly. For a few uses one or two limiting standards are prescribed but for the most part administrative discretion is unfettered.

For those conditional uses to be considered by the City Planning Commission and for those assigned to the Office of Zoning Administration but eventually appealable to the City

<sup>13</sup>Section 65901 of the State Planning and Zoning Law provides that: "The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor **and establishes criteria** for determining such matters, . . ." (emphasis added).

<sup>14</sup>As designated in Sections 12.24B1, 12.24C1 and 12.24C1.5 of the present Zoning Code.

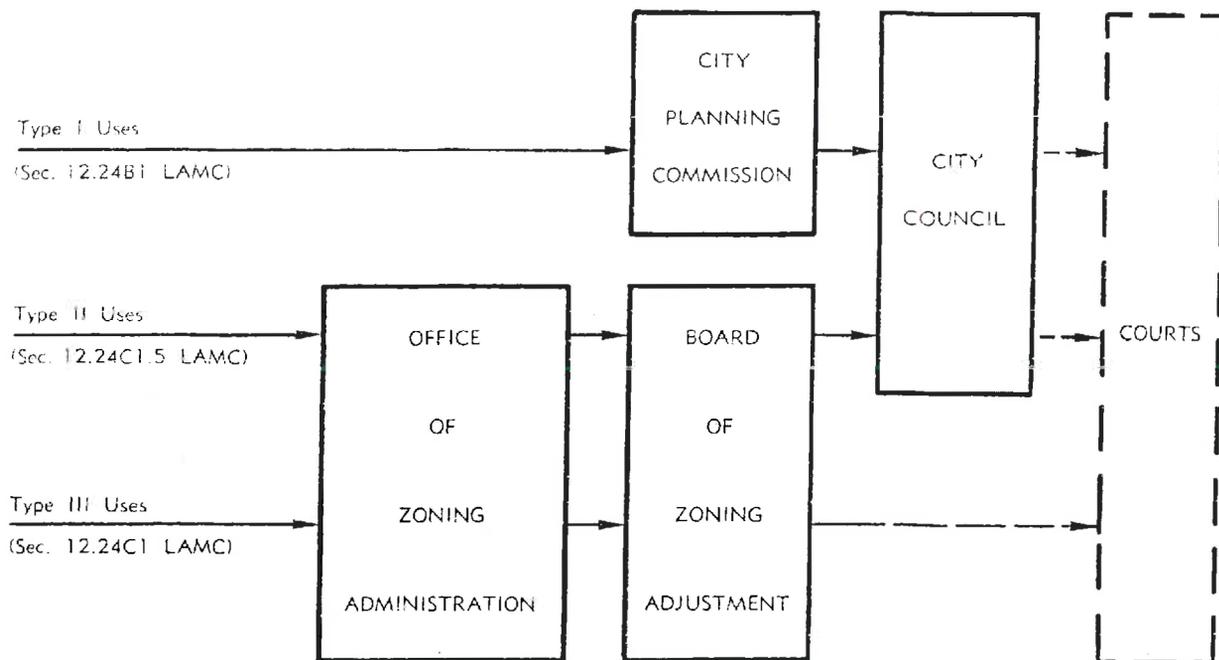


Figure 3. Present Conditional Use Procedures

Council, the only criteria prescribed in the Zoning Code are:

... that the proposed location will be desirable to the public convenience or welfare and will be in harmony with the various elements and objectives of the Master Plan.<sup>15</sup>

For the conditional uses assigned to the Office of Zoning Administration and appealable only to the Board of Zoning Adjustment, the Code requirements are:

... that the location is proper in relation to adjacent uses or the development of the community and to the various elements and objectives of the Master Plan, and that the use will not be materially detrimental to the character of the development in the immediate neighborhood.<sup>16</sup>

We find these vague requirements to be manifestly inadequate as standards for the equitable and consistent exercise of administrative authority. The regulatory intent and standards must be provided by law; but, because the application of these standards to individual complex situations requires analysis

and judgment, the specific rules or conditions to be followed in a given situation must be applied administratively. When the legislation authorizing conditional use procedures is either lacking or inadequate to serve as a sufficient guideline concerning the standards to be applied by the administrative authority (whether that authority is a department, commission or the City Council itself), legislative power is being improperly delegated. This is a flagrant violation of the basic legal requirement that legislative power can reside only in the elected legislative body. Moreover, the Council is required to act in accordance with its own ordinances.

The State of New York dealt with this problem a number of years ago when it advised local governments that:

The inclusion of only general language to the effect that the special use must be in character with the surrounding area, harmoniously developed, or that the public welfare shall be served, in the opinion of the Board of Appeals or other reviewing agency, has not proved to be an acceptable standard, and has been criticized by the courts. Therefore, in justice to the applicant and the Board of Appeals, every effort should be made to

<sup>15</sup>Los Angeles Municipal Code, Sections 12.24B1 and 12.24C1.5.

<sup>16</sup>Ibid; Section 12.24C1.

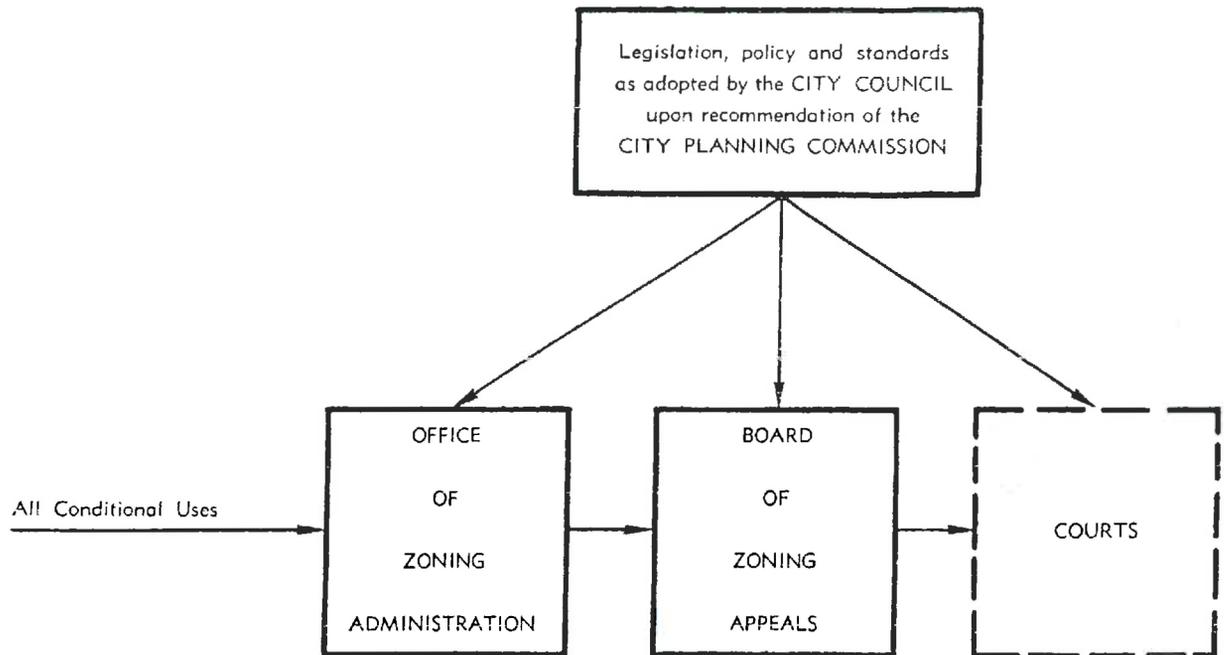


Figure 4. Proposed Conditional Use Procedure

include specific language which sets clearly understandable criteria for each special use.

The aspects of land use which need to be considered include lot area, building setbacks, traffic circulation, access to and egress from streets, building bulk, specific uses involved, the intensity of use involved, and the presence of any harmful effluent or nuisance-creating characteristics. The objectives of these standards are the control of the size, location, nature and intensity of use, and the traffic generated, to those levels which will not materially affect the overall character of the area.<sup>17</sup>

The objective of our recommendation is to insure a proper legislative basis for all conditional uses—adequate standards should be spelled out legislatively and applied reasonably, fairly and consistently by administrative action. The City Council must not reserve to itself the right of review over individual cases since this is a purely administrative function.

Under our proposal the issuance of conditional use permits would be under the jurisdiction of the Office of Zoning Administration with appeal to the Board of Zoning Appeals

and thereafter to the courts. The City Planning Commission and City Council would exercise their planning, policy-making and legislative functions in regard to such uses through approval of the Code provisions and the General Plan by which the Office of Zoning Administration would be guided (see Figure 4).

For all conditional uses, specific requirements and criteria which must be met in order for the use to be permitted in the specified zones should be set forth in the Code. Before authorizing each such use, a Zoning Administrator would be required to make written findings showing that the requirements for this use would be met and then impose special conditions to insure compliance with the intent, guidelines and criteria of the Code. If the Zoning Administrator finds that the Code criteria cannot be satisfactorily met, he must deny the request.

The burden of proof that a proposed conditional use will satisfy the Code requirements should be on the applicant, and to this end we suggest the use of a questionnaire or check list technique as part of the application form for conditional uses. The check list should

<sup>17</sup>Zoning in New York State: A Guide to the Preparation of Zoning Ordinances (State of New York: 1958) 93-94.

cover all specific requirements for the proposed use, with the applicant stating how he will meet each requirement. Adoption of our recommendation on conditional uses will correct one of the most serious weaknesses of the present Zoning Code and should go far to prevent improper or discriminatory use of discretionary authority.

Our recommendation is in contrast to Recommendation 3 of the 1966 County Grand Jury which proposed that the Mayor have veto power over conditional use permits. However, we are proposing a completely different approach to conditional use permits so that they no longer will amount to reclassification of property as assumed by the Grand Jury. Instead, we propose conditional uses be limited to administrative action within the requirements of established zoning classifications. Under this circumstance, action by the Mayor and Council on individual cases could lead to greater pressure for special discriminatory treatment rather than providing a protection against such treatment. Nevertheless, certain uses now treated as conditional uses cannot be adequately classified by zone and therefore should be subject to individual legislative action with possible veto by the Mayor. Our recommendation concerning these uses follows.

#### **UNCLASSIFIABLE USES**

**Recommendation 8: Amend the Zoning Code to provide for individual legislative consideration and approval of those few land uses which because of their unusual nature cannot be listed as permitted—either automatically or as conditional uses—in particular zones. Provide in the Code the criteria for the approval of such uses and require that specific written findings showing how the criteria are met must be adopted before approving any such use. Approval of such uses should be by ordinance, with specific conditions or requirements, after recommendation by the Planning Commission in the same manner as for zone changes. The unclassifiable category should be limited to uses such as airports, cemeteries, higher educational institutions, land reclamation projects and natural resource developments.**

As indicated in our recommendation concerning conditional uses, we believe that most uses now treated in the separate conditional use section of the Zoning Code can be included within the regulations of the various zoning classifications. However, we recognize that certain uses of property will remain essentially unclassified as to zone. We have in mind such uses as airports, cemeteries, university campuses, land reclamation projects for refuse disposal and natural resource developments. The list of uses that are truly unclassifiable is limited.

The reasons which make uses unclassifiable are:

1. A large area is usually required for each use and relatively few such uses are likely to occur in the City. To attempt to zone in advance for these uses could seriously upset the supply and demand relationships affecting other land uses.

2. In the case of natural resource developments, location is dependent on discovery of such resources, which were unknown at the time of the original zoning.

3. A mixture of uses may be involved in a single large-scale development, as in the case of educational institutions, which cannot be suitably planned for or controlled through a zoning pattern.

4. A major impact on the surrounding property may be involved, as in the case of airports, so that careful evaluation, design and control are required.

5. The use is not compatible with other uses assigned to zones on the basis of performance standards, as in the case of land reclamation projects, and it would be impractical and unfair to attempt to zone land in advance for a single use.

Because of the difficulties of zoning in advance for these uses, and because of the importance of such uses to the community, we believe it is necessary for each such use to be authorized legislatively, and administrative action with respect to such uses should be permitted only after the basic requirements have been established by ordinance.

The first step in authorizing any of these unclassifiable uses would be for the City

Council, upon request and after recommendation by the City Planning Commission in the same manner as for a zone change (and including required findings), to adopt an ordinance delimiting the area in which such a use could be permitted. The ordinance should include any requirements, in addition to those already specified in the Code, which are necessary to control the effects of the use on the surrounding area. The Office of Zoning Administration would then have responsibility for review and approval of development plans to assure compliance with the legislative intent. The similarity of this procedure with that now used under the supplemental use district provisions (oil drilling sites, rock and gravel quarries, slaughtering houses and stables) of the Zoning Code is apparent, and eventually these provisions might be consolidated with those proposed here for unclassifiable uses.

#### **PLANNED DEVELOPMENTS**

**Recommendation 9: Planned developments should be treated under the type of conditional use provisions recommended in this report, and not as unclassifiable or supplemental uses.**

A matter of special interest and controversy in the City is the question of how to treat large-scale planned developments—particularly planned residential developments. These are developments usually created by a single developer, to be maintained as a unit, and sometimes involve a combination of land uses—for instance, a complex of residential buildings together with commercial buildings and community facilities to serve the residential population of the development. Although attention has been focused on planned residential developments, the principles involved could apply to planned commercial developments and planned industrial developments as well.

At present, planned residential developments may be authorized as conditional uses by the City Planning Commission with appeal to the City Council. It was the 1966 County Grand Jury investigation of such a case which led to the formation of our Citizens Committee.

The latest proposal for changes in the method of controlling such uses, now under

consideration by the City Planning Commission,<sup>18</sup> is an ordinance which would treat planned residential developments as supplemental use districts. These districts would be special overlay zones established by ordinance with individually tailored conditions adopted as part of each such ordinance. In addition, standard conditions to be adopted as part of the Zoning Code would apply. All proposed planned residential development districts would be processed through the Planning Commission in the same manner as zone changes.

