

SUBJECT: ZONE TEXT AMENDMENT: DWELLING UNIT CLARIFICATION
INITIATED BY: PLANNING & DEVELOPMENT SERVICES DEPARTMENT
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STATEMENT ON THE SUBJECT:

The Planning Commission will hold a public hearing to consider a Zone Text Amendment (ZTA) to clarify the definition of and requirements for dwelling units in response to Zoning Interpretation 17-0001 (the "Interpretation"). The amendment aligns the Zoning Ordinance with the Interpretation, to clarify that dwelling units are meant for long-term use, which was determined to be one year or longer.

RECOMMENDATION:

Staff recommends the Planning Commission hold a public hearing, listen to all pertinent testimony, and adopt the following resolution:

1. RESOLUTION PC 19-1311: **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AN AMENDMENT TO TITLE 19, ZONING ORDINANCE, TO CLARIFY THE DEFINITION OF AND REQUIREMENTS FOR DWELLING UNITS IN COMPLIANCE WITH SECTION 19.03.030, PROCEDURES FOR INTERPRETATIONS, WEST HOLLYWOOD MUNICIPAL CODE.** (Exhibit A)

BACKGROUND / ANALYSIS:

Zoning Ordinance Chapter 19.03, Interpretation of Zoning Ordinance Provisions, provides rules for resolving questions about the meaning or applicability of any requirement of the Zoning Ordinance, intended to ensure consistent interpretation and application of the Zoning Ordinance and General Plan. The purpose of the proposed ZTA is to amend the Zoning Ordinance to align it with Zoning Interpretation 17-0001 (Exhibit C). The Interpretation, which was issued by the Director, appealed to and upheld by the Planning Commission, and appealed to and upheld by the City Council, addressed a specific project, 8500 Sunset Boulevard and their use of dwelling units as hotel rooms, and not on a long-term basis. The proposed ZTA would clarify that dwelling units are required to be rented on a long term basis, which would mean at least one year. This provision would apply to all dwelling units in projects that received approval of their development permit after May 1, 2001, which is the effective date of the City's current definition of dwelling unit that includes the word "long-term."

This report provides detailed background regarding the property that required the Interpretation, in order to provide context for the Planning Commission. However, the

specific issue before the Commission in this public hearing is limited to a recommendation regarding the ZTA to clarify provisions related to the Interpretation.

Project Background

In 1999, the City entered into a Development Agreement with Sunset Millennium Associates for the development of the West, Middle, and East Parcels (Sunset Specific Plan Target Sites 4-C, 4-D, and 5-C) on Sunset Boulevard (aka the “Sunset Millennium” project). The originally approved plan for all three parcels included the development of one hotel with 371 rooms and 208,000 square feet of office space, with no residential development. The West Parcel (Target Site 5-C) was completed and certified for occupancy under the conditions of the original Development Agreement.

In 2005, SMA requested and received approval for an amendment to the Development Agreement and associated entitlements to restructure the project. The 2005 development agreement allowed for the East Parcel, or Site 4-C, to include two hotels with a total of 296 rooms, approximately 13,950 square feet of retail and restaurant space, 2,250 square feet of outdoor dining, and 811 parking spaces. The Middle Parcel, or Site 4-D, was approved to include two residential buildings with a total of 190 dwelling units to be condominiums, 25,832 square feet of retail/restaurant space, off-site signage, and 268 parking spaces.

In 2011, the CIM Group purchased the subject property and received approval of minor changes to the Development Agreement, including revisions to the footprint, placement and height of the buildings, and the provision of parking for the middle parcel on the west parcel. The minor changes also clarified that the condominiums could be used as residential apartments.

In January 2017, the Middle Parcel received a Certificate of Occupancy. At some point in the spring of 2017, the CIM Group sold the residential portion of the project to the current owner, BPREP 8500 Sunset LLC. On June 28, 2017, through an article in the LA Times, the City became aware of that sale and purported operation of the dwelling units. The article described the project, now called AKA West Hollywood, as “an extended stay hotel”. In response to this article, the City Manager sent a letter on June 30, 2017 to the property owner expressing concern over the described use. The operator, Korman Communities, together with BPREP, (the “appellants”), communicated their intention to rent units in the east tower as unfurnished units with one year leases and market-rate units in the west tower as furnished units on an extended-stay basis (30+ day stays) with various amenities.

