

Agenda Item 18

Discussion and Possible Action to Weigh in on (re:code LA) Processes & Procedures Ordinance; Case No.: CPC-2016-3182-CA; Council File: 12-0460", CEQA Case No. ENV-2016-3183-CE

OVERVIEW

For years the Dept. of City Planning has been working on "re:code LA," a comprehensive revision of the city's zoning code. The first stage of that revision is now moving forward, rapidly. It's called the "Processes & Procedures Ordinance." It is a 948-page document. If adopted, it will add a new chapter giving the Mayor and the Planning Dept. especially the Planning Commissioner vast new powers while limiting the City Council's role in decision making, which will be codified into LAW of the Los Angeles Municipal Code.

LA's City Charter says (or will have said) that all legislative power of the city is vested in the City Council, except as otherwise provided in the City Charter. That includes the City Council's power over planning and zoning. But by adding this new chapter to the Municipal Code, "Processes & Procedures" seems intended to change that. Under "General Authority" the new language states: "The City Council generally exercises all legislative authority associated with the Zoning Code, except where otherwise provided by the Charter, State law, or the Zoning Code. "In other words, the Zoning Code itself could limit the Los Angeles City Council's legislative power over zoning. And since the Department of City Planning is rewriting the zoning code, the idea seems to be to take planning power from elected officials and give it to unelected planning bureaucrats. The addition of the words "State law" is also disturbing, since this could potentially limit the City's ability to challenge legislation from Sacramento, like maybe something along the lines of Scott Wiener's defeated SB 827. This ordinance also restricts appeals by the public, weakens safeguards for Historic Preservation Overlay Zones (HPOZs), and allows the Department of City Planning to grant conditional use permits -- without public input.

The existing City Charter vests ALL legislative authority in the City Council except as otherwise reserved in the Charter. New proposed section 13.1 specifically provides that the City Council has legislative authority, except as limited by the Charter, state law, or the Los Angeles Municipal Code. **Subsection C makes it clear that it cuts back on the City Council's ultimate legislative authority under City Charter Section 240:**

The language in "C" is pernicious in at least three respects:

First, the "subject to State law" paves the way for a statewide Planning and Zoning Commission that is implemented top down by State law directly to City Planning managers, bypassing the City Council and the Mayor. The existing Charter gives the City and City Council the right to fight and sue over "top down" state legislation like the problematic Senator Scott Weiner bills on the basis of the California Constitution or otherwise. This amendment arguably takes that right away since it specifically cedes City Charter-granted powers to the State.

Second, the "subject to the Zoning Code" takes away all legislative authority from the City to the extent given to others in the Zoning Code itself. The existing City Charter gives the City Council (or any member in accordance with its rules) the ability to respond to neighborhood sentiment by "pulling" a matter from the Department of City Planning. This amendment takes that right away since decisions are left to the Zoning Administrator or LADBS. Furthermore, nearly all such decisions are unappealable and unreviewable under the proposed ordinance. Third, the veto language is missing the crucial phrase included everywhere that a veto is mentioned in the Charter itself -- the phrase "subject to the power of veto or approval by the Mayor as set forth in the Charter". Thus, without the override provisions, this could strip the City Council of ALL legislative authority except as otherwise approved by the Mayor. These "procedural" changes

seem to fundamentally alter the veto power that the City Council has in the face of a mayoral veto.

CITIZEN/NEIGHBORHOOD PARTICIPATION: This is a general assault on neighborhood participation because it reduces notifications to residents and neighbors regarding a nearby project

From: Councilmembers, Neighborhood Councils, occupants and neighbors within 500 feet or such greater footage area as would ensure notice to at least 20 property owners,

To: Councilmembers and immediately adjacent property owners ONLY.

1. It reduces the notice period from 24 to 21 days.
2. All requirements for a public hearing are vastly reduced and may be waived unless adjacent property owners (not Neighborhood Councils or other stakeholders) object in writing to the proposed project within 21 days of receiving the notice.
3. The number of hearings, particularly at the Director of Planning level, is "optional".

HISTORIC PRESERVATION:

Historic Preservation and Historical Preservation Overlay Zones (HPOZ's): This proposed procedural ordinance allows decisions regarding commercial uses, wireless telecommunication, other specific breaches of HPOZ Guidelines, certificates of appropriateness, certificates of compliance and zoning "adjustments" and "variances" within any zone, including parcels in HPOZs, to be subject to unappealable determinations by of the Director of Planning or the Advisory Agency (which is an extension of the Director of Planning).

UPZONING:

The proposed ordinance supposedly just "streamlines" procedures, yet significantly up-zones height, FAR and other zoning limitations INCLUDING SPECIFICALLY historic properties and residences at national, state and local levels. It also embodies as an ordinance the Planning Department's view that the new City Planning Commission-adopted Transit Oriented Communities Guidelines override all other City zoning regulations and ordinances. This is not just a "procedural" clarification, but a new zoning code, implemented by fiat by the Planning Department with limited or no notice, public hearings, or neighborhood input.