While this proposal would be an advance over the present situation where planned residential developments are authorized administratively with practically no legislative guidelines, we do not believe this to be the best solution since the standards applied in each case could still be established on an individual basis without reference to the requirements of the underlying zone.

Since each planned development can be expected to have a predominant use—residential, commercial or industrial—we believe it is a use which can be provided for within the established zoning patterns, subject to the kind of conditional use approval suggested in this report. Under such a provision, planned residential developments would be listed as possible conditional uses in the residential zones with specific criteria and standards which must be met written into the regulations for each zone. These requirements would be designed to be comparable and harmonious with the requirements governing lot-by-lot development in the same zoning classification.

#### **"Q"-QUALIFIED ZONE**

**Recommendation 10: The Committee strongly opposes the "Q"-qualified zone concept. The desired objective should be met through conditional use provisions as recommended in this report and through revision of the list of uses permitted in the various zoning classifications. If action is deemed necessary before revision of the Code as set forth in Recommendation 5, the procedure suggested in this section should be followed.**

<sup>18</sup>City Plan Case No. 17155, Council File No. 119,840.

A proposal<sup>19</sup> currently before the City Council would create a new form of conditional use permit. Under this proposal a "Q" zone designation could be adopted legislatively in combination with any zone change. The ordinance which applies the "Q" designation to an applicant's property would also specify one or more particular uses, in addition to those uses permitted under the previous zoning, to which the property could be put if it complies with specific conditions included in the same ordinance.

The proposed "Q" zone provisions include no guidelines as to when or where the "Q" designation might be applied. It could be used in connection with any zoning classification, at any location, with any degree of restrictiveness or permissiveness within the limits of the applied zoning classification. There are no rules or criteria established in advance; they will be created to fit each particular case.

The proposal originated from a desire to prevent deceptions in the arguments and proposed development plans presented in connection with zone change applications. This would be accomplished by requiring applicants to comply with special requirements imposed by the City Council in each case where a change is granted. While agreeing with the objectives, we find serious problems with the method suggested.

Our basic concerns are with certain fundamental principles of zoning policy and administration, the ultimate effects on community development and public confidence in the zoning process. The practice to be established under the "Q" zone device is questionable because it violates the principle of adhering to a stable policy and substitutes individual determinations on a parcel-by-parcel basis. The proposal would tend to perpetuate the type of zoning problems which were of concern to the Grand Jury and would be contrary to what we believe to be the necessary direction for improvement of zoning practices.

Our major reasons for opposing the "Q" zone concept are that it would provide great opportunity for uncertainty and inequality in the application of zoning regulations, would

create unwarranted administrative burdens and could very well lead to increased deviation from a general community plan.

The courts have repeatedly recognized that, to be validly employed, zoning regulations should be both comprehensive and consistent. The pending proposal provides no guarantee that it would be so employed.

A fundamental principle of zoning law is that it involves territorial districting, with uniform regulations applying within each district. The "Q" zone would in effect create a separate zoning classification for each parcel of property to which it is applied. Thus, this technique has the potential for completely destroying the uniformity of regulations within districts.

Another basic principle is that the law shall reveal clearly on its face what those rules are which it presumes to establish. A property owner should be able to determine from the zoning regulations what he may and may not do with his property. He should also be able to determine what his neighbors are permitted to do. But with the "Q" zone available, the tendency could be to keep property in a zone other than that eventually intended, just so that individual control could be exercised. Thus, the meaningful zoning rules would not be finally established until an owner requested a zone change, the rules would be adopted on a parcel-by-parcel basis and one would be required to examine the individual zone change ordinances for each parcel of property in order to determine the applicable zoning regulations.

It may be argued that once a "Q" designation is applied to a parcel, the permitted use of that property will be known precisely, in contrast to the range of possible uses under conventional zoning classifications. But we believe this certainty regarding those individual parcels to which the "Q" zone has been applied would be of little value in the face of the great uncertainty which would exist regarding all property to which the "Q" zone had not yet been applied. Thus, the net effect of the "Q" zone technique would be to intensify the now too prevalent lack of public confidence in the stability of zoning—a situation brought about by a piecemeal, individualized approach to zoning changes.

<sup>19</sup>City Plan Case No. 20414, Council File No. 132,669.

We are also greatly concerned about the degree of fairness likely to be maintained among property owners under "Q" zoning. The effect of the present proposal would be to create an unknown number of what are recognized by the courts, by the legal profession, by planners and by the public as "spot zones". In principle, it means eventual custom zoning for individual parcels of land, which would inevitably result in inconsistent and preferential treatment. Based upon our evaluation of experience elsewhere, "Q" zoning would result in different conditions being imposed on different applicants even though circumstances were similar. The conditions adopted in each case would tend to depend upon the vicissitudes of pressure, salesmanship and personal bias. There should not be this kind of personalized zoning. Unequal treatment under the law in like situations can only result in dissatisfaction with and discredit to the principles of zoning.

The American Society of Planning Officials Advisory Service in commenting on this type of legislation states that:

... there is a serious problem of fairness in administration. If the community adopts a project-by-project approach the possibilities of improper discrimination become very great. It is hard to suggest any solution to this problem. When zoning itself was accepted by the courts, the problem of discrimination grew—just because different rules applied in different zones. The project-by-project approach is just another big step in the same direction. The problem is particularly acute when the only standards to guide decisions on individual projects are so general as to be virtually meaningless.<sup>20</sup>

Regarding the desirability of such legislation, the comment continues:

... we think the problem of discrimination is tremendously serious. Further, we think there is a danger that a project-by-project approach can be misapplied to lead to the same sort of haphazard development that planners have long and properly been criticizing.

Under the proposed "Q" ordinance there would be a tendency to allow zone changes which might otherwise be obviously unjustified simply because of the comfortable assurance that the conditions imposed would control the

situation and make the specific use palatable to neighbors. But the problem here is that conditions might be more readily set aside or evaded once a zone change is made. With changes in ownership, great pressure could be brought to bear to change the imposed conditions.

The "Q" zone approach would create a potential bargaining situation in connection with every zone change request. An infinite number of decisions would be possible in each case, since any conceivable set of conditions might be imposed. Thus, proponents and opponents, applicants and City officials could become embroiled in interminable negotiations over the exact conditions to be adopted in each case. The burdens in time and effort for everyone involved could become enormous, to say nothing of the temptations for political favoritism and corruption.

The administrative workload created by use of the "Q" zone could become excessive. Hearing examiners would be required to spend a great deal of time developing proposed conditions for each case. These would be subject to repeated revision before final adoption to meet the desires of the Planning Commission and City Council.

Upon enactment of each zone change involving the "Q" zone, a plan checking procedure would have to be applied to insure compliance with the conditions during construction. Subsequently, periodic inspections would be necessary to see that the conditions continue to be adhered to through the years. Enforcement would become most difficult and complicated for the Building and Safety Department, since it would be necessary to refer to an individual "Q" ordinance for each parcel in order to determine requirements.

It has been argued that the "Q" zone proposal would be used in only a limited number of special problem situations. However, we have no confidence that this would prove to be the case. When the conditional use procedure was originally established, similar predictions were made that the procedure would be little used. But experience has proven otherwise. The proposed ordinance contains no limitation on the circumstances under which the "Q" designation might be applied.

<sup>20</sup>Letter dated March 29, 1962, from American Society of Planning Officials Planning Advisory Service to the Los Angeles City Planning Commission.

Aside from the legal and administrative problems, however, is the question of whether or not the "Q" zone would contribute to achieving planning objectives. It can be argued that carefully tailored planning standards could be imposed in order to achieve precise control of development in accordance with a plan. On the other hand, it seems likely that the availability of the "Q" zone will be an invitation for seeking and approving an increasing number of deviations from an adopted plan. The result would be progressive erosion of community plans and standards.

There are two basic problems which gave rise to the "Q" zone proposal: (1) the large number of incompatible uses which are now permitted in certain zoning classifications and (2) the difficulties of insuring that development occurs in accordance with desirable standards. There are corresponding basic solutions: (1) revise the Zoning Code to provide that only compatible uses are included in each zoning classification and (2) write desirable criteria and standards into the Zoning Code, supplemented by conditional use permit procedures where necessary to insure suitable application of the criteria and standards to specific cases.

Under the present zoning classifications, a multitude of uses are permitted in each zone. As a result, various combinations of use can occur which are detrimental to a community or neighborhood. The problem is particularly acute with respect to the C2 zone—the general commercial zone accommodating everything from art shops to sports arenas. The attempt to apply such a zoning classification to the great variety of commercial land use situations which occur in Los Angeles is probably responsible for most of the interest in the "Q" zone. As it is, the same C2 zone regulations are used to govern such diverse situations as corner service stations in residential neighborhoods, local shopping centers, highway services uses along primary traffic arteries, "automobile rows" for both new and used cars, community business districts and miscellaneous commercial strips prevalent in the older sections of the City.

The first approach to a solution of the problem should be to examine the present assignment of land uses among the various zoning classifications. Insofar as possible, the

assignment of uses should be changed to increase the degree of mutual compatibility among the uses permitted in each existing zone.

To the extent such reassignment of uses is unable to solve the problem, the obvious next step is to consider increasing the number of zoning classifications. Each classification could thus be restricted to a smaller number of compatible uses, and the regulations for each classification could be better designed to meet the intended purpose of the particular classification. Although it would be undesirable to create a large number of additional zoning classifications, this would certainly be preferable to the almost infinite number of individualized zoning classifications which in effect would be created under the "Q" zone.

Recommendation 5 of our report calls for a comprehensive revision of the Zoning Code. A major element of this revision should be a reclassification of land uses as just discussed.

The second basic approach to the problem is through the specification of criteria and standards to be met in developing specific uses in zoning classifications. Whenever possible, these specifications should be sufficiently definite so that they can be compiled with without further interpretation. However, in those cases where some interpretation is necessary to apply the criteria and standards to specific cases, then the conditional use permit technique should be used. This involves providing specific guidelines in the Zoning Code to govern the administrative approval of individual uses of property within a zone. Such guidelines or criteria are being used successfully in many cities. Recommendation 7 of our report deals with the type of conditional use provisions and procedures which we believe should be followed.

To revise zoning classifications and restructure the entire conditional use regulations of the Code will necessarily require a considerable period of time for overall analysis and enactment of new provisions. In the meantime, it may be desirable to make some amendments to the existing Zoning Code to deal with those situations which gave a sense of urgency to the "Q" zone proposal. To do this, the following steps are suggested:

1. Identify the particular uses which create the problem and the types of circumstances where the problem occurs. These uses should be listed in priority order.

2. In order of priority, develop criteria and standards to apply to these uses in the situations of concern.

3. Write regulations for these uses, including criteria and standards, to become part of the conditional use provisions of the present Zoning Code. These should be placed among the uses initially acted upon by a Zoning Administrator. The zoning classifications within which each such use is eligible for consideration should be designated.

4. Where it proves inappropriate to provide for these problem uses as a conditional use within existing zones, then it may be necessary to create one or two new zoning classifications as an interim measure pending more comprehensive revision of the Code. For example, the C3 zone designation, which is not in use at present, might become a new neighborhood commercial classification, permitting planned neighborhood shopping centers, service stations and related uses, with stringent development standards to make such uses acceptable adjacent to residential areas.

In summary, we commend the Council's Planning Committee in seeking to eliminate deceptions in zone change proposals. However, in the light of the above discussion, we view with alarm the proposed "Q" classification ordinance and instead propose:

1. As a long-term solution, the problem of incompatible uses within a zoning classification should be resolved as part of a comprehensive revision of the Zoning Code by providing that only compatible uses be included within each zoning classification.

2. As part of an over-all revision of the Zoning Code, the conditional use regulations should be revised to provide definite criteria under which specific problem uses may be authorized, with conditions, in designated zones.

3. As a short-term solution pending complete revision of the Zoning Code, those uses that require more controls should be provided for by including them among the conditional use provisions, but with criteria and standards for their approval set forth in the Code. (In addition to this recommendation see Recommendations 5 and 7.)

## ZONING ENFORCEMENT

**Recommendation 11: Provide adequate staff in the Building and Safety Department for regular inspections and follow-up on compliance with zoning regulations, particularly the special requirements of conditional use and variance approvals. The City Planning Department should assist in enforcement by checking compliance with zoning requirements during area planning surveys and referring violations to the Building and Safety Department.**

By Charter provision<sup>21</sup> the Building and Safety Department enforces the Zoning Code. This responsibility includes all special conditions which may be applied to conditional use and variance approvals. At present, all zoning enforcement action occurs through either the issuance of building and other permits and the subsequent inspections during construction, or upon receipt of complaints from the public or other governmental agencies.

From the standpoint of the Department of Building and Safety, the enforcement of special conditions applying only to individual properties presents a difficult problem in record keeping, interpretation, inspection and follow-up. Suggestions have been made to establish a special unit, in either the City Planning Department or the Building and Safety Department, to deal specifically with enforcement of these special conditions established under conditional use permits or variances.

Regarding enforcement, we believe the present relationship between the Building and Safety Department and the City Planning Department is the most efficient and workable approach. The basic problem is availability of staff for enforcement work. A secondary problem is the need for more communication about possible zoning violations between field personnel of other departments and the Building and Safety Department. The City Planning Department, which is familiar with zoning regulations, should look for and report possible zoning violations during its regular field surveys for planning and rezoning studies.

<sup>21</sup>Los Angeles City Charter, Section 90.

## QUASI-JUDICIAL FUNCTIONS

### VARIANCES

**Recommendation 12: Clarify and strengthen the Charter limitations on the granting of variances as follows:**

1. Set forth the quasi-judicial nature of variance determinations and prohibit use of the variance to accomplish purposes which should properly be accomplished through legislation.
2. State the over-all intent and purpose of the variance provisions as a means of insuring equal application of zoning regulations to property in similar situations but prohibiting the use of the variance to grant special privileges.
3. Clarify and add to the requirements for the findings which must be made in order to grant a variance. Retain the basic principles contained in the present four requirements, but make them more specific. These tests for granting of a variance should be capable of realistic but strict application.

