

RESOLUTION NO. 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, WEST HOLLYWOOD, CALIFORNIA.

The Planning Commission of the City of West Hollywood does hereby resolve as follows:

SECTION 1. Applications for the comprehensive development of property located at 8474, 8480 and 8490 Sunset Boulevard, and 1234 La Cienega Boulevard, West Hollywood, California (SSP Site 4C), and 8500, 8516, 8524 and 8544 Sunset Boulevard, and 1235 La Cienega Boulevard, West Hollywood, California (SSP Site 4-D), were filed on October 16, 2003 and December 12, 2004. Proposed development on Site 4-D consisted of two residential buildings with a maximum of 190 dwelling units to be condominiums, 25,832 square feet of retail/restaurant space, 2,250 square feet of outdoor dining, a tall-wall sign and two double-faced billboards, and 468 parking spaces in a below grade parking structure. On April 13, 2005, the City Council certified an Environmental Impact Report, approved a statement of overriding considerations and approved a Development Agreement and associated entitlements to permit the subject project. In September, 2012, minor changes to the Development Agreement were approved by the City Manager, including revisions to the footprint, placement and height of the buildings, elimination of a tunnel under La Cienega Boulevard and a reduction in public parking. The minor changes also clarified that the condominiums could be rented as apartments.

SECTION 2. The City became aware that the operators of the west tower of the subject property, located at 8500 Sunset Boulevard, and commonly known as 8500 Sunset or AKA West Hollywood, intended to utilize those units (a) as "hotel rooms", (b) not on a "long-term basis", and/or (c) contrary to the approved project.

SECTION 3. Section 19.03.020A of the Zoning Ordinance states that "the Director [the West Hollywood Community Development Director, or designee of the Director] has the responsibility and authority to interpret the requirements of the Zoning Ordinance." Section 19.03.010 of the Zoning Ordinance states that "this chapter provides rules for resolving questions about the meaning or applicability of any requirement of this Zoning Ordinance. The rules provided in this chapter are intended to ensure the consistent interpretation and application of the provisions of this Zoning Ordinance and the General Plan."

SECTION 4. Pursuant to Chapter 19.03 of the Zoning Ordinance, on November 29, 2017, the Director issued Zoning Interpretation 17-0001 (the "Interpretation"), to confirm the use of these units are not in compliance with the West Hollywood Municipal Code (WHMC), the Development Agreement, or project approvals. 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 appellant's September 29, 2017 submission (the "Submission") to the City in connection with the impending Official Interpretation, which Submission purported to set forth appellant's intended extended-stay use of the units ("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." 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.
7. In response to appellant's 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.

8. The official interpretations are consistent and compliant with the West Hollywood General Plan, including goals H1-H5.

SECTION 5. WHMC Section 19.03.30E provides that “any interpretation of this Zoning Ordinance by the Director may be appealed to the Planning Commission....” On December 11, 2017, the appellant submitted a timely appeal to the Interpretation. A public hearing was duly noticed and scheduled for the March 15, 2018 Planning Commission meeting. At that meeting, the Planning Commission continued the public hearing on these matters to April 19, 2018 in order to provide commissioners more time to review the record on this item. On April 19, 2018, the Planning Commission adopted Resolution No. 18-1250, a resolution (a) denying an appeal and upholding the Director’s Interpretation, 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 (1) were being used as a “hotel”, (2) were not being rented on a “long-term basis” and/or (3) were not being used as approved.

SECTION 6. On April 30, 2018, the appellant filed a timely appeal of the Planning Commission decision (the “appeal”). A public hearing was duly noticed and scheduled for the July 9, 2018 City Council meeting. At that meeting, the City Council continued the item to a date uncertain. A public hearing was duly noticed and scheduled for the September 4, 2018 City Council meeting. On September 4, 2018, the City Council adopted Resolution 18-5106, a resolution (A) denying the appeal and upholding the Planning Commission decision to uphold the Director’s Zoning Interpretation 17-0001 and (B) found 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 (1) are being used as a “hotel”, (2) are not being rented on a “long-term basis” and (3) are not being used as approved, as further evidenced by the findings and determinations outlined in the subject staff memorandum dated July 9, 2018.

SECTION 7. Pursuant to Subsection 19.03.030(C), WHMC, 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 the Interpretation.

