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November 9, 2020

CF 17-0226-S1

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, CA 90012

Re: Report on Penalties Imposed for Unpermitted Remodels, Additions, and Demolition of Buildings and Structures, CF 17-0226-S1

Dear Honorable Members,

The Los Angeles Department of Building and Safety (LADBS) was instructed to report back to the Planning and Land Use Management (PLUM) Committee on penalties that can be imposed for unpermitted remodels, additions, and demolition of buildings. Since the Council's vote on this motion, LADBS received inquiries about limiting the scope of the motion to focus on designated historic buildings and historic resources identified in SurveyLA, the Citywide Los Angeles Historic Resources Survey. Given that the grave consequences for unpermitted remodels, additions, and demolition to historic structures, this report addresses the potential for addressing this issue.

I. EXISTING PENALTIES FOR BUILDING CODE VIOLATIONS

The Los Angeles Municipal Code (LAMC), specifically Chapter 9, contains building code provisions that are enforced by LADBS and also authorizes LADBS to assess various fees for building code violations. These fees are not considered penalties,

as the current fee rates are set to recover the cost of providing code enforcement services. The current building code provisions do not include penalties assessed on unapproved construction violations. LADBS assesses the following building code violation fees at cost-recovery levels:

A. Building Code Violation Fees

1. Code Violation Inspection Fee

LAMC Section 98.0421 gives authority to impose a fee of \$356.16 when an Order to Comply is issued. Late penalties may be assessed.

2. Non-Compliance Fee

LAMC Section 98.0411 gives authority to impose a fee of \$660.00 if an owner fails to comply with the Order to Comply within 15 days following the compliance date. Late penalties may be assessed.

3. Investigation Fee

LAMC Section 98.0402 gives authority to collect a fee when a permit is required to bring a property into compliance with the LAMC. When the permit is issued, the permit fee is doubled; the minimum fee is \$400.00.

4. Modification Fee

LAMC Section 98.0403.1 gives authority to collect a fee if the owner cannot correct a violation within the compliance period and needs additional time.

Although the fees listed above may have a punitive effect, the amounts are based on the cost to provide those services. The LAMC includes a provision (LAMC Section 11.00 (m)) whereby the City Attorney may pursue a fine of \$1,000 or up to six months in jail through prosecution in the Los Angeles County Court system for any municipal code violation, including violation of building codes.

B. LAMC Violation Penalties

1. Misdemeanor Fine

LAMC Section 11.00 (m) states that violation of LAMC is punishable as a misdemeanor with a fine of \$1,000 or six month County Jail imprisonment, or both.

2. Reimbursement of LAMC 11.00 (m) Investigation and/or Enforcement Costs

LAMC Section 91.8102.3 states that violators of LAMC Section 11.00 (m) may be required to reimburse LADBS for costs expended to investigate and/or enforce the provisions of LAMC.

3. LAMC Section 11.2.04 authorizes the use of Administrative Citations as an alternative to criminal, civil and any other legal enforcement remedies provided in the Municipal Code. The recipient of an Administrative Citation is required to pay an Administrative Fine which shall be ascertained by the Enforcement Officer in accordance with the Administrative Fine Schedule set forth in the Code. The fine amounts vary depending on the number of previous citations issued and the character and size of the area impacted by the violation.

II. FEASIBILITY OF INCREASING EXISTING PENALTIES FOR BUILDING CODE VIOLATIONS

As detailed in Section I above, LADBS currently charges non-compliance and code violation inspection fees, which are for the recovery of costs and are not considered monetary penalties. Per California Constitution Article 13D, Subsection 6 and California Government Code Section 66014, the City of Los Angeles must justify any new or increased fees with a fee study and public hearing. The City may recommend increasing the \$1,000 civil penalty imposed by Section 11.00 (m) for LAMC violations, or increase the Administrative Fine Schedule provided in LAMC Section 11.2.04, subject to City Attorney review and approval.

III. FEASIBILITY OF ADDITIONAL PENALTIES FOR CHRONIC VIOLATIONS OF THE SAME BUILDING CODE

The Municipal Code offers limited penalty authority to address chronic repeat violators performing construction or demolition in violation of the Building Code. California Government Code Section 53069.4 gives authority to local agencies to make any violation of any ordinance subject to an administrative penalty if there are administrative procedures to govern the enforcement and review of those

penalties. A number of other jurisdictions have utilized similar State authority to legislate for penalties to combat unpermitted construction or demolition, especially when such unpermitted construction causes irreparable damage to irreplaceable historic resources. The following jurisdictions have served as examples of the imposition of penalties that may be considered.

A. Civil Penalties Tied to Building Value

1. Fines Tied to Fair Market Value

The City of San Antonio levies a fine for unpermitted demolition in the amount of 90 percent of the fair market value of the cost of replacement or repair of such building, object or structure. The fines collected are to be used for the benefit, rehabilitation or acquisition of local historic resources. The City of New York Landmarks Preservation Law imposes a civil penalty for unpermitted demolition in the amount of up to the fair market value of the improvement parcel, with or without the improvement.