4. Provide that, in granting a variance, self-imposed hardships are not a proper consideration.

5. Include more specific limitations on the circumstances under which variances from permitted land uses are justifiable.

The legal theory upon which variances are based is often misunderstood by the public and sometimes, unfortunately, by lay officials appointed to handle variances. The sole legitimate purpose of variances is to modify the application of a zoning ordinance as it applies to a given piece of property to bring the privileges of that property to a parity with other properties similarly located and classified (see Figure 5). The variance device should never be used in the opposite direction to grant special privileges. By proper adjustment of equities, the use of the police power in the form of zoning is brought into conformity with constitutional limitations upon its use by assuring that it will deal similarly with all persons or properties under similar circumstances.

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1. Straight line represents equal privileges to all properties in a given zone and vicinity. This is as it should be.



2. Depression represents a property which, because of special circumstances is deprived of privileges enjoyed by others in same zone and vicinity. Dotted line represents a variance authority that brings discriminated property to a parity with all others in the zone and vicinity.



3. Situation begins as shown on straight line #1, but through granting improper variance subject property is given special privileges as illustrated by the heavy dotted line while, at the same time other properties in vicinity are thereby depressed as shown by light dotted line.

**Figure 5. Proper and Improper Use of Variances**

Because zoning regulations for a given district must apply to parcels with differing sizes, shapes, topography and other characteristics, it is virtually impossible to write regulations that will apply equally to all situations in a specific zone. Thus, the variance was designed as a technique for maintaining equal treatment under circumstances which could not be adequately anticipated in advance in the adopted regulations. This is essentially a judicial matter, but because the process is provided within an administrative framework and not as part of the court system, it is generally referred to as quasi-judicial.<sup>22</sup>

The City Charter now sets forth four tests to be met before a variance can be properly granted:<sup>23</sup>

1. The strict application of the zoning regulations or requirements would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the regulations.

2. There are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood.

3. The granting of a variance will not be materially detrimental to the public welfare or injurious to property or improvements in such zone or neighborhood in which the property is located.

4. The granting of a variance will not be contrary to the objectives of the Master Plan.

Testimony from several sources consistently pointed out that the wording of the Charter-defined required showings for validating variances, if literally applied and without defining reasonable and workable interpretations of intent, would make the granting of many variances technically difficult. However, pioneering efforts of the Office of Zoning Administration, beginning twenty-seven years ago, revealed that it was possible and necessary to develop reasonable interpretations by which the objective of the variance could be

realized, and such interpretations subsequently have been consistently employed.

A partial explanation of the enviable record established since the inception of the Office of Zoning Administration in Los Angeles is found in the policy and practice of developing specific and pertinent findings upon which decisions in given cases were based. This practice established an ever-increasing foundation of record precedents that assured consistent decisions in variance matters.

On the other hand, we find that in recent years, the Board of Zoning Adjustment in many cases has been inconsistent and superficial in its recognition of and conformity to the Charter-required showings in variance cases. Another practice of the Board has been to ignore or evaluate inadequately the findings made by the Zoning Administrator and for the Board to fail to develop specific and adequate findings of its own as the basis for its actions on appeals. Testimony and the record show that actions on the part of the Board of Zoning Adjustment have included so-called findings, but such findings usually have been generalizations, surprisingly similar regardless of the specific issues in each case.

In addition, in many cases the Board, through the device of the variance, has approved projects that can be validly accomplished only by legislative action. In a number of these cases, Board approval was given even though requests were previously denied by both the Planning Commission and the City Council. This constitutes, in fact, a usurpation by the Board of Zoning Adjustment of the legislative function which is vested properly and exclusively in the Mayor and Council.

We believe that since January 1, 1968, the Board has been operating in a sound manner. However, there should be Charter changes to insure that future boards serve their proper function.

A variety of suggestions have been made to the Committee relative to improvement in the basic requirements, practice and procedures as to variances, all of which we have carefully considered.

<sup>22</sup>See Appendix C for further discussion of the history of the variance principle and its use in Los Angeles.

<sup>23</sup>Los Angeles City Charter, Section 98(2).

We conclude that a strict literal construction of the present findings required by the Charter as prerequisite to the granting of a variance would make it almost impossible to grant many worthy and proper variances. The Chief Zoning Administrator, recently retired, has suggested that good zoning practice would justify some modification of present Charter provisions, with which suggestion the Committee concurs.

We further conclude that the basic corrective action should be a revision of the Charter-specified tests for the granting of variances, coupled with reinforced requirements that the appeal body must adhere strictly to these tests. The objectives of this Charter amendment are set forth in Recommendation 12. In a later report the Committee will submit a suggested text for such Charter change. Additional recommendations dealing with the zoning administration function and the appeal body are covered in various ways in succeeding sections of this report.

#### **OFFICE OF ZONING ADMINISTRATION**

##### **Recommendation 13: Retain the present powers, relationship and civil service status of the positions of Chief Zoning Administrator and Associate Zoning Administrators.**

One of the critical issues with which we have been concerned is the place of the Office of Zoning Administration in the City's organizational structure.

The creation of the position of Zoning Administrator in Los Angeles in 1941, with the power to grant variances and certain conditional uses and to make other interpretations of the Zoning Ordinance, was a unique and pioneering step in the history of zoning in the United States. The conduct and accomplishments of the Office over the years have outstandingly demonstrated the merit of this system. In 1957, by Charter amendment, the Office was broadened from a single Zoning Administrator to include a Chief Zoning Administrator and several Associate Zoning Administrators, each with the authority to make determinations.

As constituted from 1941 to the present, the Office has been administratively a part of the City Planning Department. However, the

decision-making authority on the zoning matters assigned to the Office is not subject to control by any other officer of the City, except upon formal appeal to the Board of Zoning Adjustment. This arrangement is designed to protect the quasi-judicial character of the decisions, thus maintaining separation from the legislative and executive branches of City government.

However, suggestions have been made periodically either to integrate the Office of Zoning Administration more fully into the City Planning Department under the management of the Director of Planning or to make a complete separation and give the Office its own budget and authority over personnel and other administrative housekeeping matters.

After a study of the City Planning Department in 1956<sup>24</sup> this issue was raised. In 1957 the City Council resolved it by reaffirming the present Charter provision by which the Director of Planning appoints Zoning Administrators under civil service procedures.<sup>25</sup> In 1959 the Council adopted the following section of the Zoning Code, which further defines the administrative relationship between the Director of Planning and the Office of Zoning Administration:

The Chief Zoning Administrator shall be in direct charge of the Office of Zoning Administration. He shall assign applications and all other matters under the jurisdiction of that Office among the Associate Zoning Administrators and himself so as to distribute the workload equitably between them. He shall also prescribe the style and content of the forms to be used. He shall determine and establish, with the advice of the Associate Zoning Administrators, the administrative methods and procedures to be followed in the Office of Zoning Administration for the purpose of simplifying them insofar as practicable in making it possible to render sound decisions expeditiously. The Director of Planning may review the established forms and procedures when deemed advisable, and may recommend such changes or improvements in administrative procedures as will more effectively further the purposes of the office.<sup>26</sup>

<sup>24</sup>Adams, Howard & Greenley, Consultants, "Report to the Board of City Planning Commissioners, City of Los Angeles, on the Los Angeles City Planning Department," November 1956.

<sup>25</sup>Los Angeles City Charter, Section 98.

<sup>26</sup>Los Angeles Municipal Code, Section 12.27.

We believe the following principles are importantly involved in making it possible for the Office of Zoning Administration to function with the high degree of integrity, judiciousness and consistency it has demonstrated for more than a quarter of a century:

1. Authority and responsibility for assigned zoning determinations must go hand in hand. A Zoning Administrator's decisions should not be subject to influence, dictation, modification or reversal by other authority except through formal quasi-judicial appeal procedures.

2. Appointees to the positions of Chief Zoning Administrator and Associate Zoning Administrator must have the highest degree of integrity and must be highly competent in the areas of planning, zoning administration and applicable law.

3. Stability in office should be protected so that the Zoning Administrators are responsible in their decisions only to the law and the public interest and cannot be influenced by pressures from special interests or by political considerations.

We conclude that these objectives can be best met by retaining the present organizational structure. The basic function of the City Planning Department is to do comprehensive planning. To place the Office of Zoning Administration more directly under the authority of the Director of Planning could unnecessarily subject the Director to political pressures and interfere with his essential planning responsibilities. It could also lead to undue interference in the impartial, quasi-judicial character of the Office of Zoning Administration. On the other hand, to remove the Office completely from the City Planning Department would be administratively undesirable because of the need to use Department records, to coordinate with other planning and zoning matters and to avoid unnecessary duplication of housekeeping functions.

Finally, in order to emphasize the proper role of the Zoning Administrator and to lay the basis for the proper functioning of the appeal body as discussed in the next section:

**Recommendation 14: Amend the City Charter to clearly define the authority of a Zoning Administrator as quasi-judicial, making it clear that no actions shall be taken which usurp legislative authority.**

## **BOARD OF ZONING APPEALS**

**Recommendation 15: Amend the Charter to change the title of the Board of Zoning Adjustment to its original designation as the Board of Zoning Appeals and to limit the jurisdiction of the Board to appeals from determinations of Zoning Administrators. The Board should not have jurisdiction over matters outside the proper scope of its appellate function.**

We are seriously concerned with the manner in which the Board of Zoning Adjustment has functioned in recent years and with the present assignment of jurisdiction and functions to the Board.

In 1941, a Charter amendment created the Board of Zoning Appeals, consisting of three citizens, with the sole function of considering appeals from decisions of the Zoning Administrator. A 1963 Charter amendment expanded the Board to five members, changed its name to the Board of Zoning Adjustment and provided that the City Council may, by ordinance, transfer certain functions from the City Planning Commission to the Board. Pursuant to this provision, the Board has been delegated the responsibility for acting upon building lines and reviewing public property acquisitions and dispositions, parcel maps and private street maps, in addition to its basic responsibility for zoning administration appeals.

While recognizing that these changes were designed to relieve the City Planning Commission of a heavy workload of minor decisions and enable it to deal more effectively with major planning issues, this change has produced a confused pattern of decision-making and handling of appeals among the various categories of planning and zoning matters. We believe that the assignment of these additional duties makes it difficult for Board members to distinguish clearly the differing criteria for decision on the various types of cases.

More important is the fact that the number of appeals taken from Zoning Administrators to the Board of Zoning Adjustment and the proportion of reversals of Zoning Administrators' decisions have risen significantly in recent years. Figure 6 illustrates this trend

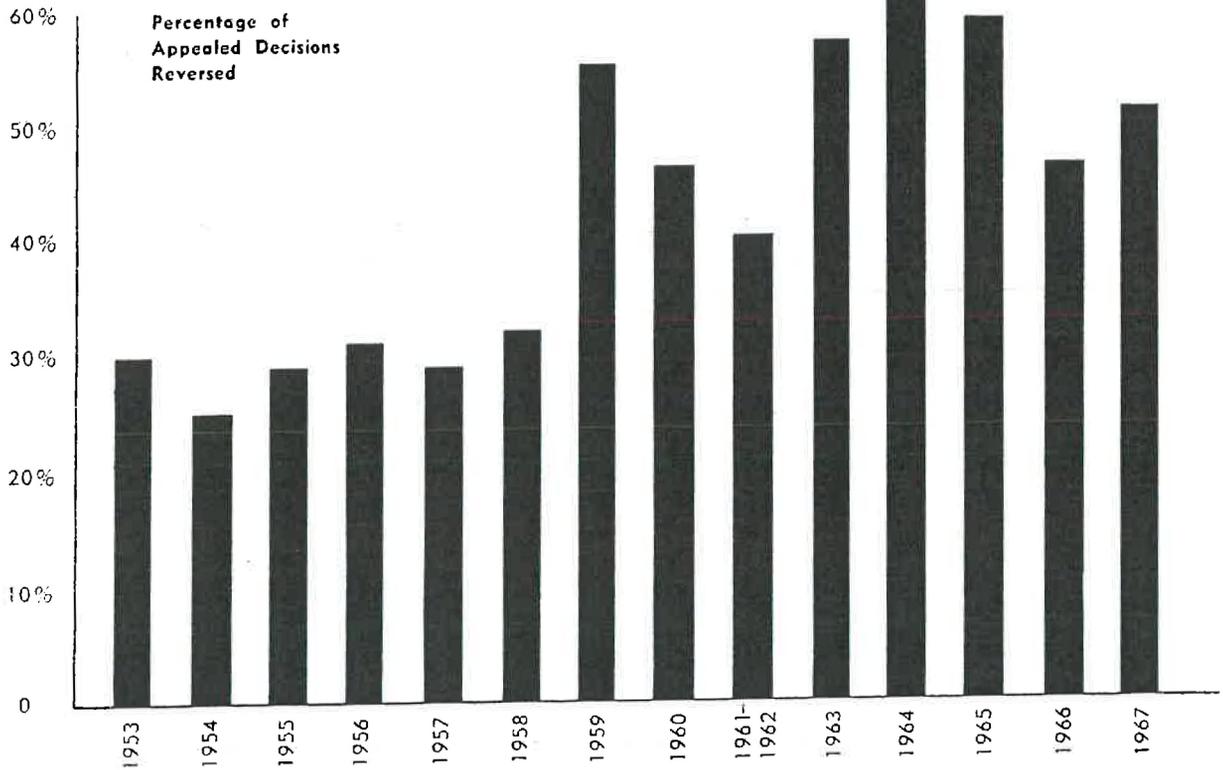
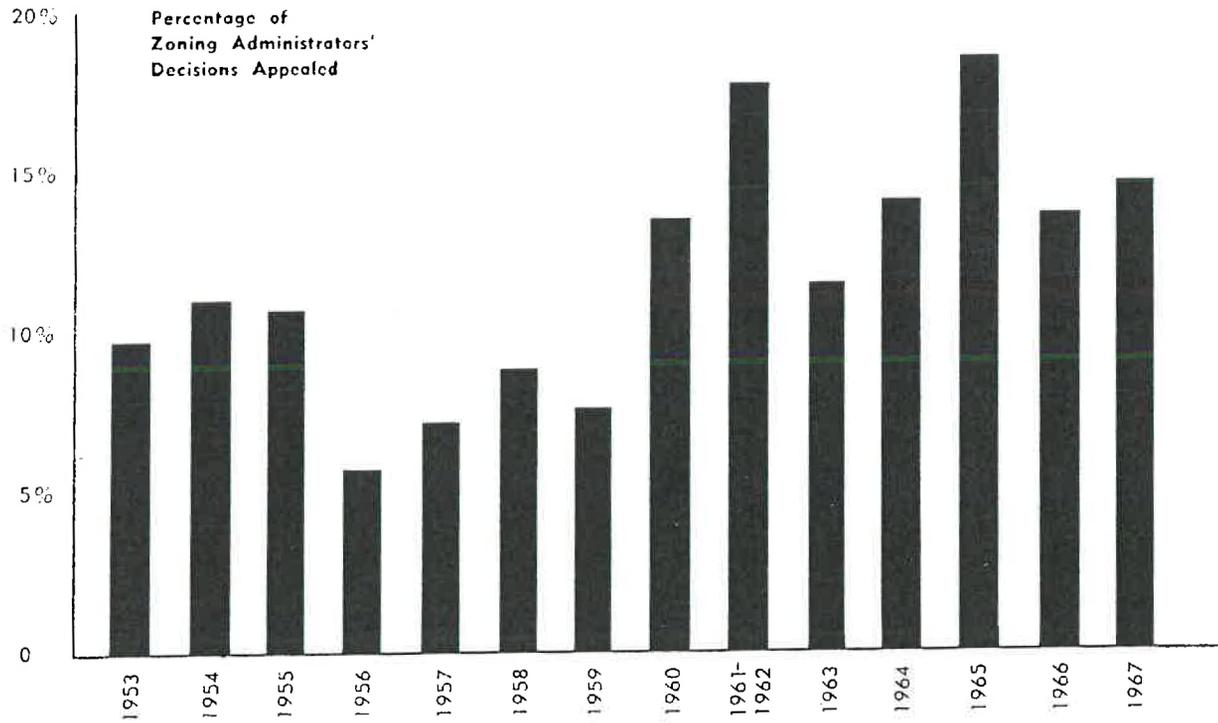