Zoning Ordinance Interpretation Issuance Process

On September 21, 2017, the Director issued a notice to AKA West Hollywood via Korman Communities of his intent to issue a Zoning Interpretation regarding the contemplated use of the market-rate units in the west tower. Specifically, such notice reflected the Director’s intent to address the interpretations of “dwelling unit” and “hotel” as related to the approved entitlement for the subject property.

On September 29, 2017, appellants sent a submission to the City in connection with the impending Zoning Interpretation that set forth appellants' intended extended-stay use of the units. This is referred to as "the Submission" in the Interpretation (provided as Attachment B of the Interpretation in Exhibit C).

Pursuant to Chapter 19.03 of the Zoning Ordinance, on November 29, 2017, the Director issued Zoning Interpretation 17-0001. Among other things, the Director made the following findings and determinations in that Interpretation:

1. WHMC section 19.90.020 defines "Dwelling Unit" as "a room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis."
2. WHMC does not expressly define "long-term basis".
3. The terms "transitional housing", "emergency shelter" and "corporate housing" provide the most significant context for the meaning of "long-term basis."
4. "Long-term basis" means one (1) year or more.
5. Based upon the Statement of Facts set forth in the Submission which purported to set forth AKA's Use, AKA's Use is not on a "long-term basis" and, therefore, not permitted within the property approvals.
6. WHMC defines "Hotel" as "a facility with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other temporary lodging, typically less than 30 days."
7. Based upon the Statement of Facts set forth in the Submission, AKA's Use: (a) is "temporary lodging;" (b) falls within the definition of "Hotel;" and (c) is therefore, not permitted within the property approvals.
8. In response to appellants' contention in the Submission that (a) there is ample precedent that the WHMC allows occupancy of one to six months within the meaning of dwelling unit," and (b) a February 6, 2017 staff report relating to the Corporate Housing ordinance stated that "several recently constructed buildings offer one-to six month leases for those who need short-term housing on an on-demand basis", the Director found that AKA's Use anticipates using (in a DA Overlay zone) an entire building (as opposed to 1 or 2 units) for prohibited purposes. Staff determined that the short-term housing use referenced in such staff report (not subject to a DA Overlay zone) is limited to one or two units in a building at any given time. The Director further noted that, subject to available resources, the City would moving forward enforce its laws in a manner consistent with the Official Interpretation.
9. The official interpretations are consistent and compliant with the West Hollywood General Plan, including goals H1-H5.

Appeal of Director's Zoning Interpretation to Planning Commission

WHMC Section 19.03.30E provides that any Director interpretation may be appealed to the Planning Commission. On December 11, 2017, appellants submitted a timely appeal of the Interpretation.

The subject dwelling units remained unoccupied until sometime in January, 2018, when AKA began operating with its extended-stay format in the west tower, in contradiction to the Director's interpretation.

On March 15, 2018, the Planning Commission continued the public hearing on these matters to April 19, 2018 to allow more time to review documents. On April 19, 2018, the Planning Commission held a public hearing, heard the appeal and adopted Resolution No. 18-1250 (Exhibit D), a resolution (a) denying an appeal and upholding the Director's Zoning Interpretation 17-0001, and (b) finding on a de novo basis that, in contravention of the Zoning Ordinance, the applicable development agreement and project entitlements, the market-rate (non-affordable) dwelling units located in the west tower of 8500 Sunset Boulevard were being used as a "hotel" and that they were not being rented on a "long-term basis" and/or and not being used as approved.

On April 30, 2018, the appellants, represented by Eric George, filed a timely appeal of the Planning Commission decision to the City Council. On July 9, 2018, the City Council continued the item to a date uncertain. On September 4, 2018, the City Council heard the appeal and adopted Resolution No. 18-5106 to deny the appeal and affirm the Planning Commission decision to uphold Zoning Interpretation 17-0001, and on a de novo basis, determine that the market-rate dwelling units located in the west tower of 8500 Sunset Boulevard, West Hollywood are: (a) being used as a "hotel;" (b) not being rented on a "long-term basis;" and/or (c) not being used as approved, in contravention of the Zoning Ordinance, the applicable development agreement and project entitlements.

Dwelling Unit and Long Term Analysis

WHMC Section 19.90.020 defines a "dwelling unit" as "a room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis." The Code does not expressly define "long-term basis." The Director determined in the Official Interpretation that AKA's Use was not on a "long-term basis", which the Official Interpretation further defined as 1 year or more.