2. Fines Tied to Appraised or Replacement Value

The City of Palo Alto imposes a civil penalty that is equivalent to the replacement value of the building, but not to exceed \$10,000. The City of Ventura assesses a fine equivalent to the greater of a) the appraised value of the building before demolition minus the appraised value after demolition, or b) \$10,000. The City of Pleasanton proposed an ordinance that allows for a fine to be imposed based on the appraised value of the building before demolition or the replacement value of the demolished building.

B. General Penalties or Fines

The City of San Francisco issues administrative citations at \$100.00 per day as well as civil penalties of \$200.00 per day for ongoing violation. The City of Berkeley's Landmark Preservation provisions include misdemeanor fines of \$100.00 for first violation, \$200.00 for second violation, and \$500.00 for third violation. The City of Oakland's fine for illegal demolition is \$5,000 per living unit.

C. Demolition by Neglect Enforcement and Penalties

Demolition by Neglect can be defined as willful property neglect that then leads to demolition. The City of San Antonio considers demolition by neglect as a civil offense and imposes penalties of \$1,000 per day.

IV. FEASIBILITY OF NON-MONETARY PENALTIES

The LAMC provides authority to take action against unpermitted remodels, additions, and demolition of buildings that are not fines or penalties. The City can currently take the following actions per the LAMC.

A. Non-Monetary Penalties per LAMC

1. Five-Year Moratorium

The City currently has the ability to place a five-year moratorium on issuing permits for sites where demolition or relocation work has been done without permits, per LAMC Section 91.106.4.1(10). LADBS has implemented this LAMC section in the past, albeit infrequently and primarily in situations involving the unpermitted demolition or alteration of historically significant buildings. Although the City views such moratorium on permit issuance as a deterrent to conducting unpermitted construction work, there are other “costs” that need to be considered and carefully weighed before imposing such a moratorium on a property. During this five-year period, neighboring properties are negatively impacted by the vacant land or partially demolished building existing in a non-productive state which causes blight and enables various nuisance conditions caused by squatters or other unauthorized trespassers. In addition, in some cases the moratorium may not serve as the intended deterrent, as some building owners could consider the five-year moratorium as a routine “cost of doing business”.

B. Other Non-Monetary Penalties

1. Civil Action

The City may be able to bring civil action against a person who is a chronic violator of building codes pursuant to California Business & Professions Code Section 17200, among other statutes. Additionally, the City may utilize receivership, through the judicial process, to request a Court to appoint a responsible party to take charge of a neglected property and bring it into

compliance with code standards. Finally, the City can pursue injunctive relief in certain instances.

2. Other Jurisdictions

Below are summaries of actions that other jurisdictions have implemented for unpermitted demolitions or alterations of historical resources.

a) Additional Property Maintenance Requirements

The City of Redlands Demolition Ordinance contain provisions that specify that any property that remains undeveloped shall be maintained in such a manner so as to not constitute a public and private nuisance. The City of Glendale Demolition Deterrence Ordinance also contains affirmative maintenance of lot provisions.

b) In-Kind Restoration or Replacement

The City of Glendale requires in-kind reconstruction of destroyed or deteriorated features of a building that is illegally demolished or demolished through demolition by neglect. The City of Alameda also requires the restoration of prior appearance of a building, if possible. The City of Redlands Demolition Ordinance states that missing features of a demolished historic resource needs to be reconstructed and/or replaced in kind to match the original in terms of size, proportions, design, details, materials, and overall appearance.

c) Receivership for “Demolition by Neglect” Buildings

Receivership or Conservatorship is defined as allowing citizens and organizations, as well as local governments, to take constructive action in order to deal with serious cases of property neglect. The State of Pennsylvania has laws where a party may ask the court to appoint a responsible party to take charge of a neglected property and bring it into compliance with code standards. The State of California Health and Safety Code (HSC Section 17980.7) also contains provisions where the court may order the appointment of a receiver to take control of a substandard property and correct conditions cited in the notice of violation.

d) Restrictions on Future Development

The City of Glendale requires new structures to maintain the footprint, height, and square footage of demolished structures. The City of Pleasanton's proposed ordinance states that new or replacement development needs to be no larger than the demolished historic building by square footage, floor area ratio, height, and location and have this development restriction in place for twenty (20) years.

e) Building Moratorium

The Cities of Alameda and Ventura prohibit the issuance of building permits for five (5) years for illegal demolition or alteration of historic buildings, while the City of Glendale prohibits the issuance of new construction permits for three (3) years from the date of demolition.

CONCLUSION

This report presented recommendations that can discourage and penalize unpermitted building demolition or alteration. These proposals, if implemented, serve to further protect neighborhoods from activities that are hazardous or create a nuisance; the disincentives and penalties outlined in this report aim to deter, limit, and stop such activities. By doing so, the City of Los Angeles can preserve community resources and minimize harmful impact to a neighborhood's character.

Should you have any further questions, please contact Charmie Huynh at 213-482-6875 or via email at charmie.huynh@lacity.org.

Respectfully,



Osama Younan
General Manager
Department of Building and Safety

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