Figure 6. Board of Zoning Adjustment Actions on Land Use Variances

with respect to land use variances—the most important category of cases upon which the Board acts and for which the governing laws have not changed over the years.

The essential function of the Board is to consider appeals in quasi-judicial matters. A proper judicial approach is limited to reviewing decisions made by others (in this case by Zoning Administrators) and interpreting the legislatively established regulations according to the criteria set forth in the regulations. This function does not properly include creating and applying a different set of rules.

Those matters—building lines, public land acquisitions, parcel maps and private street maps—which were delegated from the Planning Commission to the Board pursuant to the 1963 Charter amendment are not quasi-judicial matters. They are matters which involve either administrative planning decisions or advice to the City Council on legislative and

policy questions. The result is that the Board's responsibilities, and the types of reasoning required, have become so mixed that the Board has not been properly carrying out its basic quasi-judicial function, has been granting special privileges and has been failing to support its decisions with evidence and reasoning related to the Charter-required criteria for its actions.

To alleviate this problem, the non-quasi-judicial matters should be removed from the jurisdiction of the Board of Zoning Adjustment and either returned to the City Planning Commission or delegated to the Director of Planning for decision (see Figures 7 and 8). For the purposes of this report, we have classified conditional use permits as an administrative function. However, our Recommendation 7, proposing that all conditional use permits be handled by Zoning Administrators with appeals to the Board of Zoning Appeals, does

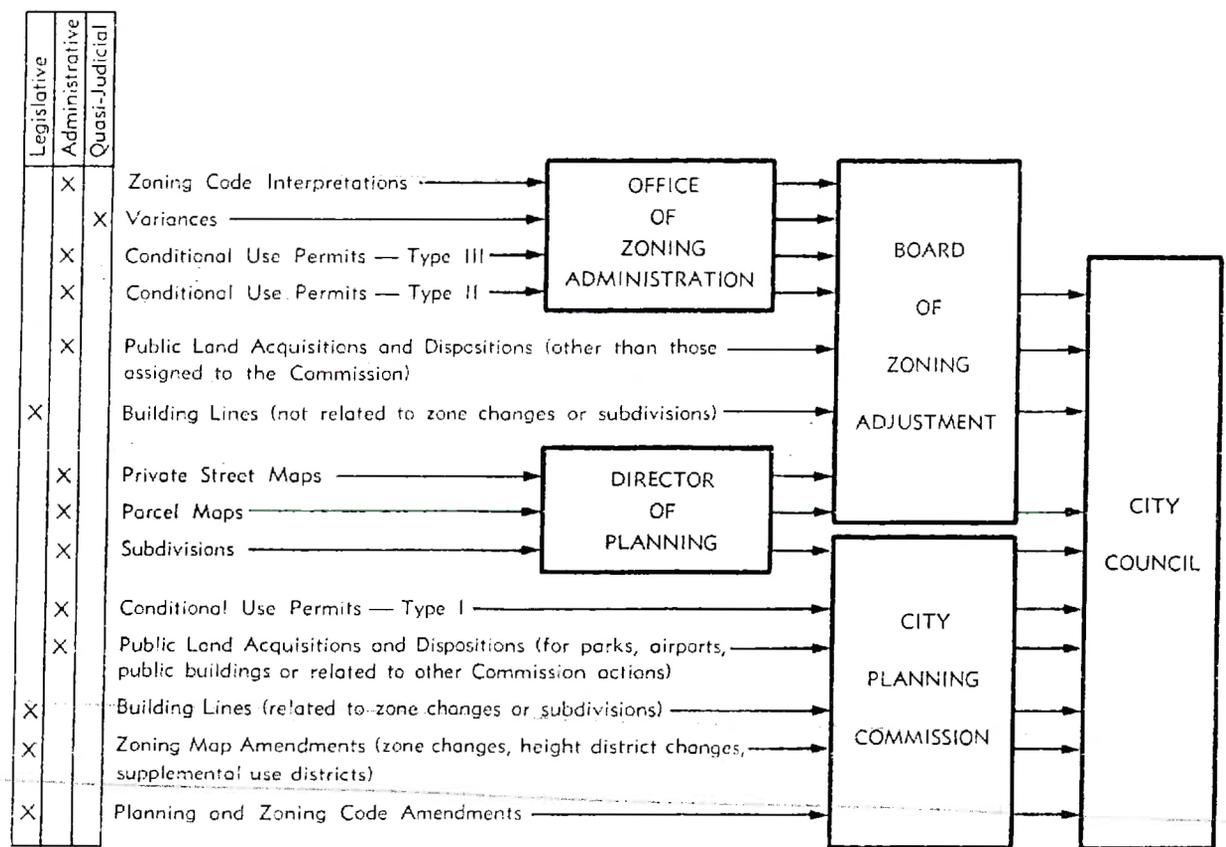


Figure 7. Present Assignments for Determination of Planning and Zoning Matters

not alter the basic quasi-judicial character of either the Office of Zoning Administration or the Board of Zoning Appeals, since conditional use matters involve the **interpretation** of legislatively established zoning regulations and criteria.

Our proposed realignment of responsibilities to completely separate the functions of the Board of Zoning Appeals from those of the City Planning Commission and City Council will make clear that the Board is not a policy-making or legislative agency and that its essential responsibility as a quasi-judicial body is to insure that Zoning Administrators comply with the law.

Grand Jury Recommendation 3 proposed that all rulings of the Board be appealable to the City Council, with veto power by the Mayor. The Jury felt that this would provide a more effective remedy to improper Board actions than does the expensive process of appeal to the courts. We find, however, that such procedure would place undue individual pressures upon elected officials, with greater tendencies for political rather than judicial de-

isions on these quasi-judicial matters. The better remedy, we believe, lies in improving the definition and limitation of the scope of the Board's functions so that the Board itself is an effective appeal "court".

## CONCLUSION

The recommendations of this chapter are designed to restore to each agency concerned with zoning matters its distinct and proper function as originally intended by the City Charter and as defined by the principles of sound zoning practice. Thus, (1) the City Planning Commission and City Council should be concerned with laying down the rules legislatively, (2) the Office of Zoning Administration should provide consistent and fair application of the rules to situations requiring discretion or judgment and (3) the Board of Zoning Appeals should serve to insure that the Office of Zoning Administration operates within the rules. Finally, (4) the Building and Safety Department should be the agency to prevent and correct violations of the rules.

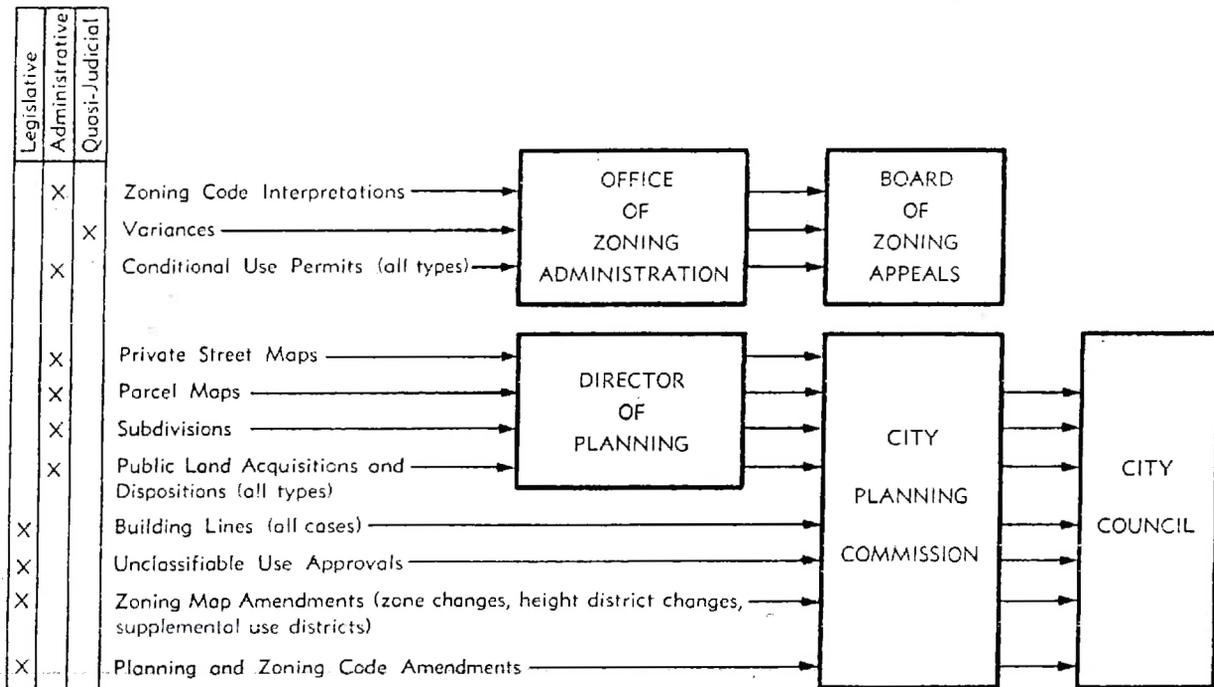


Figure 8. Proposed Assignments for Determination of Planning and Zoning Matters

## **CHAPTER 3**

### **INSURING FAIR, UNDERSTANDABLE AND EFFECTIVE PROCEDURES**

#### **GENERAL OBJECTIVE**

To maintain procedures which guarantee due process and equal treatment, which are simple and easily understood, and which lead to decisions in accord with legislative intent and policies.

Zoning issues involve the delicate problem of balancing community interest against individual rights. Each individual has a stake on both sides of the scale. The concept of due process represents a guarantee that these individual and community stakes will be carefully weighed before decisions are made.

To apply this democratic principle to the zoning process requires that zoning decisions—whether legislative, administrative or quasi-judicial—be made in full public view and with the opportunity for submission of information by the public, including the expression of attitudes. At the same time the public needs to understand the essential relevant principles of law involved and the role of professional analysis in the zoning process. Basic to this process are:

- The right of petition
- The right of notice
- The right of public hearing
- The need for competent technical and professional analysis
- The application of sound judgment
- The necessity of reaching timely decision
- The right of appeal

In Chapter 1 we proposed a system of regular area-by-area review and amendment of the General Plan and the Zoning Map. This system is intended to keep planning and zoning controls up to date and attuned to community needs and desires. It should also reduce the volume of individual requests for change in, or relief from, zoning restrictions. But whether changes are considered by area review or individual request, the process followed should recognize the above principles of effective, democratic procedure.

In Chapter 2 we emphasized the differences between legislative, administrative and quasi-judicial functions in zoning matters. The concept of due process and public participation is involved in all three types of zoning actions. For this reason, we believe the basic elements of sound procedure as discussed in this chapter should apply to all three functions. In addition, a uniform procedure in all zoning matters should assist the public to understand all types of zoning cases.

Although procedures may be uniform, it is important to emphasize that the issues to consider are different in each type of zoning case. Figure 9 indicates the differences which

Function	Type of Zoning Case	Decision-Making Agency		Issue Involved
		Initial Consideration	Final or Appeal Agency	
Legislative	Zoning Map Change Unclassifiable Use Approval Supplemental Use District	City Planning Commission	City Council	What regulations should be applied in various districts to serve the community interest and carry out the General Plan?
Administrative	Conditional Use Permit	Office of Zoning Administration	Board of Zoning Appeals	What is the correct application of the law to the property involved?
Quasi-Judicial	Variance	Office of Zoning Administration	Board of Zoning Appeals	What adjustment of the general regulations is necessary to treat an individual property fairly and as intended by the law?

Figure 9. Types of Zoning Cases (as Recommended)

would exist among types of zoning cases if the various recommendations of this Committee are adopted.

