

The Honorable City Council of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

October 4, 2023

[CF 23-1066](#): Midvale Interim Housing

Dear Councilmembers,

The City hereby demands that the procedures set forth in [Los Angeles Municipal Code\(LAMC\) 16.00 et seq. \(“Local Emergency Temporary Regulations”\)](#) be followed for the project at [2377 Midvale Avenue](#). These processes are critical to ensuring due process rights as required under the State and US Constitutions.

The amendments to [Article 6, Section 16.00](#) began with a [March 27, 2020 motion](#) brought by Council Member (CM) Blumenfield which read in part:

“Small businesses, including restaurants, are the backbone of the Los Angeles economy. The public health orders aimed at preventing or slowing the spread of coronavirus have had and will have a devastating effect on local businesses.” The motion was assigned [Council File \(CF\) 20-0380-S1](#).

History

- On May 27, 2020, the council adopted the above Blumenfield motion which became final on May 28, 2020.
- On January 6, 2021, the Los Angeles Planning Commission submitted a [document](#) titled “Los Angeles City Planning Commission report”, dated January 6, 2021, relative to a proposed ordinance amending the Los Angeles Municipal Code, to provide regulatory relief from specific Zoning Code provisions during a declared “Local Emergency.” The document included a “Letter of Determination.”
- On that same date, City Planning provided a document titled “[Local Emergency Code Amendment Project Case Number: ENV-2020-4927-ND](#).” The document, an Initial Study under CEQA, contained a project description as follows:

“Project Description: The Local Emergency Code Amendment project is an ordinance amending and establishing new provisions within Article 6 of Chapter I of the Los Angeles Municipal Code. This amendment will supplement the current provisions and procedures within Article 6, **which details the various temporary regulations available during a declared local emergency**. As discussed in detail in the Project Description, **the proposed ordinance will provide the Los Angeles City Council and Mayor with a mechanism, during a declared local emergency**, to enact an extension of time limits for certain conditional use permits and related actions, suspension of valet and off-site parking conditions of approval for certain entitlements, and suspension of additional parking requirements when a change of use occurs to a nonresidential use. Certain eligibility criteria must be meant(sic) to take advantage of any of these regulatory relief measures. **All these provisions will only be available for activation during a local emergency declared by the City of Los Angeles** or State of California. Furthermore, the provisions will only be available upon approval of an affirmative resolution by Council by majority vote or by emergency order by the Mayor, and the time period they are applicable during are time limited. However, if activated, the alternative calculation method for required automobile parking will be permanent for approved projects. The suspension of valet parking and off-site parking conditions of approval are limited to the time frame the provisions are active. Finally, the project will rename Article 6

and create an exception, for these provisions, from the general activation clause of the Article.”

The Executive Summary read:

“The Local Emergency Code Amendment (LAMC) project is an ordinance amending and establishing new provisions within Article 6 of Chapter I of the Los Angeles Municipal Code. This amendment will supplement the current provisions and procedures within Article 6, which details the various temporary regulations available during a declared local emergency.”

- On May 13, 2021, the City Attorney submitted a [report](#) and [draft ordinance](#). The introductory paragraph read:

” Honorable Members: This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance amends Article 6 of Chapter I of the Los Angeles Municipal Code to provide relief from certain zoning and land use requirements during a local emergency. The draft ordinance, if enacted, **would minimize the adverse economic impacts of an emergency like the COVID-19 pandemic on local business and property owners.**” (emphasis added)
- On June 23, 2021, the council adopted the ordinance and the action became [final](#) on June 28, 2021.
- On October 6, 2021, the council approved technical revisions to the ordinance which became final on October 7, 2021.
- On December 12, 2022, Mayor Bass declared a local emergency related to homelessness. Mayor Bass subsequently issued several [Executive Directives](#) citing authority under a local emergency under LAMC 8.29 and LAMC 8.27.
- After the declared emergency, many departments in response to the Mayor’s generic instructions, created [new policies and procedures](#) governing many topics including land use in conflict with LAMC 16.00 and numerous other portions of the LAMC and LAAC.
- On July 7, 2023, Mayor Bass [declared a local emergency](#) under the newly passed LAMC 8.33. Mayor Bass retroactively included previously issued Executive Directives in the new declaration.

