

Public Comments Not Uploaded PLUM June 1, 2021, Item 12--CPC-2019-2282-CDP-MEL-SPP-DB-CUB-1A

1 message

'Robin Rudisill' via Clerk-PLUM-Committee <clerk.plumcommittee@lacity.org>

Mon, May 31, 2021 at 9:54 PM

Reply-To: clerk.plumcommittee@lacity.org

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PLUM City Clerk,

Please provide this letter to PLUM for the June 1st Agenda, Item 12.

Thank you.

To: City of Los Angeles Planning and Land Use Management Committee

Fr: Appellants POWER and Citizens Preserving Venice

Re: Our appeal of CPC-2019-2282-CDP-MEL-SPP-DB-CUB-1A
[811-815 Ocean Front Walk](#)

We provide the following rebuttal to the City and Applicant rebuttals of our appeal:

1. Demo/Conversion for purposes of a mixed use project is not authorized

City Planning states that they did not err re. the Mello Act prohibition of conversions/demolitions of residential structures for purposes of a mixed use project. However, the City is "in denial," as the evidence has been provided by the Appellant that shows that the Mello Act and the IAP (which both state that the conversion or demolition of any residential structure for purposes of a nonresidential use shall not be authorized) are very clear that demolitions/conversions for purposes of a nonresidential, mixed use project are not allowed.

The City's response is nonsensical. First, they provide definitions of "coastal-dependent non-residential use" and "residential unit" and "new housing development," all of which are irrelevant to the mixed use issue. They argue that because the new units meet the IAP's definition of residential units that the project is not a nonresidential structure. That is not the question. The fact is that the existing structures would be demolished for purposes of a mixed use project. That mixed use project has two components, residential and commercial. The existing structures are being demolished for purposes of the total project, for purposes of both the residential and commercial components of the mixed use project and not just for purposes of the residential component.

In addition, the Planner errs in making the point that the proposed project does not result in a nonresidential structure. However, whether the City considers the resulting mixed use structure residential or nonresidential/commercial is irrelevant. The question is not what kind of structure results but rather what kind of use: "...demolition of any residential structure for purposes of a nonresidential use...shall not be authorized."

Also, the applicant errs in making the assertion that the Mello Act only prohibits replacement of residential structures with entirely non-residential uses. The Mello Act and the IAP say that residential structures cannot be replaced with non-residential uses and has no provision for a partial residential, partial commercial (a mixed use project) exception!

A mixed use project is a nonresidential use. The project cannot be allowed under the Mello Act as it would entail a demolition of a residential structure for purposes of a nonresidential use/project. The project must conform to both the Mello Act state law and the Coastal Act state law. In addition, neither the Coastal Act nor its certified Land Use Plan guidance require that the project be a mixed use project in this coastal land use designation; rather, the certified Land Use Plan guidance only encourages the development of mixed use structures. A residential use is allowed in the zone, which results in a mix of uses in that zone as opposed to a mix of uses on the site.

A 100% residential project can conform to both the Mello Act and the Coastal Act. Thus the use must remain residential.

2. Prior Coastal Commission decisions

The Coastal Commissioners made it clear in the hearing for the [3011 Ocean Front Walk](#) project that a mixed use project was not required. Because the certified Land Use Plan guidance only encourages a mixed use project in the land use designation, and because the Coastal Commission did not require a mixed use project for [3011 Ocean Front Walk](#), there is no basis for the Coastal Commission to find issue with the project if it is residential and not mixed use.

3. City's prior actions/proposed Mello Act ordinance

We acknowledge that City Planning has supported demolitions or conversions of 100% structures for purposes of some mixed use projects in the past and also that City Planning has put a provision in the draft Mello Act Ordinance in that regard. However, the City is in error on this point and we the undersigned have challenged such projects as well as the mixed use provision of the draft Mello Act Ordinance. See attached letter from Venskus and Associates and California Women's Law Center for details of our legal challenge. The City has a pattern and practice of approving such projects in violation of the Mello Act state law. Until this mixed use issue is decided by the City Council, and ultimately by a court of law if necessary, the City and applicant cannot conclude that the City's actions in this regard, which are undergoing a serious legal challenge (including this appeal as a pattern and practice of violating the Mello Act along with other similar projects) are a basis to support the proposed project.