In this chapter we present recommendations about the various steps in zoning procedures, particularly as applied to zone changes, conditional use permits and variances.

## PROCEDURES

**Recommendation 16: Amend the Municipal Code to provide simple and uniform procedural requirements governing applications, notices, hearings, time limits and appeals for all types of planning and zoning cases. Also provide that each agency having jurisdiction in such matters must formally adopt and publish any rules of procedure which are used.**

At present the procedural requirements for each type of zoning case are treated separately in different parts of the Zoning Code. Although generally similar, there are minor differences, due in part to piecemeal amending of various sections of the Code at different times. A separate section of the Municipal Code includes additional provisions on time limits, appeals, and fees which apply to all

types of zoning cases.<sup>27</sup> To simplify and increase understanding of zoning procedures, it is suggested that all of the procedural requirements applying to zoning matters be placed in one section of the Zoning Code and should incorporate the points presented in the rest of this chapter.

Each official agency involved in the planning and zoning process (including the City Planning Commission, Board of Zoning Appeals, City Planning Department and Office of Zoning Administration) is and should continue to be empowered to adopt additional rules of procedure for the conduct of its business, supplementing the Code requirements. For the public to be adequately informed, a Code requirement should stipulate the adoption of any such rules by formal action of the agency involved and their publication in convenient form for public distribution.

## FILING OF APPLICATIONS

No major changes in the filing of applications are recommended. However, we do feel that there could be some simplification, together with emphasis on the department securing specific, accurate and complete information from the applicant.

<sup>27</sup>Los Angeles Municipal Code, Chapter 1, Article 9.

Currently at least fifteen different kinds of application and appeal forms exist for various types of zoning requests. In addition to the varying requirements of the Zoning Code, each zoning decision agency (City Planning Commission, Board of Zoning Appeals, Office of Zoning Administration) prescribes its own detailed rules for the submission of applications, including the forms, required information, who is eligible to file and whether or not sworn affidavits are required.

Among the problems brought to the attention of the Committee have been the lack of an adequate record upon which subsequent actions are based and the possibility of unverified information being accepted as fact. To promote more uniform and explicit requirements for the submission of applications, it is suggested that the Director of Planning should be delegated the authority and responsibility to prescribe the application and appeal forms and rules for all zoning matters other than those under the jurisdiction of the Office of Zoning Administration. The Director of Planning and Chief Zoning Administrator should cooperate to make all zoning application procedures as straightforward, clear and uniform as possible.

As a means of securing complete information pertinent to the questions involved in each type of case, it is suggested that a check list or questionnaire should be developed for each type of application, by which detailed and comprehensive information on the circumstances pertinent to the case would be provided and attested to by the applicant.

Although the authority appears to exist now, the Code should be clarified as to the authority of the Director of Planning and Chief Zoning Administrator to reject applications which provide insufficient information or are incomplete.<sup>28</sup> If such insufficiency is discovered after acceptance, the authority to stay the running of time limits with immediate notice to the applicant should be clear. When necessary, counsel of the City Attorney should be used to assist the Director of Planning and Chief Zoning Administrator in their determinations about the insufficiency of applications.

<sup>28</sup>Los Angeles Municipal Code, Section 19.00A.

## PUBLIC NOTIFICATION

**Recommendation 17: Provide timely and effective notification to all interested parties concerning hearings on planning and zoning cases through improvements in the record keeping and data processing procedures of the departments involved.**

At present, notices of public hearing are mailed to owners of property within 300 feet of the property involved in a request for zoning action. A notice is also published as legal advertising in a newspaper of general circulation. Both types of notice must be made at least ten days before the hearing. For large areas being rezoned a means for adequate notification should be developed.

## MAIL NOTICES

Numerous complaints were received about inadequate notice of pending zoning matters. Apparently, hearing notices often are not received at all or too late by interested parties, and the notices are sometimes difficult to understand.

We believe that timely and effective notice should be given to the public about zoning proceedings. To this end we suggest the following improvements:

1. The format and wording of notices should be clear, straightforward and as simple as possible. Long sentences should be abandoned in favor of short statements under subject headings. Diagrams should be included to avoid complicated verbal descriptions of locations and boundaries.

2. Ownership lists for the mailing of notices should be prepared by the City rather than relying upon the submission of such lists by applicants.

3. Data processing systems should be developed and improved as rapidly as possible to insure the mailing of notices to current owners at their present addresses. The Code now requires use of City Clerk's records for address purposes. Apparently, these records are often inaccurate due to either the failure of owners to report a change in mailing address or delays in reports of title transfer being recorded by the City Clerk's Office. We understand that an electronic data processing

system is under study by the City which will permit the continuous automatic updating of the City Clerk's records.

4. When data processing systems permit, provision should be made for mailing notices to residents who are not property owners. The City has under study the possible development of a computerized street address file which should eventually make this possible. This provision would improve public representation because tenants may have a somewhat different point of view than owners—particularly absentee owners—and because some occupant-owners may not be recorded as such on title records due to financial, trust or partnership arrangements.

5. For cases where public hearings are not held, but where information from the public could be pertinent, notification should be sent which solicits written comments by a specified date. Under the present policies and regulations, there are three classes of cases to which this could apply: (a) conditional uses for public utilities and governmental enterprises, for which notice of hearing other than to the applicant is not required; (b) land use variances, which are not required to be set for hearing although the Office of Zoning Administration always does so as a matter of policy; and (c) area variances involving only yard and setback regulations, which the Office of Zoning Administration normally does not set for hearing. For use cases this notification should be to owners and residents within the 300-foot radius while for area cases it might be made only to owners and residents of adjacent properties.

### **SUBSCRIPTION SERVICE**

**Recommendation 18: Establish a subscription service to provide notification to any interested individuals and organizations not otherwise notified.**

Suggestions have been made that notice should be given to a wider area than the present 300-foot radius. Recognizing that the number of people to be notified tends to go up in geometric proportion to the radius, with corresponding costs to the City, we favor a subscription service which should be available

to anyone. There should be two phases to this service:

1. For hearing notices, mailing lists should be maintained for subscribers by neighborhood or community areas.

2. For mailing of reports and notices of actions subsequent to hearings, separate mailing lists should be established for each case.

A fee should be charged sufficient to cover the cost of these services.

### **NEWSPAPER PUBLICITY**

Although we do not recommend any change in the requirements for newspaper notices, such notices, buried in the legal advertising section of a newspaper, are relatively ineffective.

News reporting on planning and zoning matters in advance of public meetings and hearings should be encouraged as a means of stimulating public awareness and interest. A simple technique would be to issue a suitable press release at about the same time as each hearing notice is issued. We suggest that the Planning Department consider adopting this practice, with distribution to local newspapers in accordance with their deadline dates.

### **CONDUCT OF HEARINGS**

Public hearings should be conducted in a manner which fairly and accurately develops the information upon which sound decisions can be based. In addition, the conduct of hearings should be such that the public has confidence in the fairness, completeness and correctness of the proceedings.

We received considerable comment to the effect that hearings have not always been fairly and properly conducted—particularly on the part of the Board of Zoning Adjustment. In addition, many comments suggest that the public finds the proceedings difficult to understand and follow, with occasional hostility and a resulting loss of confidence.

At present, hearings are conducted by either a staff officer or an appointed citizen board. Most original hearings are by professional staff—hearing examiners (acting on behalf of the City Planning Commission) or Zoning Administrators. Because of the large

number of cases, the Planning Commission itself does not normally conduct official hearings. Unfortunately, however, many Commission meetings become in effect rehearings of the cases before them, due to a rather liberal policy of allowing the interested public to ask questions or to comment.

Under our proposals concerning the functions of the Board of Zoning Appeals, this body would be limited to examining the record made before the Zoning Administrator for possible errors of judgment. The only exception would be in the case of a transfer of jurisdiction where a Zoning Administrator has failed to act within the time limit. In this case the Board would consider the case de novo.

All the officers and agencies involved in conducting hearings or subsequent deliberations should insist upon full and complete disclosure of pertinent information at the time of the original hearing on each case before the original hearing officer. This will insure that a proper record is established and will eliminate the need for public officials and citizens to engage in repetitive, time-consuming rehearings at subsequent stages of the zoning procedures.

#### TESTIMONY UNDER OATH

**Recommendation 19: Require that all testimony and other statements of fact be given under oath at all hearings held by or on behalf of the City Planning Commission, Office of Zoning Administration and Board of Zoning Appeals.**

The 1966 Los Angeles County Grand Jury recommended that: "At any formal hearing wherein the advisability of granting, changing, or modifying zoning is under consideration, both the proponents and opponents shall be placed under oath."

Staff hearing officers have generally indicated their opposition to this proposal on the grounds that it could inhibit the free expression of pertinent information, would unnecessarily delay proceedings and is unnecessary since hearing officers are skilled in distinguishing fact from fiction. On the other hand, many members of the public feel that misleading or untrue testimony is sometimes

allowed to pass without verification. On balance, we conclude that requiring testimony or any other representations of fact under oath would heighten public confidence and at least produce more accurate and thoughtful testimony. Among other jurisdictions, there is no unanimity about the desirability of this requirement, but many planning and zoning bodies do follow this policy and report satisfactory results.

We further believe that oaths should be administered individually, and should be required for all statements of fact whether given in testimony or otherwise.

#### VERBATIM RECORD

**Recommendation 20: Make a verbatim record of the testimony at each hearing and retain such records for three years.**

We concur in the suggestion made by many, and which we understand to be the present practice, that there be a complete record (but not necessarily a transcript) of all hearings conducted by or for the City Planning Commission, the Office of Zoning Administration and the Board of Zoning Appeals. These records (tape recordings or stenotype notes) should be retained for at least three years.

#### FINDINGS IN ZONING CASES

**Recommendation 21: Amend the Charter and the Zoning Code to clearly require that specific written findings of fact based upon competent evidence of record, and showing conformance or nonconformance to the required criteria, must be adopted in acting upon all zoning matters other than slight modifications as defined in the Charter and the Zoning Code.**

If zoning procedures are to be fair, and sound decisions insured, the reasoning used in proceeding from evidence to decision must be available and subject to examination, comparison and appeal. All too often the written reasons for decisions have been couched in only the broadest terms, offering the possibility at least for special interest objectives to be hidden beneath a cloak of vague platitudes about the general public welfare.

In other sections of this report we are recommending that zone changes must be based upon the General Plan, that specific criteria for conditional uses must be written into the Code and that the Charter requirements for variances be strengthened. These are the vital requirements to insure that each zoning action serves its intended public purpose and that legal authority is not being exceeded. Written findings are needed in each case to relate the requirements to the decision. They serve (1) as a tool of analysis for the decision-maker, (2) as an explanation to the public and (3) as a test by which an appeal body or the courts can examine the validity of the decision. Findings are a key element in making zoning procedures operate as they are meant to operate.

Two recent decisions of the California courts greatly strengthen the importance of proper findings.<sup>29</sup> These cases make it clear that when written findings are required they must be correct statements, based on substantial evidence of record, and sufficient to satisfy the criteria for zoning action as established by law. It can now be expected that the courts will examine in detail the reasoning employed in local zoning decisions and will strike down zoning actions involving inadequate or faulty findings.

## APPEALS

**Recommendation 22: Amend the Zoning Code to standardize appeal procedures for all types of planning and zoning cases, and include the following provisions:**

- 1. Allow a twenty-day period following the original determination for the filing of appeals.**
- 2. Provide that those eligible to file an appeal include an applicant, any person aggrieved, the Director of Planning and the Planning Commission.**

<sup>29</sup>*Cow Hollow Improvement Club v. Board of Permit Appeals*, 245 A.C.A. 160 (District Court of Appeal, hearing denied by California Supreme Court); *Broadway, Laguna, Vallejo Assn., et al v. Board of Permit Appeals*, 66 A.C. 798 (California Supreme Court).

- 3. The written appeal must show specifically wherein the original findings and determination are not supported by the facts.**
- 4. Appeals to the Board of Zoning Appeals, involving as they do interpretations of the provisions of the Charter and ordinances, are to be considered only upon the record of the original hearing and determination. No new evidence may be introduced. If new evidence is offered the case shall be returned to the agency having original jurisdiction for rehearing and redetermination.**
- 5. Any modification or reversal on appeal must include written reasons detailing wherein the original determination is not supported by the findings of fact, and must set forth specific revised findings.**
- 6. Failure of the appellate body to act within fifty days after filing of an appeal (or longer period when an extension of time is authorized) shall constitute denial of the appeal.**

The purpose of appeals is frequently misunderstood. The only reason for conducting appeal proceedings is to correct the possible errors of an agency or office which has been given power to take certain actions—to insure that such an agency continues to operate within its assigned authority and responsibility. It is not the proper function of an appeal agency to duplicate the functions of the agency from which the appeal is made. To do so is wasteful of time and money and opens the door to inconsistency and unfairness between the actions of the two agencies.

In Los Angeles, it is apparent that zoning appeals have sometimes been looked upon by both appellants and City officials as a means of applying alternate sets of policies and standards to particular situations, and not as a check to insure that adopted rules and policies are being followed. If the rules or policies are wrong, they should be changed for everybody by action of a legislative or policy-making body, not for a few by action of an administrative appeals agency.

It is also an abuse of the appeals procedure to use it as a means of bypassing the agency having original jurisdiction rather than as a means of correcting the errors of that agency. Too many zoning cases have been filed and pursued with little or no concern for the adequacy or outcome of the proceeding before the agency having original jurisdiction, on the assumption that what really counts is the attitude of the appellate body.

The basic steps involved in sound appeal procedure are shown in Figure 10.