Discussion

Under [LAMC 16.00 et seq](#), the following steps must be followed:

- **Application.** An application to permit any temporary use referred to in this article shall be filed with the Department of City Planning upon forms and accompanied by data as the Department of City Planning may require.
- **Notice and Hearing.** Upon the filing of a verified application, the Zoning Administrator shall set the matter for public hearing. Notice of the time, place, and purpose of the hearing shall be given by mailing a written notice at least 14 days prior to the date of the hearing to the applicant, to the owner of the subject property, to adjoining and abutting property owners, and to property owners directly across the street or alley from the subject property. For this notice the following shall be used: the last known name and address of the property owners as shown upon the records of the City Engineer or the records of the County Assessor.

- **Hearing/Findings.** An application for a temporary use shall be set for public hearing unless the Zoning Administrator makes written findings, attached to the file involved, that the requested temporary use: will not have a significant effect on adjoining properties or on the immediate neighborhood; or is not likely to evoke public controversy.
- **Time Limit.** The Zoning Administrator shall make a determination within 30 days from the filing of a verified application. This time limit may be extended by mutual written consent of the applicant and Zoning Administrator.
- **Decisions by the Zoning Administrator.** Decisions by the Zoning Administrator shall be supported by written findings of fact based upon written or oral statements and documents presented to the Zoning Administrator, which may include photographs, maps and plans, together with the results of the Zoning Administrator's investigations. Upon making a decision, the Zoning Administrator shall forthwith mail a copy of his or her written findings and decisions to the applicant, and to the other persons who were required to be notified.
- **Decision Effective and Appeal.** The decision of the Zoning Administrator shall become final after an elapsed period of ten days from the date of mailing a copy of the written findings and decision to the applicant. During this period, any person aggrieved by the decision may file a written appeal to the Area Planning Commission. The appeals shall set forth specifically the points at issue, the reasons for the appeal, and how the appellant believes there was an error or abuse of discretion by the Zoning Administrator.
- **Record on Appeal.** Within five days of receipt of the filing of an appeal, the file of the Zoning Administrator appealed from and the appeal shall be delivered to the Area Planning Commission. At any time prior to the action by the Area Planning Commission on the appeal, the Zoning Administrator may submit supplementary pertinent information he or she deems necessary or as may be requested by the Area Planning Commission.
- **Hearing Date-Notice.** Upon receipt of the appeal, the Area Planning Commission shall set the matter for hearing and give notice by mail of the time, place and purpose of the hearing to the appellant, to the applicant, to the owner or owners of the property involved, to the Zoning Administrator and to any other interested party who has requested in writing to be so notified. This notice shall be in writing and mailed at least five days prior to the hearing.
- **Decision.** When considering an appeal from an action by the Zoning Administrator, the Area Planning Commission shall make its decision within 15 days (in the case of a revocation, within 10 days) after the expiration of the appeal period, or within an extended period of time as may be mutually agreed upon in writing by the applicant and the Area Planning Commission.
- **Appeal.** The Area Planning Commission may modify or reverse the ruling, decision or determination appealed from only upon making findings indicating how the action of the Zoning Administrator was in error or constituted an abuse of discretion and shall make specific findings supporting any modification or reversal. The decision of the Area Planning Commission shall be final as of the date of its determination on the matter. After making a decision, a copy of the findings and determination shall forthwith be placed on file in the City Planning Department and a copy of the determination shall be furnished to the applicant, the appellant and the Department of Building and Safety.

