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2021 MAR -8 AM 9:35

Honorable Mayor and Council Members:

As a Pasadena resident, I respectfully urge the Council to reject or amend the proposed Zoning Code amendment relating to nonconforming land uses, Item 11 on the March 8 agenda. In its present form, the proposed ordinance has the potential for serious, unintended consequences.

Businesses that operate as nonconforming uses today, or that might be made nonconforming by future zoning changes, rely on many kinds of licenses and permits, issued by numerous federal, state, and local government agencies.

The proposed ordinance would allow the City to require the abatement and termination of a nonconforming use, thereby forcing a business to relocate or close, whenever any of its licenses or permits is revoked, terminated, or suspended, regardless of the reason, circumstances, or duration. This policy would invite unreasonable and unfair enforcement.

– Licenses and permits may be issued to individuals and thus routinely terminated or revoked due to changes in ownership or personnel.

For example, a medical clinic might rely on a physician's license, or a Smog Check station on a technician's license. When such individuals die, retire, or otherwise separate from a business, current Zoning Code section 17.71.060, subsection B, allows operations to be suspended for up to twelve months, giving owners or heirs time to engage new personnel or to sell, and new operators time to obtain licenses or permits in their own names. The proposed ordinance would jeopardize this right.

– Licenses and permits may be suspended temporarily for non-punitive reasons.

For example, if the hot water supply fails in a restaurant, the City can suspend its health permit to protect the public, but as soon as the problem is corrected, the permit can be reinstated (Cal. Health & Safety Code §§ 114409, 114413). Under the plain language of the proposed ordinance, if the restaurant in this example were a nonconforming use, it could be required to close permanently.

– Licenses and permits may be suspended as a penalty less severe than revocation.

The possibility of collateral consequences arising from the proposed ordinance would interfere with the enforcement discretion of other agencies, which would no longer be able to use suspension to encourage compliance without the risk of destroying otherwise viable and responsible businesses. The disciplinary guidelines of the California Department of Alcoholic Beverage Control, for example, call for suspensions as brief as five days for certain violations.

Thank you for considering my comments.

William Hooper

03/08/2021
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