The first determination by the appeal body is whether or not the original decision-maker had sufficient information upon which to base a decision. If pertinent facts were not disclosed in the original application, investigation and hearing, there has not been a full opportunity for reaching a sound decision in the first instance. In this circumstance the

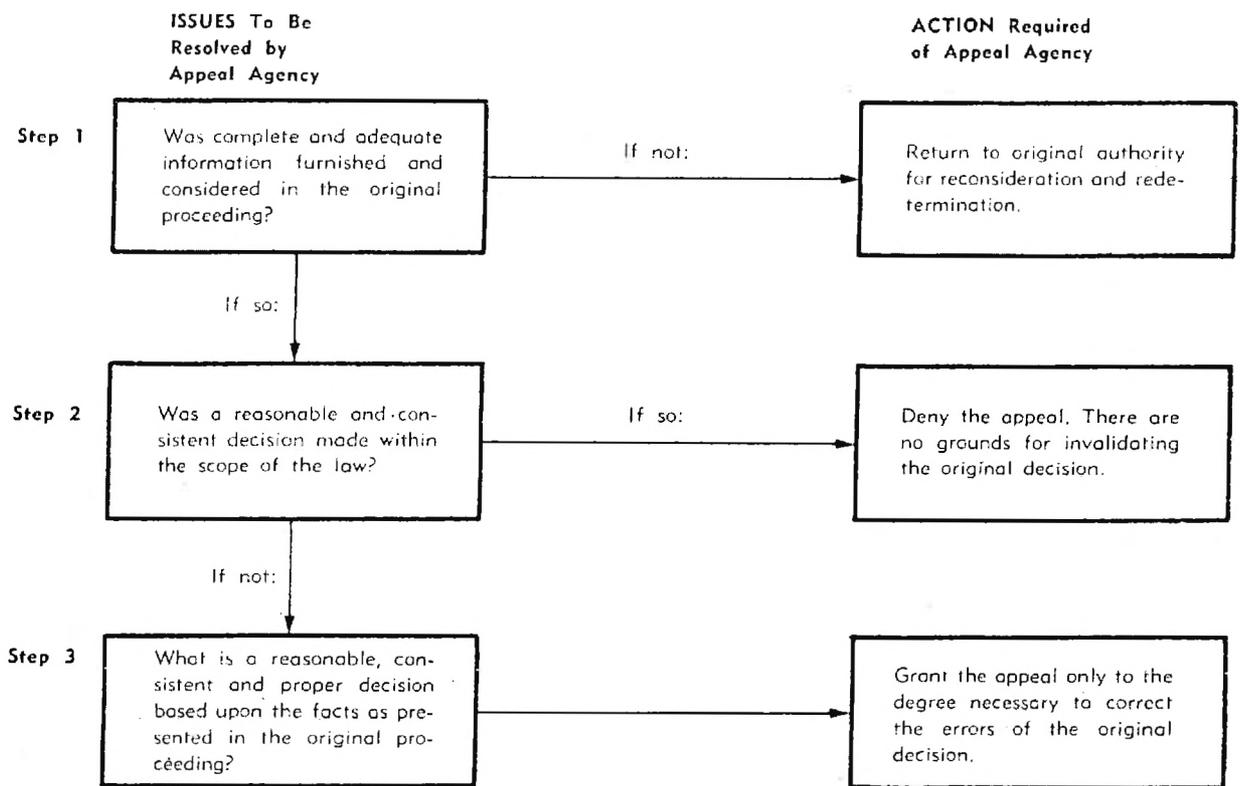


Figure 10. Guide for Recommended Appeal Procedure

original proceeding is incomplete rather than erroneous. Rather than substitute its own judgment based on different information, the appeal body should, in such a situation, return the matter to the original authority for reconsideration in light of the full facts of the case. To do otherwise is to invite the withholding of information simply for the purpose of justifying an appeal—in effect bypassing the agency having original jurisdiction. New time limits should apply when a case is re-

turned for reconsideration. Where rehearing occurs because an appellant failed to provide information which could have been furnished initially, it would be appropriate to require a rehearing fee.

The next question for the appeal body is whether or not the original decision has exceeded the bounds of the law, regardless of whether the appeal body agrees with the decision. For this purpose, the findings of the

original authority must be examined to determine if they demonstrate a suitable relationship between the facts of the case and the conclusions reached. If the decision is found to be reasonable and proper in the circumstances, the appeal body is not justified in substituting its own judgment for that of the original authority.

Only after it has been determined that the original reasoning went beyond the applicable legal requirements is it proper for an appeal agency to apply its own specific reasoning to the case. To assure that the appeal body, in turn, does not go beyond the requirements of law, it must state its own reasoning in the form of written findings which, if necessary, can be reviewed by higher authority—usually the courts.

The key requirement to maintain proper appeal procedure, therefore, is to prohibit the appeal body from considering matters de novo, that is, on the basis of new information or arguments. Instead, each appeal should be considered entirely on the basis of the record of the original proceeding. This, of course, requires the keeping of an adequate record, including both the pertinent facts and the reasoning based on the facts, thus emphasizing the importance of written findings as discussed in a previous section of this report.

The second requirement to insure the proper handling of appeals is to require that the reasoning involved in appellate decisions is also fully disclosed through specific written findings. For appeal decisions which modify or reverse previous decisions, there must be two types of findings: first, those showing error in the original determination; and second, those supporting whatever revised decision is made.

#### **FILING OF APPEALS**

To justify filing an appeal, there must be a showing that error has been made in the original determination. Since appeals should be considered entirely on the record, and since the burden of proof is on the appellant,

the written appeal should establish the claim of error. The Zoning Code now requires specific showings of error to be stated on the appeal forms for the various types of zoning matters. However, it is found that appeals are often submitted with only the most general statements as to why the initial decision is believed to be in error. As suggested in the discussion concerning the filing of applications, there should be a careful checking of appeal forms before their acceptance. Although the staff of a City agency can be authorized to refuse to accept an improperly filled out appeal, appellants should be encouraged to present their case as specifically and in as much detail as possible.

A present problem, however, is that for variances and conditional uses the appeal must be filed within ten days from the issuance of the original determination. We believe this does not always provide enough time for an appellant to analyze the determination and prepare his appeal in sufficient detail. We recommend a twenty-day filing period for variance and conditional use appeals—the same period as now allowed on zone change appeals.

Finally, concern has been expressed because, for some zoning matters, only “an applicant or any other person aggrieved” is permitted to file an appeal. This wording excludes appeals by persons not directly affected by a zoning action.

It has been suggested that any Councilman be permitted to file an appeal in zoning matters. If this were permitted, a Councilman would be able to file an appeal and then, when it reached the City Council, pass judgment on the appeal. Such a situation would be untenable. However, it is possible that a Zoning Administrator, for example, could take an action contrary to the general plan of a community, yet neither the applicant nor directly affected property owners file an appeal. In order to protect the public interest in such cases, we propose that the Planning Commission and the Planning Director be empowered to cause an appeal to be presented to the Board of Zoning Appeals.

## TRANSFERS OF JURISDICTION

**Recommendation 23: Amend the Zoning Code to standardize the procedure for transfer of jurisdiction to an appellate body when the original body fails to act, and include the following provisions:**

- 1. Failure of the original authority to act within the fifty-day time limit (or longer period when an extension of time is authorized) constitutes neither approval nor denial but permits transfer upon written request of the applicant. The appellate body then assumes all responsibilities and duties imposed upon the original authority, and must act within fifty days of transfer of jurisdiction (or longer period when extended by mutual consent).**
- 2. Upon transfer of jurisdiction, public notification shall be made and a hearing held in the same manner as required for an original hearing.**

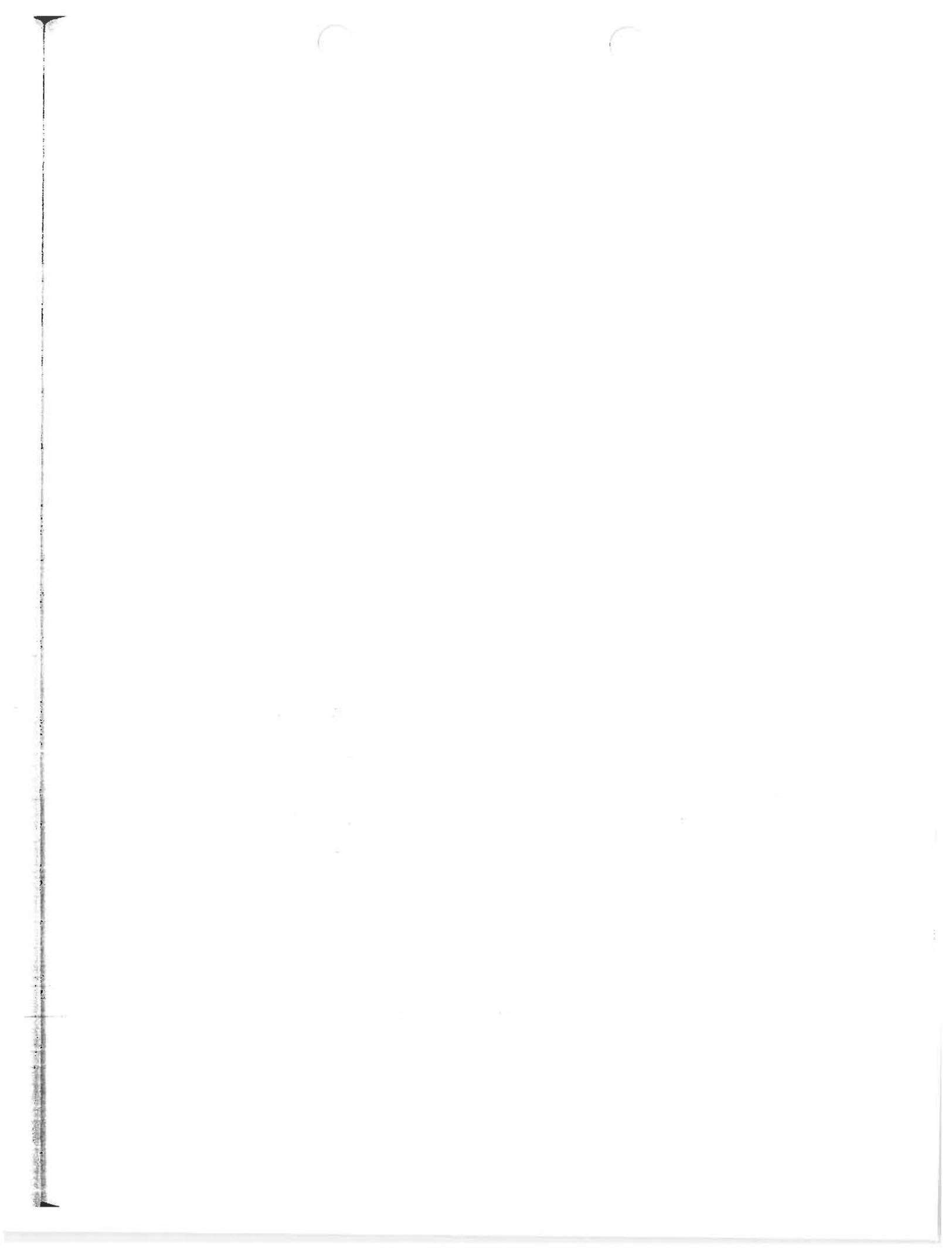
The provision for a transfer of jurisdiction is intended to enforce the timely completion of proceedings and decisions by the agency having original jurisdiction. If a determination is not made within a specified time limit, then the applicant may have the case transferred to the appellate body, and this body then acts in place of the original authority. This provision is desirable to insure timely action but it should not be abused, as has happened occasionally, by permitting the applicant to select his forum.

Additional authority should be provided for the extension of time limits on zoning proceedings in proper cases. In normal cases the present fifty-day time limit has proved sufficient for staff investigation, notification, hearing, report and decision. Present provisions should be retained which permit the

Zoning Administrator to extend the time when more information is required. In major cases, the time is often extended by mutual consent of the applicant and the agency having jurisdiction. In unusual cases, however, legal opinion or special research may be required even though an applicant does not consent to delay for such purposes. Under these circumstances, the agency having jurisdiction should not be forced either to make a decision based on inadequate information or to lose jurisdiction by transfer to the appeal agency. A maximum time limit for this type of delay should be provided, however, together with the criteria to be met to justify such a delay.

If the other recommendations of this chapter are followed concerning requirements about the providing of full information during initial proceedings, it is unlikely that a transfer of jurisdiction could occur except when a decision-making agency is truly negligent in reaching a decision. In other cases it would be possible to stop the running of time limits until needed information is furnished, thus avoiding an unwarranted transfer of jurisdiction.

In those few cases where a transfer of jurisdiction does occur, there should be assurance of the same degree of fact-finding and analysis as would be the case under the original authority. To accomplish this the Code should make it clear that under a transfer, the appellate body must assume all responsibilities and adhere to the procedures which would have been followed by the original authority. The City Planning Department should be required to provide staff services for a transferred case, including investigation, report and recommendations in the same manner as would have been provided if the case had not been transferred.



## CHAPTER 4

### RESOLVING THE PUBLIC INTEREST— A DEFINITION OF ROLES

#### GENERAL OBJECTIVE

To organize and define the roles of the various officials involved in the planning and zoning process in a way that leads to full recognition of the public interest.

In the previous chapters of this report, we have been concerned primarily with the legally established specifications for city planning and zoning practice. In this chapter, we turn to more intangible factors involved in public decision-making. Government should serve the public interest, but the public interest is an elusive concept. However, by bringing together people who represent the public in different ways, with different approaches and points of view, our governmental system seeks to guarantee the best possible determination of the public interest. This system is often described as consisting of checks and balances.

The possible abuses which have given rise to the work of this Committee are due to a partial breakdown in the checks and balances which had been intended to insure that planning and zoning practices serve the broad public interest. The system was designed to provide a set of distinctive, but interrelated, official roles which would prevent domination of the system by any one interest group and encourage exposure of and counteract any abuse. But we find that recent practice has tended toward an overlapping of the roles played by elected officials, appointed board

members and professional staff. This has resulted, in some cases, in an inadequate resolution of the public interest and a decrease in governmental efficiency.

