

BRENTWOOD RESIDENTS COALITION

August 3, 2011

Los Angeles City Council
Audits & Governmental Efficiency Committee
200 N. Spring Street
Los Angeles, CA 90012

Re: Clean Hands Ordinance

Dear Councilmembers Zine, Parks and Englander:

The Brentwood Residents Coalition (BRC)¹ applauds and supports Councilmember Zine's motion instructing the City Attorney to draft and present a "clean hands" land-use ordinance for the City of Los Angeles. The BRC has been advocating for adoption of a clean hands ordinance for the past year, since publication of the Court of Appeal's decision in *County of Los Angeles v. Sabag-Mesrob Armenian Christian School*, 188 Cal.App.4th 851 (2010), on September 22, 2010, which upheld Los Angeles County's clean hands ordinance against a legal challenge based on the federal Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA").

Members of the BRC have spoken about the need for a clean hands ordinance with City Councilmembers and their staffs and made presentations to community groups, including the Federation of Hillside and Canyon Associations, the Bel Air Beverly Crest Neighborhood Council, the Upper Mandeville Canyon Association, and PlanCheckNC. An article supporting passage of a clean hands ordinance was published in the June 2011 edition of the Hillside Federation's Newsletter and the Bel Air Beverly Crest Neighborhood Council and the Upper Mandeville Canyon Association have submitted letters in support of a clean hands ordinance.

The City, in adopting a clean hands land-use ordinance, has the opportunity to improve upon the County's 25-year old ordinance by codifying policies that have been applied by the County to aid in the enforcement of a viable clean hands land-use policy. Specifically, we recommend that the City Attorney draft the ordinance in a manner that (1) clarifies that the scope of the clean hands ordinance extends to any violation of planning or zoning requirements; (2) enumerates the factors that weigh "against" or "in favor of" a waiver of the clean hands requirement; and (3) clarifies that a clean hands violation can be "waived" only for the purpose of allowing the applicant a reasonable amount of time to bring the property into compliance with planning and zoning codes.

¹ The BRC is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in Brentwood, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, to encourage traffic safety, and to educate the public on issues that affect quality of life and the environment.

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1. The ordinance should specify that it applies to planning and zoning requirements.

The County ordinance states that it applies to “land uses” (but not to buildings or structures that do not conform to development standards). The County properly interprets the phrase “land uses” broadly to encompass any activity that requires a “use” permit – thereby encompassing not only non-permitted uses of property but also, among other things, violations of code that require permits such as permits for grading, retaining walls and many other basic activities.

Instead of relying upon a broad interpretation of the phrase “land uses,” the City can improve upon the County’s ordinance by using simpler language and thereby avoiding unnecessary ambiguity over the ordinance’s scope. We recommend that the City’s ordinance provide that “No land use application shall be granted if the applicant is not in good standing.” In *Christiana Town Center, LLC v. New Castle County*, 2003 Westlaw 21314499 (Delaware Chancery Court), New Castle County in Delaware adopted a clean hands land-use ordinance providing that “No land use application shall be granted by any board, Department, or Council if the applicant is not in good standing with the New Castle County.” *Id.* at *5 (quoting Development Code). The New Castle ordinance defines “not in good standing” to mean that the applicant is “in violation of the [Development] Code” at the time of the request. *Id.* We suggest that the City’s ordinance similarly define “not in good standing” to mean that the applicant is “in violation of the City’s planning or zoning requirements.” The intent of this proposed language is to apply the clean hands ordinance whenever the developer or property owner is in violation of a planning or zoning requirement.

2. The ordinance should enumerate the factors guiding the discretionary determination to grant a clean hands waiver.

The County clean hands ordinance provides a mechanism for waiving the existing violation to avoid unnecessary hardship. This “clean hands waiver” empowers the Director of the Planning Department to allow a property owner to continue with the unpermitted land use and authorize processing of the property owner's application. But the ordinance does not guide the Director in exercising discretion over a waiver application. The County’s briefs and supporting declarations in the *Sabag-Mesrob* case reveal that the Director relies upon established (but not codified) policies to guide the waiver determination. The County’s reliance upon such guidelines, which establish *objective factors* weighing “for” or “against” waiver, were critical to the Court’s ruling that the clean hands ordinance was applied in a neutral manner and did not therefore violate religious rights protected by RLUIPA. *Sabag-Mesrob*, 188 Cal.App.4th at 864.

Under the County’s policy, the Director may waive the violation if the applicant’s proposed use is “1) consistent with the objectives, goals and policies of the County’s land-use constitution -- the General Plan; or 2) essential or desirable to the public convenience or welfare.” Respondent County of Los Angeles’ Brief, *County of Los Angeles v. Sabag-Mesrob Armenian Christian School*, 2010 Westlaw 1139631, p. 4 (March 12, 2010). The purpose of the waiver is “to acknowledge hardship, but at the same time protect legitimate and important planning goals and objectives.”

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Id. The standard applied by the County Planning Department is “to grant clean hands waivers in situations where the existing land use creates little or no detrimental impact to the surrounding community and is consistent with the ordinance criteria. Therefore, the director simply makes a preliminary determination regarding the impact created by the offending use - if such adverse impact is high, the waiver is denied, and if it is low, the waiver is granted.” *Id.* at pp. 4-5 (citations omitted).

These guiding policies, however, have not been codified by the County. Thus, the City could and should improve upon the County’s clean hands ordinance by codifying such guidelines and thereby avoid confusion and inconsistent application of the ordinance. In order to do so, we recommend the following:

These *factors* generally weigh *against* the issuance of a waiver:

- 1) The unlawful use is located in a residential community;
- 2) The unlawful use presents significant expansion from the prior use of the property; or
- 3) The unlawful use is not [the] same or substantially similar to the prior use of the property. County Brief, *Sabag-Mesrob*, 2010 Westlaw 1139631, pp. 5-6.

These *factors* generally weigh *in favor of* a clean hands waiver:

- 1) There is no need for deterrence because the applicant is actively cooperating with the City to bring the property into compliance;
- 2) The applicant would suffer a disproportionate hardship absent a waiver;
- 3) The surrounding community will not suffer an adverse impact from the violation; and
- 4) A limited waiver is required to allow the property owner to apply for remedial permits needed to bring the property into compliance or otherwise eliminate hazardous conditions.

3. A clean hands waiver defers enforcement of the clean hands requirement only until the applicant has had a *reasonable opportunity* to bring the property into compliance.

The City can improve upon the County’s ordinance by explicitly stating that clean hands waivers are merely conditional and must be limited to the time period reasonably necessary to bring the property into compliance. Indefinite waivers should not be granted.

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The BRC strongly supports the adoption of a “clean hands” land-use ordinance for the City. As described above, however, the BRC asks that the City Attorney be instructed to draft a clean hands ordinance that (1) precludes the issuance of land-use permits or approvals from applicants who are not in “good standing” – meaning that they are not in compliance with applicable planning and zoning requirements; (2) authorizes the issuance of a “clean hands waiver” but limits the decision-maker’s discretion to grant such a waiver by specifying the factors that weigh in favor of and against issuance of such waivers; and (3) specifies that “clean hands waivers” should be limited by providing recipients with waivers only for a time period that is reasonably necessary to bring the property into compliance with the applicable planning and zoning requirements.

Respectfully submitted,



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cc:

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Westside Regional Alliance of Councils
Plan Check Neighborhood Council LA
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