



Memorandum Planning

Wednesday, February 18, 2015

To: Planning Commission
From: Jim Pechous, City Planner 
Sean Nicholas, Associate Planner 
Subject: Study Session-LA Times Article Regarding Conditions of Approval

In January, 2015, the attached Article was published in the LA Times. It discusses issues that the City of Los Angeles has had regarding enforcement of Conditions of Approval. The key points of the article were:

- 1) Conditions need to be legal and enforceable
- 2) Conditions need to be clear on intent and goal
- 3) There needs to have follow through/monitoring

Staff has reviewed the article, and discussed it within the Planning Division, and at the Development Management Team and Executive Development Management Team meetings and the following conclusions were reached:

- 1) Economy of scale plays a large part in many of these issues
- 2) Majority of conditions are approved by Council or are from the Municipal Code
 - a. Required regardless of discretionary action
 - b. Conditions citation policy, code-Council driven
- 3) Monitoring
 - a. Typically only three types of condition (1. Pre-Permit; 2. Pre-COO; 3. Best Practices)
 - b. Quality Assurance Program (Q.A.P.)
 - c. Reactive/Proactive
 - d. Code Compliance Citations
- 4) Update Municipal Code to reflect Best Practices, apply equally across all applicants-easier to enforce/consistency

IN L.A., CONDITIONS PLACED ON DEVELOPERS GO UNHEEDED

By EMILY ALPERT REYES AND DAVID ZAHNISER

JANUARY 6, 2015, 6:00 AM

Worried about how new shops, bars and apartments might affect Los Angeles neighborhoods, community groups and city officials have tried to tie strings to local development.

They have demanded parking spots to ease the crunch on crowded streets, sought to limit the hours businesses can stay open, and even insisted on community perks such as a senior center. But many neighborhood activists complain that once the city gives the green light for development, those promises are overlooked.

For example, in the Fairfax area, the Grove was supposed to include a 500-square-foot employment office along with its gleaming shops and buzzing restaurants, according to planning documents. Yet last year — more than a decade after the mall opened — the city planning department found that no such job center existed.

The Grove developer, Caruso Affiliated, created a new online portal for hiring and said it was providing job postings and applications at its concierge desk, steps that satisfied the planning department. But that happened only after years of hectoring by a local consultant, who remains unconvinced that the developer and property owner Gilmore Co. fulfilled their promises.

"It bothers me that the community was taken advantage of," said land use consultant Robert Chernow. "I'm not asking them to do anything they're not supposed to do."

Another case recently landed the city in court: The developer of a 22-story apartment building in Hollywood was required by the planning department to preserve the facade of the Old Spaghetti Factory, a restaurant building on the site. Yet two years ago, the developer obtained a permit from another city agency to raze the entire structure. A similar facade was built in its place.

In an internal email, one city official called it a "demo permit fiasco." A judge invalidated construction permits for the building last year, throwing its future into question.

And in yet another case, city planners required the 526-unit Da Vinci apartment project alongside the 110 Freeway to have a ventilation system with higher-strength air filters to capture some of the particles produced from vehicle exhaust. Developer G.H. Palmer Associates did not take steps to

install the proper equipment until after The Times began asking city officials about the requirement, a Building and Safety spokesman said.

City officials say thin staffing at the Department of Building and Safety and a monitoring system driven by complaints rather than proactive enforcement has made it harder to ensure that such conditions are followed. Such "conditions of approval" are requirements that a project must satisfy to comply with municipal and environmental rules, planning officials say.

The problem has persisted over time. Five and a half years ago, then-Controller Laura Chick said she had long wondered who made sure developers adhered to such restrictions.

The answer is, "No one," Chick wrote in an introduction to a related audit. Her report found that none of the city departments involved in vetting new developments could ensure that such promises were kept.

In reaction, city departments pledged to coordinate better and change their ways. But the same complaints emerged again two years ago, when City Councilman Paul Koretz wrote in CityWatch, an independent newsletter and website on neighborhood issues, that the "valiant and unstinting efforts" of local groups to impose restrictions were not necessarily paying off.