In rendering the Official Interpretation, the Director considered the following definitions and concluded that "transitional housing", emergency shelter, and "corporate housing" provided the most significant context for interpreting the meaning of "long-term basis."

"Transitional housing" is defined as "temporary rental housing ... that calls for the ... recirculation of the dwelling unit ... which shall be no less than six months." The actual subject of the definition is wholly irrelevant. The definition provides instruction as to the meaning of "long-term basis" (i.e., more than "temporary rental housing"). And, the definition makes it clear that "temporary" means six months or more.

“Emergency shelter” is defined as “a facility that provides immediate and short-term housing ... that is limited to occupancy of six months or less ...” Again, the actual subject of the definition is wholly irrelevant. The definition provides instruction as to the meaning of “long-term basis” (i.e., more than “short-term housing”). And, the definition makes clear that “short-term housing” means up to six months.

The Corporate Housing Ordinance (Ordinance No. 17-999) was enacted on February 21, 2017. “Corporate housing” is defined as “the temporary occupancy of any dwelling unit, by any person (1) who does not intend to use it as their domicile, or who has not entered into a written rental or lease agreement to occupy the unit for at least one year; and (2) for which the dwelling unit is owned, leased, guaranteed or made available by a business entity for occupancy by the entity’s officers, employees, consultants, vendors, or contractors.”

The Corporate Housing Ordinance also found that “there is a documented shortage of housing throughout ... the County of Los Angeles. Residential developments approved in the City of West Hollywood are expected to be used as residential housing, and not used for short-term or temporary occupancy. “Corporate housing” takes away needed housing from the City’s housing stock and that is inconsistent with the City’s housing policies of requiring residential dwelling units to be used as places of domicile. This ordinance is intended to implement these housing policies.”

Clearly, clause (2) of the definition of “corporate housing” does not bear upon the interpretation of “temporary occupancy.” “Temporary occupancy” must, therefore, be addressed in clause (1). Clause (1) defines “temporary occupancy” in terms of a person who (a) “does not intend to use such dwelling unit as their domicile” or (b) “has not entered into a written rental or lease agreement to occupy the unit for at least one year.” The definition appears to have codified the City’s then-existing position that a dwelling unit was to be used for “at least one year,” but added to it, as an alternative, anyone who intends to use it as their domicile. Contrary to appellants’ argument that the enactment of such ordinance was irrelevant and redundant, it is the addition of those two new concepts (i.e., intention to use as their domicile and clause (2)), rather than the one year requirement, that rendered the action necessary and, therefore, not irrelevant and/or redundant. Further, the findings make clear that dwelling units are intended for long-term occupancy (i.e., “not short-term or temporary occupancy”). Consequently, both the definitions and the findings support the Director’s Official Interpretation of “long-term basis” being one year or more.

The Short-Term Vacation Rentals Ordinance (Ordinance No. 15-958) was enacted on September 21, 2015. WHMC Section 19.36.331(A) provides, “No person or entity shall offer or provide a dwelling unit, or any portion thereof, for rent for 30 consecutive calendar days or less to any transient.” The appellants argued that this section “defines” short term as “30 consecutive calendar days or less,” and, therefore, that long-term must mean 31 days or more. However, the definition above makes no mention whatsoever of “short-term” or “temporary occupancy.” Moreover, appellants’ argument is inconsistent with other definitions in the Code that do in fact define “temporary” and “short-term” – namely, the definitions for “transitional housing”, “emergency shelter” and “corporate housing” (as discussed above).

In addition to the argument above, the appellants made an argument that the City amended the Zoning Ordinance to ban short-term vacation rentals of 30 days or less, and thus, permitted all rentals over 30 days. While vacation rentals of 30 days or less were explicitly banned, this does not imply the legality of stays longer than 30 days. The City was addressing a very specific problem of short term rentals when that ordinance was enacted. At the time, the proliferation of Airbnb and similar platforms made the short term rental of units a pressing issue. Neither the City nor staff anticipates every scenario when drafting very specific regulations that deal with a current issue, such as short term rental.