SECTION 8. A public hearing for the Zone Text Amendment (ZTA) was duly noticed for the Planning Commission meeting of January 17, 2019 by publication in the Beverly Press newspaper, the West Hollywood Independent Newspaper, required state and local agencies, the City website, by announcement on City Channel 6 and via a mailed notice to affected properties, by January 3, 2019.

SECTION 9. The proposed ZTA is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the CEQA Guidelines, which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed ZTA reaffirms and promotes the long-term tenancy of dwelling units, as those units were intended and therefore will not have a significant effect on the environment.

SECTION 10. The Planning Commission of the City of West Hollywood hereby finds that ZTA 18-0019 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.

SECTION 11. Based on the foregoing, the Planning Commission of the City of West Hollywood hereby recommends approval to the City Council of ZTA 18-0019, which is attached hereto as Attachment A, to further clarify the scope of the City’s prohibition against the use of dwelling units for purposes other than long-term residential occupancy.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of West Hollywood at a regular meeting held this 17th day of January, 2019 by the following vote:

AYES: Commissioner:

NOES: Commissioner:

ABSENT: Commissioner:

ABSTAIN: Commissioner:

STACEY E. JONES, CHAIRPERSON

ATTEST:

BIANCA SIEGL, LONG RANGE PLANNING MANAGER

Decisions of the Planning Commission are subject to appeal in accordance with the procedures set forth in West Hollywood Municipal Code Chapter 19.76. Any action to challenge the final decision of the City of West Hollywood made as a result of the public hearing on this application must be filed within the time limits set forth in Code of Civil Procedure Section §1094.6.

ATTACHMENT A

PROPOSED ZONE TEXT AMENDMENT

(additions in underline; deletions in ~~strikethrough~~.)

SECTION 1. Section 19.36.275 is hereby added to Chapter 19.36 of Title 19, Zoning Ordinance, of the West Hollywood Municipal Code, as follows:

19.36.275: Residential Uses- Dwelling Units: Dwelling units shall be intended to be occupied by the owner or, if leased (as evidenced by a written rental or lease agreement), by the tenant under such agreement for an initial lease term of at least one year. This provision applies to all dwelling units in projects that received approval of a development permit on or after May 1, 2001. This provision does not apply to transitional housing, emergency shelters, congregate care facilities, or supportive housing. Home sharing in accordance with Chapter 5.66 of the West Hollywood Business License Code, may be permitted.

SECTION 2. The Title of Section 19.36.331 of Chapter 19.36 of Title 19, Zoning Ordinance, of the West Hollywood Municipal Code, is hereby amended as follows:

19.36.331 ~~Short-Term~~ Vacation Rentals.

SECTION 3. Section 19.48.060(A) of Chapter 19.48 of Title 19, Zoning Ordinance, of the West Hollywood Municipal Code, is hereby amended as follows:

19.48.060 Conditions of Approval.

A. In approving a development permit for a project containing dwelling units, the review authority shall ensure that the permit contains the following condition:

1. Dwelling units within the City ~~city~~ are intended for ~~long-term~~ occupancy by the owner, or, if leased (as evidenced by a written rental or lease agreement), by the tenant under such agreement for an initial lease term of at least one year, and as reflected by the definition of dwelling unit in Section 19.90.020. ~~As such, no part of any A dwelling unit in the project may~~ shall not be used as corporate housing or ~~short-term~~ vacation rental. ~~This condition is independent of the city's ban on short-term rentals and corporate housing, which also applies to all dwelling units in the city.~~

SECTION 4. Section 19.90.020, Definitions of Specialized Terms and Phrases, of Chapter 19.90 of Title 19, Zoning Ordinance, of the West Hollywood Municipal Code, is hereby amended with the following changes to existing definitions:

Corporate Housing. The temporary occupancy by any person of any dwelling unit, ~~by any person: (1) who does not intend to use it as their domicile, or who has not entered into an initial 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.~~

Domicile. ~~As defined in California Elections Code Section 349, "That place in which his or her an individual's habitation is fixed, wherein the individual person has the intention of remaining, and to which, whenever such individual he or she is absent, the individual person has the intention of returning. At a given time, an individual person may have only one domicile."~~

Dwelling, Dwelling Unit, or Housing Unit. 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~~ use by the owner, or if leased, by a tenant for an initial lease term of at least one year.

Hotel. A commercial facility not approved as a dwelling unit with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other ~~temporary~~ lodging generally not intended to be the guest's domicile. typically less than 30 days. Also may include accessory guest facilities such as swimming pools, tennis courts, indoor athletic facilities, accessory retail uses, meeting facilities, etc.