In the face of such frustrations, the city created a new team in the planning department in 2013. It is focused exclusively on new cases in which businesses have agreed to specific conditions in order to serve alcohol or provide live entertainment.

The system is set up, right now, basically on the honor system," said Rocky Wiles, supervisor of the Condition Compliance Unit. "We shouldn't rely on the community to be enforcing these conditions. It should be the department. But that takes a lot of resources."

Her unit currently has four employees, including Wiles herself. Wiles wants to charge new fees that will pay for more workers to conduct spot inspections of projects, but it is unclear when the unit will be able to tackle other conditions besides those tied to alcohol and live entertainment.

Critics argue that beyond the new unit, the problem needs to be tackled systematically, with a transparent way to watchdog all kinds of projects once they are completed. "There needs to be regular monitoring. And there needs to be definitive actions based on the findings," said Mike Loveloff, president of the advocacy group Fix the City.

Part of the problem is that the city and its planners sometimes impose conditions that it has no practical way to enforce, said Building and Safety spokesman Luke Zamperini. Though the planning department crafts conditions, his agency is responsible for investigating alleged violations.

Zamperini said that in one case, a Jewish school was required to have only "so many people in here for so many purposes" after certain hours — a rule that would require an inspector to stop in and question people about why they were there, he said. When a Building and Safety inspector tried to meet with a school official during Friday religious services, it spurred an uproar.

"He had no idea it was Yom Kippur," a major religious holiday, Zamperini said.

Planning officials also say that some kinds of conditions that have been offered up by businesses cannot be legally enforced, either because they are not tied to planning department findings about how the development will affect the area, or because they fall under the jurisdiction of another agency, such as the California Department of Alcoholic Beverage Control.

Nearly a year ago, City Atty. Mike Feuer warned a Venice neighborhood group that some kinds of conditions related to selling alcohol — including banning the sale of single cans or limiting the number of exterior signs advertising alcohol — were prohibited. David Greene, president of the Eagle Rock Neighborhood Council, said he now tells residents to think carefully about whether they want new businesses that serve alcohol, instead of trying to soften their effects with restrictions on hours, signage or operations.

"There's no system to enforce them," Greene said.

Last year, the planning department found that there was no evidence of the jobs program and recruiting office that had been promised at the Grove. Associate Zoning Administrator David Weintraub said that since then, the developer had created a jobs website and provided space at its concierge desk for job seekers to meet the requirements. Caruso Affiliated sent a statement to The Times saying it was confident that it was "satisfying the hundreds of conditions outlined ... for the property."

Cherno is still not convinced. In addition to the jobs center, Cherno and Diana Plotkin — president of the Beverly Wilshire Homes Assn. — point to a provision that promises a 3,000-square-foot senior center for the use of the community. The planning department says an existing community room on the second floor of the Historic Farmer's Market met that requirement.

Plotkin said that wasn't what they expected when they worked out the conditions. Cherno said one condition required that the local City Council office be involved in the design of the community center, but the Farmers Market room was built before 1939. And the space is reached by a flight of stairs that makes it inaccessible for people in wheelchairs.

Weintraub said the room was not in violation of city rules because it was built before wheelchair accessibility was required. He said the council office had vetted and approved the community room, which has been heavily used — holding more than 1,800 meetings last year, according to the

company.

Twelve years ago, the Beverly Wilshire Homes Assn. sued the city and the Grove owner over the community room and other conditions. The attorney who represented them, Rob Glushon, said they eventually struck a settlement after securing funding for traffic control but abandoned the quest for a new community room because he thought the wording was not clear enough to keep pushing. When asked about the promises tied to the Grove, Councilman Tom LaBonge said he had never gotten a complaint about what he called "a much loved center of community activity."

His deputy, Renee Weitzer, argued the Grove had met the requirements to provide a job center.

"They have an office. They have a bulletin board. That's considered a job center," Weitzer said.

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