POWER GRAB:

New section 13.1.1. opens by stating, *"This Division recognizes or formally establishes the agencies involved in administering the Los Angeles Zoning Code. The Division also describes how the agencies are composed, and their powers and duties."*

This language suggests that the agencies are being given powers independently of Council and its power per the City Charter. Since this will be enacted by ordinance, the provisions and powers granted may be read to override contrary provisions in the Charter and serve to delegate away legislative power without formally amending the Charter. That is made apparent because the Charter provision on the City Council's general authority is changed, while the Charter provision on the general authority for the Mayor's office is not. The City Charter cannot be amended or modified without a vote on the ballot, yet that is precisely what this proposal appears to do.

Section 13.1.3 gives the Central Planning Commission ("CPC") final decision-making authority over (among other things) Class 3 Conditional Use Permits, Preservation Plan Adoptions/Amendments; and Policy Plans as well as over all decisions given to Area Planning Commissions. Currently, the CPC has final authority over NOTHING since all of their activities are subject to Council's ultimate legislative power. The proposed ordinance also makes the CPC the ultimate decision maker "to approve or deny, on appeal, any:

Project Review relating to a Density Bonus;

1. Specific Plan Interpretation (which affects an entire Specific Plan area or any of its subareas);
2. Appeals of Department of City Planning action on LADBS appeal that is found may have a citywide impact;
3. Zoning Code Interpretation; and
4. Subdivision approval, as provided in Division 13.10.

So, the CPC would decide all Zoning Code interpretations (e.g. Do the CPC-adopted Transit Oriented Community Guidelines that implement Measure JJJ apply in an HPOZ? Do they override Q conditions?).

Area Planning Commissions ("APC") also get vastly expanded powers in Section 13.1.4 (and remember that the Director of Planning can exercise power and make decisions regarding all CPC and APC matters under the proposal):

To render a final decision on any:

Project Exception; and

Certificate of Appropriateness (demolition, removal, relocation).

To approve or deny, on appeal, any:

- Class 2 Conditional Use Permit;
- Project Review;
- Project Permit;
- Project Compliance (with Design Review);
- Project Adjustment;
- Specific Plan Interpretation (which is applicable only on a site-specific basis);
- Alternative Compliance;
- Adjustment;
- Variance;
- Appeals of Department of City Planning action on LADBS appeal;
- Zoning Code Interpretation on a site-specific issue;
- Subdivision approval, as provided in Div. 13.10;
- Certificate of Appropriateness (construction, addition, alteration, reconstruction);
- Certificate of Compatibility for non-contributing elements; and
- Coastal Development Permit.

NOTE: the proposal does not say "to hear in the first instance subject to any right of appeal to the full CPC and Council", it says "to render a final decision" and "to approve or deny, on appeal", in each case suggesting no further right of appeal.

THE ELEVATION OF THE DIRECTOR OF PLANNING:

The Director of Planning currently has no ultimate authority in the existing charter and Municipal Code. **The proposed Section 1.3.5 grants the Director of Planning a wide array of prior un-granted powers making the Director of Planning the ultimate decision-maker:**

(1.) Review and submit recommendations on:

- a. The adoption or amendment of the General Plan;
- b. The adoption or amendment of a Specific Plan;

- c. The adoption or amendment of the Zoning Code;
- d. A Zone Change (including Supplemental Use Districts);
- e. The adoption or amendment of a Preservation Plan; and
- f. Any other decision within the original jurisdiction of the City Planning Commission or an Area Planning Commission.

(2.) To render a decision on any:

- a. Project Review;
- b. Director Determination;
- c. Administrative Review;
- d. Project Compliance;
- e. Project Compliance (with Design Review);
- f. Project Adjustment;
- g. Specific Plan Interpretation;
- h. Alternative Compliance;
- i. Adjustment;
- j. Reasonable Accommodation - Fair Housing Protections for Individuals with Disabilities;
- k. Review of Conforming Work in an Historic Preservation Overlay Zone, where delegated by a Preservation Plan;
- l. Certificate of Appropriateness (construction, addition, alteration, reconstruction) in an Historic Preservation Overlay Zone;
- m. Certificate of Compatibility for non-contributing elements in an Historic Preservation Overlay Zone;
- n. Appeals from LADBS Determinations; and
- o. Coastal Development Permit.

Sources: <https://citywatchla.com/index.php/2016-01-01-13-17-00/los-angeles/16366-948-pages-of-power-grab-la-s-city-planning-commission-hearing><https://mailchi.mp/aidshealth/cjm1lfmao8-627425?e=58be8ee31e> <https://recode.la/updates/news/proposed-process-overhaul-%E2%80%93-staff-report-and-recommended-ordinance-released> http://www.plannersnetwork.org/wp-content/uploads/2015/11/PPM_Fall2015_Platkin.pdf