It should be noted that the City also violated the Mello Act and IAP for several years with a pattern and practice of approving Mello Act Compliance Determinations using the VSO ministerial permit process. The VSO procedure was not a discretionary action and it was not appealable and thus these City actions violated the state Mello Act law and the IAP. The undersigned fought this practice and the City eventually made the necessary corrections to the process in order to end these ongoing violations.

And finally, the City also violated the Mello Act in the 90's, resulting in the 2000 Settlement Agreement between the City of L.A. and the Venice Town Council, Inc., the Barton Hill Neighborhood Organization, and Carol Berman Concerning Implementation of the Mello Act in the Coastal Zone Portions of the City of L.A.

As you can see, the City has violated the Mello Act many times over the past decades and it is known for its long-standing illegal practices with respect to the Mello Act. It has been necessary for citizen groups, such as ours and such as the Venice Town Council and Barton Hill Neighborhood Organization, to fight and work to get the City's illegal practices corrected. This mixed use issue is no different.

4. Environmental Justice provisions of the Coastal Act

City Planning indicates that it does not believe that the Environmental Justice provisions of the Coastal Act apply to a Venice Coastal Zone project. They are mistaken. The entire Coastal Act is the standard of review for a Venice Coastal Zone project. It is erroneous for the City to say that the state Coastal Act law does not apply until the LCP is approved, particularly since the LCP has been delayed by the City itself for many decades now. Not finalizing the LCP does not enable the City to evade any provisions of the state Coastal Act law, including the Environmental Justice provisions. The relevant Coastal Act provisions do entail judgements/discretionary decisions; however, the City errs in that it has not even considered the provisions.

5. HCID affordable units determination

The HCID affordable units determination dated July 14, 2015 concluding that there are no replacement affordable units on the project site is in error and thus the Mello Act Compliance Determination must be corrected. HCID must correct it's 2015 analysis of replacement affordable units because according to community testimony during the [811-815 Ocean Front Walk](#) hearings and as per evidence provided by the undersigned (see [811-815 Ocean Front Walk](#) case files), including 2014 utility bills and photos showing occupants in the structures during the review period--June 2012 to June 2015--the units were being occupied/rented at well below market rents. Also, there was an unpermitted commercial use during that time. Under Mello, the unpermitted commercial use cannot be acknowledged/rewarded by being used as an exemption from replacing RSO affordable units.

In addition, as pertains to mention of the AB 2556 affordable replacement units, this is, again, irrelevant as it relates to density bonus requirements, which do not replace the Mello requirements.

The Mello Act Compliance Determination is in error as it does not provide for the units qualifying as replacement affordable from the review period, June 2012 - June 2015.

It should be noted that the one low income affordable unit proposed to be provided is being used to qualify for the Density Bonus incentives.

As explained above, this project would violate the Mello Act. Please uphold the appeal and require a 100% residential project.

*For the Love of Los Angeles
and our precious Coast,*
Robin Rudisill
(310) 721-2343



CWLC_Venskus ltr Mello Ordinance.pdf
245K



May 4, 2021

CPC-2019-7393-CA
ENV-2019-7394-ND

Re: Mello Act Ordinance must not allow demolitions/conversion of residential structures for purposes of mixed-use projects

Dear Los Angeles City Planning Commissioners:

The California Women's Law Center ("CWLC") is a non-profit law and policy center whose mission is to create a more just and equitable society by breaking down barriers and advancing the potential of women and girls through transformative litigation, policy advocacy and education. We focus on addressing economic justice, gender discrimination, violence against women, and women's health.

Venskus & Associates, APC is a boutique law firm litigating in the areas of housing rights and environmental/land use. The law firm represents and advocates for traditionally under-represented plaintiffs, such as low-income tenants, community organizations and environmental groups.

We write to urge the Los Angeles City Planning Commission ("Planning Commission") to ensure that its proposed Mello Act Ordinance (CPC-2019-7393-CA) does not:

- exceed the City's jurisdiction by conflicting with, or changing the meaning of, state law;
- run afoul of the Settlement Agreement Concerning Implementation of the Mello Act in the Coastal Zones within the City of Los Angeles ("Settlement Agreement");
- establish a law that is weaker than the City of Los Angeles' ("City") Mello Act Interim Administrative Procedures ("IAP").