The original concept, as we interpret it, was to have essentially a three-way balance among the political system (represented by the City Council and the Mayor), a non-political "civic conscience" (reflected by the City Planning Commission and Board of Zoning Appeals), and a professional-technical-administrative staff (the City Planning Department with responsibility focused on the Director of Planning and the Chief Zoning Administrator). This arrangement was in line with the nationwide growth of the concept of a planning commission as a group of knowledgeable civic leaders interested in the long-term development of their city and bound by neither partisan political considerations nor an overly technical viewpoint which might not be fully appreciative of community values and attitudes.

The basic relationship among the Mayor, City Council and City Commissions is a fundamental issue in Los Angeles City government because of the unique and extensive use of commissions to provide either management

control or policy guidance for most City departments. It is beyond the scope of this Committee to deal with this broad question; undoubtedly, it is a matter currently under consideration by the Los Angeles City Charter Commission. However, with respect to planning, we believe the organizational structure, with powers revised in accordance with the various recommendations of this report, can be effective if used properly. In particular, the Planning Commission serves in a unique screening capacity which we believe should be retained. This commission, unlike certain others, is not the administrative head of the department.

Figure 11 shows the present organizational relationships of the City officials and agencies directly involved with planning and zoning, as defined by the City Charter and ordinances. Although the Charter provisions affecting organization have been changed somewhat over the years, the current pattern still reflects the basic three-part relationship of elected officials, citizen appointees, and civil service staff as envisioned in the original provisions. The recommendations of this chapter are intended to strengthen these officers and agencies in assuming and maintaining their proper roles within the existing structure.

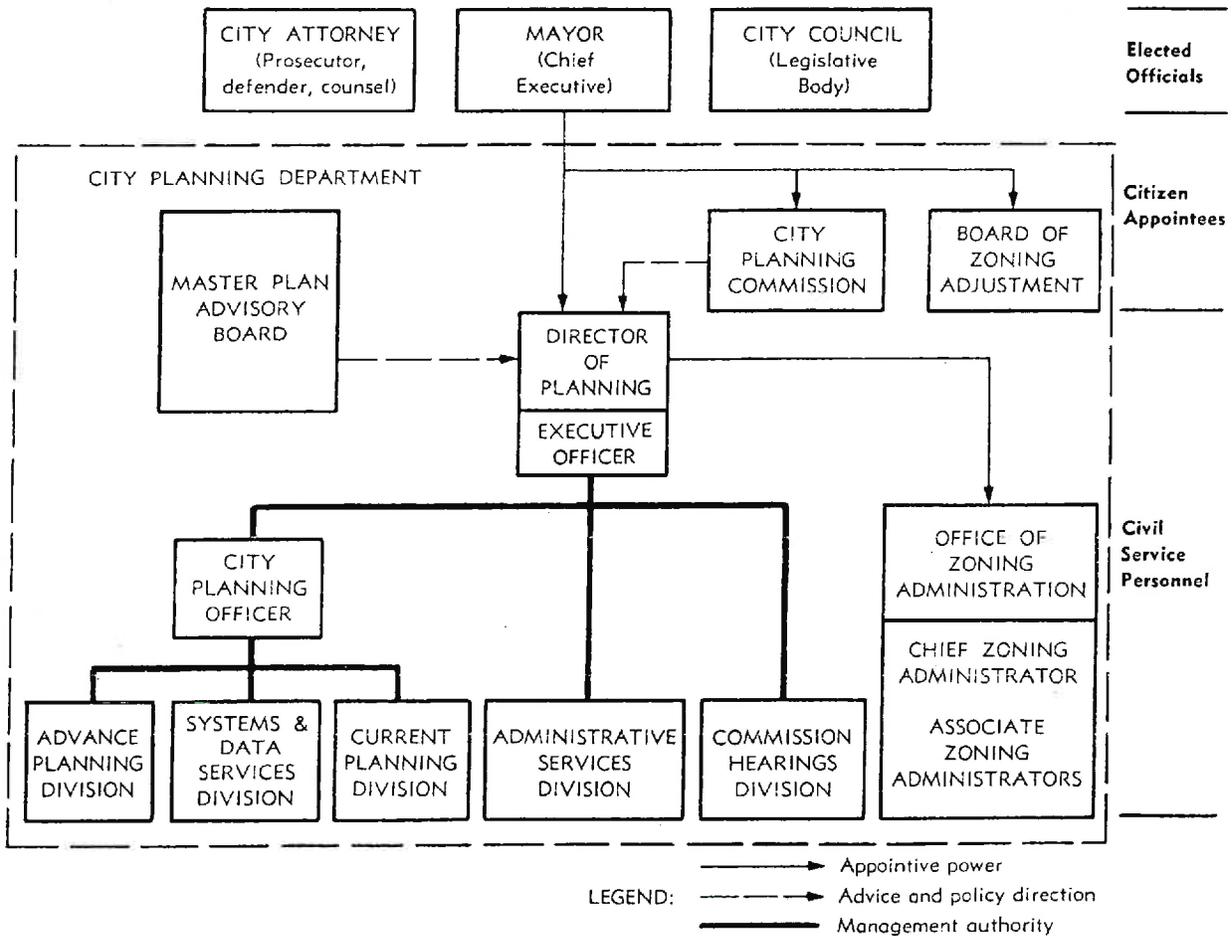


Figure 11. Organization Chart — City Agencies With Responsibility for Planning and Zoning

## CITY PLANNING COMMISSION AND BOARD OF ZONING APPEALS

The Planning Commission should be a high caliber advisory agency with an independence of action from both the political arena and the bureaucracy. In this role, it can serve as a balancing influence and a source of both continuity and innovation. We believe the Commission should not assume legislative authority in any manner, nor should it act as a board of management; it should be an advisor to both legislators and the Director.

As we have pointed out in Chapter 2, the Board of Zoning Appeals should play a strictly quasi-judicial role, and this too requires independence from both political and bureaucratic influences; the law alone should be the Board's primary guide.

### APPOINTMENTS

**Recommendation 24: In making and confirming appointments to the City Planning Commission and the Board of Zoning Appeals, the Mayor and the City Council must assume full and equal responsibility for insuring that persons of the highest integrity, competence and interest in civic and public affairs are selected.**

Because of their broad influence on both public and private land development, the appointive positions on both the City Planning Commission and the Board of Zoning Appeals have special responsibility, sensitivity and burdens. We consider it absolutely essential that people of the highest integrity, competence and civic interest be appointed to those positions. We believe that the basic personal qualifications required include:

- Civic mindedness, understanding and leadership.
- A deep interest in planning for orderly community development.
- Skill in analyzing complex situations involving social, economic and physical elements and—especially for the Board of Zoning Appeals—judicial temperament and skill.
- No substantial conflicts of interest.
- Time available to meet the burdens of the office.

We do not believe any foolproof system exists for insuring that appointees meet these criteria. In the first instance, the responsibility for appointments rests with the Mayor, but we believe the Council must accept equal responsibility for the quality of appointments by conscientiously exercising its power to confirm only after careful inquiry.

### ORIENTATION

**Recommendation 25: Furnish new appointees with a written manual covering the nature of the planning and zoning functions, the role of the Planning Commission and Board of Zoning Appeals, and the legal, policy and ethical limitations within which they must operate.** (The Committee will make more specific recommendations on this in a subsequent report.)

Our understanding is that the City Planning Department provides a briefing for new appointees and furnishes them with various official documents and explanatory material relating to their duties. However, we feel it would be valuable for each commissioner and board member to have a well organized and indexed volume for ready reference, bringing together in succinct form all significant information on laws, principles, policies and practices relating to their activities. Such a document might best be maintained in loose-leaf form for continuous updating.

In addition, advantage should be taken of outside organizations such as universities and associations of government officials which might organize meetings or seminars for exchange of information concerning practices in other jurisdictions and innovations in the field of planning, zoning and public administration. The City should encourage such participation.

### POLICY REVIEWS

**Recommendation 26: The Director of Planning should arrange periodic meetings with members of the Planning Commission, the Board of Zoning Appeals, the City Attorney, Zoning Administrators and key staff members to review over-all operations, consider basic policies, examine the relationship of zoning actions to such policies and reevaluate established procedures and policies in the light of advancements elsewhere.**

In order for any organization to continue to achieve its basic objectives, there must be a means of monitoring results, evaluating overall effectiveness and making adjustments in policy when necessary. It is our understanding that, in spite of a steady stream of zoning and planning cases to consider, the Planning Commission, Board of Zoning Adjustment and Planning Department staff occasionally conduct policy review sessions. We commend this practice and urge its continuance and strengthening on a regularly scheduled basis.

One important part of such discussions should be periodic explanations by the City Attorney of significant court decisions in California and other states. In addition, information on new techniques in planning and zoning should be presented and discussed. Finally, there should be an exchange of attitudes and ideas among the agencies responsible for planning and zoning in Los Angeles, directed toward definition of their respective roles and effective coordination of the City's planning and zoning processes.

#### **TERMS OF OFFICE**

**Recommendation 27: Amend the Charter to strengthen the system of overlapping terms of service on the City Planning Commission and the Board of Zoning Appeals as intended by the City Charter. This should be accomplished by providing that:**

1. **Appointments can only be made when an office becomes vacant.**
2. **Vacancy in an office occurs only upon:**
  - a. **Expiration of the term.**
  - b. **Removal accomplished by either:**
    - 1) **Request of the Mayor approved by simple majority vote of the Council.**
    - 2) **On initiative of the Council by a two-thirds vote. If disapproved by the Mayor, a four-fifths vote required to sustain removal.**
  - c. **By a commissioner or board member filing a resignation with the City Clerk.**
3. **Appointments will be deemed approved if not acted upon by the Council within sixty days.**
4. **In the event the Mayor does not make an appointment within sixty days after a vacancy in an office occurs, the President of the City Council shall make the appointment, subject to confirmation by the Council as in the case of appointment by the Mayor.**

The clear intent of the City Charter is to have overlapping terms of office on City commissions and the Board of Zoning Appeals.<sup>30</sup> The purpose of overlapping terms is to guarantee continuity of policy and experience on these boards. We firmly believe this is essential to protect the independent advisory role of the Planning Commission and a consistent quasi-judicial role for the Board of Zoning Appeals.

The principal of continuity of policy and experience is of special and vital importance in planning and zoning since the aim is to develop and implement **long-term** plans for city development. The process of development and redevelopment is continuous and largely influenced by what has already happened or by what is firmly projected. If sudden and substantial changes are made in the plans, programs and standards of the City by new appointees, chaos could result. The knowledge and understanding of a commissioner, which are principally the products of experience, represent valuable assets to the City. In the event of complete and sudden change in the personnel of the Commission, a void in the availability of this kind of background will develop, and the new Commission will be forced to operate for a period of time without an understanding of what and how things were done in the past.

Unfortunately the City Charter, although clear as to intent, does not provide adequate restrictions against violation of this principle. Commissioners can be replaced at any time simply by appointing someone else to their office; also, they can be continued after their term of office expires and thus made subject to replacement at any time. In some cases, resignations have been secured and held for use at any time. Such practices hardly contribute to the exercise of independent judgment on the part of appointees.

In 1961 as in 1953, a new Mayor replaced most of the members of the Planning Commission and the Board of Appeals. A majority of City commissioners was also replaced in 1939 after a new Mayor was elected in a recall campaign. Since 1961, the average tenure on these two boards has been 2.5 years, compared with 4.3 years for the period 1940 to 1961 (see Figures 12 and 13).

<sup>30</sup>Los Angeles City Charter, Sections 72 and 98½, provides for five-year terms of office with one term expiring each year.

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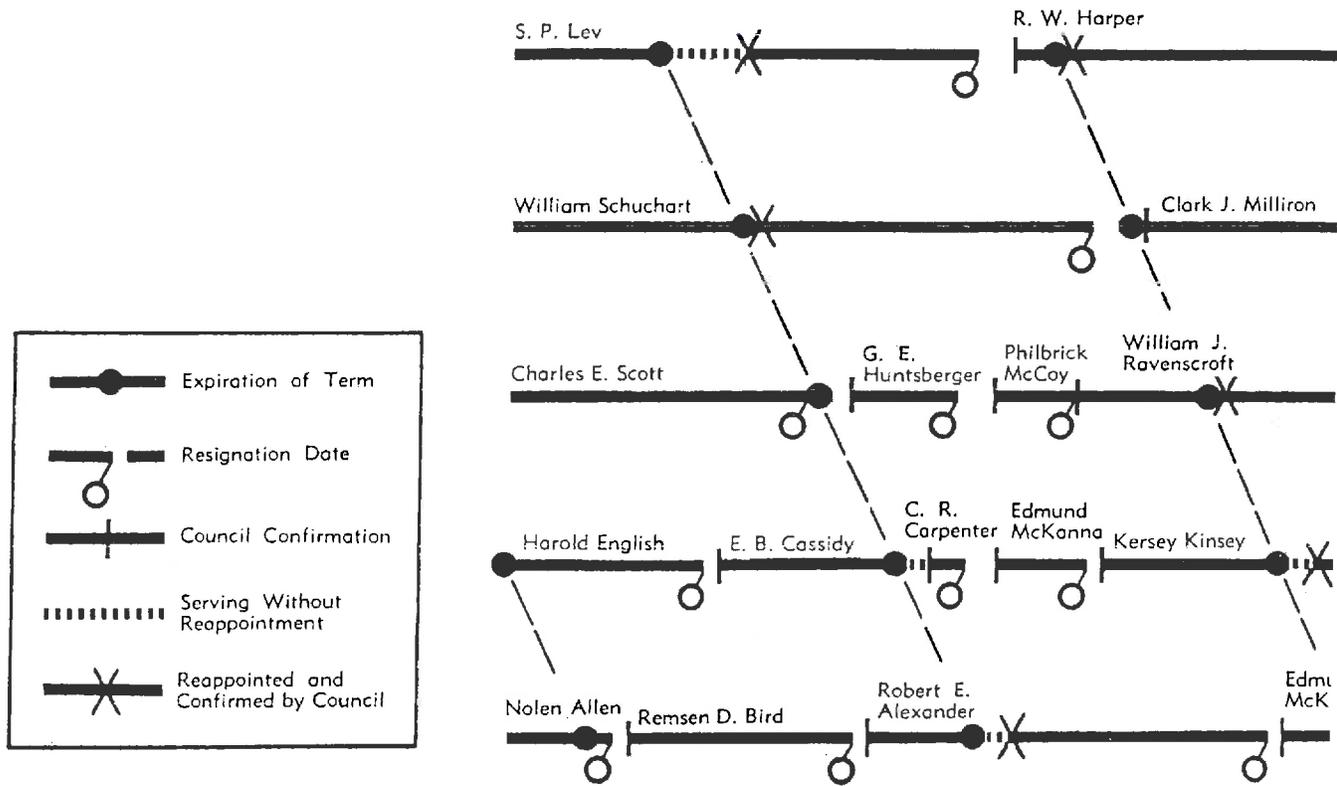