To be clear, LAMC 16.01.A, projects must first be presented to a Zoning Administrator (ZA). The ZA must make findings of the following:

1. That the nature and short duration of the proposed temporary use assures that the proposed use will not be materially detrimental to the character of development in the immediate neighborhood;

2. That the proposed use will not adversely affect the implementation of the General Plan or any applicable specific plan; and
3. That the proposed use will contribute in a positive fashion to the reconstruction and recovery of areas adversely impacted during the emergency.

The ZA is further instructed as follows:

“In making a determination pursuant to this section, the Zoning Administrator shall balance the public interest and benefit to be derived from the proposed temporary use against the degree, significance of, and temporary nature of the inconvenience to be caused in the area where the temporary use is located.”

The 2377 Midvale Project has failed to follow the very procedures the council put in place to govern land use during a local emergency. Most critically:

- Councilmember Yaroslavsky’s office turned what is a clearly defined public process into a secretive process which included [selecting the site, vendors and service providers](#), all outside of a public process and in violation of City laws regarding competitive bidding. This includes a sole-source award to a vendor who was not on the approved vendor list.
- The secretive nature of the process allowed an apparent ethics violation by Yaroslavsky’s staff to occur. That ethics violation, having been brought via an ethics complaint after a public records request, is [currently being investigated](#).
- The findings required in 16.01.A have not been (and could not be) made. Specifically, the proposed use is materially detrimental to the immediate neighborhood, and the proposed use is inconsistent with the General Plan. In addition, there has been no effort to “balance the public interest and benefit to be derived from the proposed temporary use against the degree, significance of, and temporary nature of the inconvenience to be caused in the area where the temporary use is located” as required.
- The public processes defined in LAMC 16.00 provide for due process in that there are public hearings and that “...any person aggrieved by the decision may file a written appeal to the Area Planning Commission.”
- Ironically, the proposed action would have the exact opposite effect which LAMC 16.00 sought to avoid: To “minimize the adverse economic impacts of an emergency [like the COVID-19 pandemic](#) on local business and property owners.”

The Mayor does not have, nor should she seek, the right to evade the US Constitution, specifically the [14th Amendment](#).

Quoting from the [Overview of Procedural Due Process](#):

“The Due Process Clause of the Fourteenth Amendment provides that no state shall deprive any person of life, liberty, or property, without due process of law.¹ The Supreme Court has construed the Fourteenth Amendment’s Due Process Clause to impose the same procedural due process limitations on the states as the Fifth Amendment does on the Federal Government.² Broadly speaking, procedural due process requires state actors to provide certain procedural protections before they deprive a person of any protected life, liberty, or property interest.³

The Supreme Court has often decided whether a property interest exists by considering whether a law or government policy created an entitlement—a reasonable expectation that a government-provided benefit would continue.⁸ Modern cases have found protected liberty interests in the exercise of constitutional rights⁹ and where state laws create an expectation related to individual liberty.¹⁰ “

The Mayor does not have the right, nor should she seek, to evade the [California Constitution, Article 1 § 3](#).

“Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.”

Due Process Rights

- The businesses and property owners have been denied their due process rights as a result of the City ignoring the procedures set forth in LAMC 16.00 et seq. The proposed project removes a critical parking lot from public use and also places potentially dangerous individuals in close proximity to families. The proposed project has already caused a lease to fall through for a commercial property and there is a substantial likelihood that residential property owners will see the value of their properties reduced. Further, the proposed project seeks to place a wildly incompatible use on a single-family parcel.
- Yaroslavsky and the City [scheduled the committee meeting](#) before the local Neighborhood Council (Westside Neighborhood Council) had an opportunity to meet, hear public comment and then weigh in. Public comment has been limited to one minute per person only, with public comment being taken only in person.
- Yaroslavsky and the City then caused the full City Council meeting to occur just two days later. Per the provided agenda, the report from the committee will be presented at the October 6, 2023 meeting, providing no time for the public to review and comment on the report and place concerns in the administrative record.

In light of the above-mentioned events and the consistent disregard for the established procedures outlined in LAMC 16.00, we demand that the City follow the mandated processes, ensuring that due process rights are upheld.

Sincerely,



Fix The City

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