Zone Text Amendment

Pursuant to Subsection 19.03.030(C), West Hollywood Municipal Code, after an interpretation is issued, “any provisions of this Zoning Ordinance that are determined by the Director to need refinement or revision should be corrected by amending this Zoning Ordinance as soon as is practical.” The following Zone Text Amendment 18-0019 serves to clarify the definition and requirements for dwelling units as outlined in Zoning Interpretation 17-0001, including the following components:

- Addition of new Section 19.26.320, Residential Uses- Dwelling Units: This section requires that if dwelling units are leased to a tenant, there must be an initial lease term of at least one year, as evidenced by a written lease agreement. This provision applies to projects that received approval of a development permit on or after May 1, 2001, which is the effective date of Ordinance 01-594, which overhauled the Zoning Ordinance and included adoption of the phrase “long-term” within the definition of dwelling units. This will apply to approximately 1704 existing dwelling units on 334 properties, or 6.5% of dwelling units within the City.
- Amended definition of dwelling unit: This will clarify the definition to ensure that when leased, length of stay is an initial one year or more.
- Amended definition of “corporate housing”: This will eliminate the one year or more requirement for corporate housing since this requirement is now part of the definition of dwelling unit
- Amended the definition of hotel: This will eliminate reference to “typically rented for 30 days or more” since many hotels allow rentals beyond 30 days and length of stay does not determine what is considered a hotel
- Amended 19.48.060, Conditions of Approval: This will require all new dwelling units to have a condition of approval that includes the initial lease term of one year when rented.

Planning Commission Long Range Subcommittee

Planning Staff presented a version of the proposed ZTA to the Planning Commission Long Range Subcommittee on November 15, 2018. The ZTA presented to the Subcommittee included the applicability threshold of having vested rights by a certain

date. The Subcommittee members expressed concern that the threshold of vested rights was too complicated, and as a result, staff eliminated this threshold and changed it to approval of a development permit, a key project milestone which can be more reliably tracked and gives a small grace period for projects under construction at that time. The Subcommittee voiced further concern that delineating requirements for certain dwelling units could be complicated. However, this allows older buildings to maintain a variety of lengths of stay, and a complete list of applicable buildings will be made publicly available at a later date to ensure compliance. The Subcommittee members expressed related concern that we need to understand how many units are impacted by this proposal. At this time, there are approximately 334 properties that have received development permit approval since May 1, 2001 that include a total of 1704 dwelling units, which account for 6.5% of all dwelling units within the City. The Subcommittee members asked whether we would want to include home sharing in the Zoning Ordinance, and staff did not include this in the Zoning Ordinance as part of this ZTA because Home Sharing as a use is regulated by Code Compliance through Title 5, Business Licenses. The Subcommittee expressed concern regarding the clarification between hotel and dwelling units, and in response, staff added language to amend the definition of hotel to remove length of stay. The Subcommittee members stated that there could be room for a shorter term for dwelling units, and that 6-12 months may be adequate for long-term stay. However, the Interpretation adopted by Planning Commission and City Council already established long-term as one year, so the proposed Zone Text Amendment mirrors that interpretation. Further, 93.5% of all units, or 24,303 units, would not be subject to the new lease requirements.

West Hollywood Chamber of Commerce Government Affairs Committee

City Staff presented this item to the Government Affairs Committee of the West Hollywood Chamber of Commerce on January 8, 2019 at their regularly scheduled meeting, where members provided staff with feedback on this item.

ALTERNATIVES

While the City is tasked with developing a ZTA that aligns the Zoning Ordinance with the Interpretation, there are a number of alternatives that could be recommended to City Council in order to address the issue of long-term use of dwelling units:

1. Allow a certain percentage (such as 20% or a maximum of 5 units, whichever is less) of dwelling units within apartment buildings to be utilized on a basis of between six months and one year.
2. Change the applicability so the minimum one year lease requirement does not apply to single-family residences or other similar land uses.
3. Direct staff to establish a new land use that allows extended stay hotel and/or corporate housing uses under certain circumstances.

CONFORMANCE WITH THE WEST HOLLYWOOD GENERAL PLAN:

ZTA 2018-0019 is consistent with the Goals and Policies of the General Plan, including Goal LU-1, which states that the City should “maintain an urban form and land use pattern that enhances the quality of life and meets the community’s vision for the future. Specifically, it complies with Policy LU-1.4, which states that the City should continue to maintain regulations that “encourage preservation of existing housing and development of new housing that accommodates households that are diverse in size, type and income.” The ZTA is also consistent with General Plan Goal H-1, which calls to provide affordable rental housing and H-2, to maintain and enhance the quality of the housing stock and residential neighborhoods.

EXHIBITS:

- A. Resolution No. 19-1311
- B. Index to Zoning Code Changes
- C. Zoning Interpretation 17-0001
- D. Planning Commission Resolution 18-1250
- E. City Council Resolution 18-5106