Figure 12. Tenure of Members — City Planning Commission (1940 to 1968)

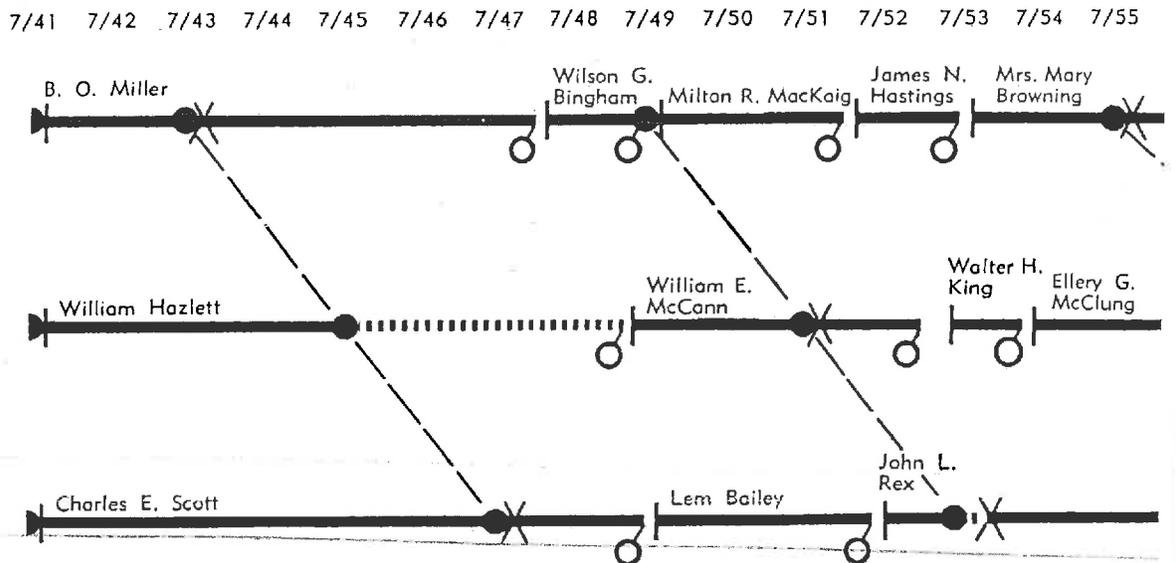
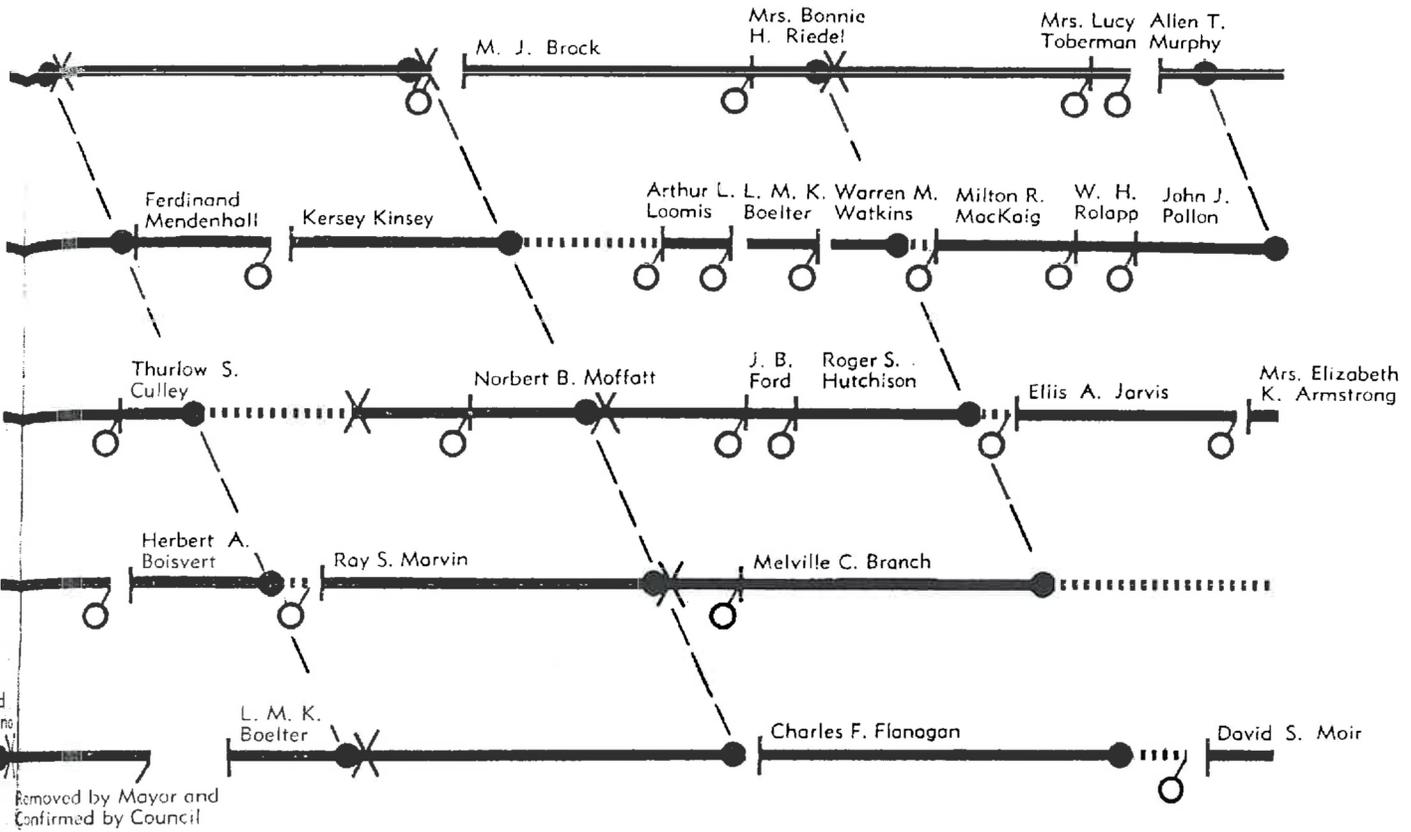
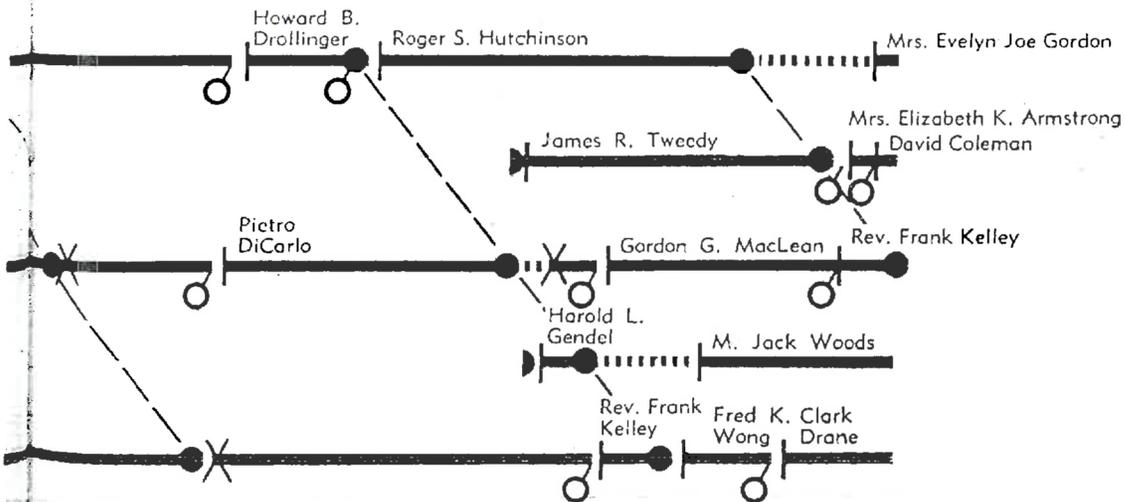


Figure 13. Tenure — Board of Zoning Appeals (1941 to 1963); Board of Zoning Adjustment (1963 to 1968)

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We believe it is essential to sound and effective planning and zoning to make the intent of the Charter mandatory in regard to overlapping service on the City Planning Commission and Board of Zoning Appeals. This can be accomplished by requiring that (1) appointments or reappointments be made at the beginning of each term of office on the Commission or Board, (2) removal from office can occur only with the consent of the City Council (which body may require a showing of substantial reason such as improper conduct in office), and (3) resignations become effective only when voluntarily and publicly submitted.

Under Council File No. 136,635, a Charter amendment similar to our recommendations is currently being considered. We urge the inclusion of our specific proposals in this Charter amendment.

## COUNCIL ACTION

**Recommendation 28: Provide by Charter or ordinance that, for planning and zoning matters where time limits are not otherwise provided, each such matter must appear on the Council agenda each ninety days from the date of transmittal to the Council, until Council action is completed.**

In all legislative matters and most policy issues, the final resolution of the public interest should and does occur on the floor of the City Council. Professional analysis is provided by City staff; independent civic advice is offered by City commissions and others; but it is the ultimate responsibility of the elected representatives to debate the issues and reach a decision. Two principles are well recognized as basic to the legislative process: the minority should be heard, but the majority should rule.

Because Councilmen are elected by districts, the Committee finds it important to emphasize the responsibility of each Councilman for the City as a whole. Practices which permit a Councilman individually to control decisions affecting his district is in effect a form of minority rule and should be eliminated. We do not object to any Council procedures allowing reasonable consideration, but we do propose that the practices which permit

one or two Councilmen to prevent action indefinitely without support by the majority should be changed.

We believe that in most instances the Council acts as expeditiously as possible on planning and zoning matters. But apparently on rare occasions action has been unreasonably delayed or prevented by holding a file in Committee or in a Councilman's office.

It should be noted that time limits are provided by Charter and ordinance for staff and Commission action on most planning and zoning matters. It is perhaps unreasonable to impose time limits for final legislative action on these same matters, but at least there should be the **opportunity** for the majority to act within a reasonable time. If the Council has failed to take action on a planning or zoning matter within ninety days of submission to the Council, the Council as a whole should be aware of the delay and the reasons therefor, and if the majority so decides, the Council as a whole should be able to act upon the matter. This purpose would be accomplished by the above recommendation.

## MAYOR'S VETO

**Recommendation 29: Identify in the Charter and Code those matters that are legislative in character (as distinguished from administrative and quasi-judicial matters) and therefore to be adopted by ordinance with the right of veto by the Mayor.**

As the chief city-wide elected official, the Mayor properly has an important role to play in legislative and policy-making matters. Several of the Committee's recommendations are intended to strengthen the role of the Mayor by assuring that he does in fact have veto power over legislative and policy actions, as intended by the City Charter. In zoning matters, the major change would be the criteria and circumstances under which conditional uses could be approved. Thus, the Mayor would have veto power over the Code provisions and subsequent amendments governing these land uses.<sup>31</sup>

<sup>31</sup>See Chapter 2 re: Conditional Uses, pp 30-33, and Planned Developments, p 34.

In addition, the small group of unusual but significant land uses which we refer to as unclassifiable would be individually authorized by ordinance<sup>32</sup> and thus subject to veto. These unclassifiable uses, as well as the more significant conditional uses, are now subject only to approval by the Planning Commission, unless appealed to the Council, in which case action is by resolution. The Mayor has no veto power over Council resolutions.

In Chapter 1 we emphasized the importance of the General Plan as a major policy document of the City. In view of its importance, the Mayor should have the same degree of authority and responsibility for the General Plan as for legislative matters. As explained in Chapter 1, the General Plan is not suitable for adoption by ordinance because it is general in character and serves as a guide rather than as a set of definite regulations. Therefore, we have recommended that a copy of any General Plan matter should be submitted to the Mayor prior to Council action, and a two-thirds vote of the Council should be required to override any recommendation of the Mayor concerning the General Plan.<sup>33</sup>

The various recommendations referred to in this section will carry out the intent of Grand Jury Recommendation 3 which proposed that the Mayor have veto power over those actions which in effect constitute reclassification of property.

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<sup>32</sup>See Chapter 2 re: Unclassifiable Uses, pp 33-34.

<sup>33</sup>See Chapter 1 re: General Plan Procedure, pp 17-21.

## OVERRIDING OF RECOMMENDATIONS BY CITY COUNCIL

The Charter presently requires the referral of all zoning matters, as well as many other matters relating to planning to the City Planning Commission before the Council may act. A two-thirds vote of the Council is required to act over the disapproval of the Commission, and, if the Mayor vetoes this action, a three-fourths vote of the Council is required to override. In general, these provisions are designed to give some weight and balance to the longer range concerns of the Commission as against the shorter range pressures often placed upon the Council. We favor retention of these present provisions.

Grand Jury Recommendation 8 calls for requiring a four-fifths vote of the City Council to override a recommendation of the Planning Commission which is in accordance with the General Plan and substantially the same as the recommendation of the City Planning Department. This procedure would present practical difficulties in determining whether or not the necessary degree of conformance to the General Plan exists and whether or not there is sufficient agreement between the Commission and the Department. We believe the present requirements provide essentially the same degree of limitation on overriding actions of the Council, without the uncertainties inherent in the Grand Jury proposal.