The Settlement Agreement provided that the City must adopt Interim and Permanent Ordinances to implement both the Mello Act and the provisions of the Agreement. In response, the City adopted the IAP in 2000. In 2015, the City Council requested that City Planning prepare a permanent ordinance, but one was not adopted at that time. In April 2019, the City Council directed the Planning and Housing Departments to prepare and present a permanent ordinance to implement the Mello Act. In December 2019, the City's proposed Mello Act Ordinance was released. On February 25, 2021, the Planning Commission reviewed the proposed ordinance, but the vote was continued to May 13, 2021.

Adopting a permanent ordinance is an important step to protect housing stock including, specifically, affordable and Rent Stabilized (RSO) housing in the City’s coastal zones, and to prevent displacement of people and communities. The ordinance must be in accordance with controlling state law and the Settlement Agreement. As currently proposed, the Mello Act Ordinance is not in accordance with controlling authority and thus exceeds the City’s jurisdiction.

I. The purpose of the Mello Act is to preserve residential structures in the coastal zone, to protect existing affordable housing, and to provide new affordable housing

As stated in the IAP, under the Mello Act each local jurisdiction shall enforce three basic rules—

1. maintain existing residential structures,
2. replace converted or demolished affordable units
3. provide inclusionary residential units in new housing developments.

However, by adding clause 12.21.H.c.7. Mixed Use in the draft Mello Act Ordinance, the City is not honoring the first requirement, which states:

“Existing residential structures shall be maintained, unless the local jurisdiction finds that residential uses are no longer feasible.” (IAP pg. 7.)

California courts also have made clear that the Mello Act’s purpose is to preserve housing in the Coastal Zone. The Court of Appeal stated that the purpose of the Mello Act is:

“to preserve residential units occupied by low or moderate-income persons or families in the coastal zone.”¹

The California Supreme Court similarly explained that:

“[t]he Mello Act supplements the housing elements law, establishing minimum requirements for housing within the coastal zone for persons and families of low or moderate income.”²

In fact, the Mello Act specifically mentions the housing elements state law, making it clear that the Mello Act is a law that protects housing for all income levels and certainly not one that would allow for non-residential uses. One of the main avenues the Mello Act proscribes for protecting residential housing is to limit the ability to convert existing residential structures to non-residential uses. To allow such conversions would not only violate both the letter and the spirit of the Mello Act, but it would plainly threaten housing, by allowing its destruction for purposes of a more lucrative commercial use, including mixed use projects, thus displacing families and damaging coastal communities that are already holding on by a thread—exactly what the Mello Act was intended to prevent.

¹ *Venice Town Council v. City of L.A.*, 47 Cal. App. 4th 1547, 1552-53 (1996).

² *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, 55 Cal. 4th 783, 798 (2012) (emphasis added).

The Mello Act states:

“The conversion or demolition of any **residential structure** for purposes of a nonresidential use which is not ‘coastal dependent,’ as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location.”

This language is repeated in IAP section 4.1 (also covered in the Settlement Agreement, section VI.C.1.):

“The Mello Act states that the Demolition or Conversion of **residential structures** for the purposes of a non-Coastal-Dependent, non-residential use is prohibited, unless the local jurisdiction first finds that a residential use is no longer feasible at that location.”

II. As proposed, the draft Mello Act Ordinance exceeds the City’s jurisdiction and violates the Settlement Agreement

The draft Mello Act Ordinance exceeds the City’s jurisdiction. Under article XI, section 7 of the California Constitution, “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”³ The Mello Act is a state statute; therefore, any attempt to enact an ordinance in conflict with it is in excess of the City’s authority.

The City must also comply with the Settlement Agreement in enacting the Mello Act Ordinance. The permanent ordinance must be consistent with both the Mello Act and the provisions of the Settlement Agreement. Adopting an ordinance that is contrary to the provisions of the Settlement Agreement would be in violation of the Settlement Agreement itself.

III. Words have meaning: terminology in land use law is specific

The draft Mello Act Ordinance new proposed provision (LAMC 12.21H.c.7.) for conversion to mixed uses changes the meaning and application of the Mello Act by stating:

“Mixed Use Development. A proposed mixed use development may not result in a net reduction in the total number of existing Residential Units unless a residential use is no longer feasible. A mix of uses is permitted, so long as the structure provides all required Replacement Affordable and Inclusionary Units.”

This new provision would allow for the conversion of one hundred percent residential structures to non-residential mixed uses and by doing so, change the meaning, spirit, and purpose of the Mello Act. This change is in direct violation of the Mello Act and the Settlement Agreement, which explicitly forbid the conversion of a residential structure to a non-residential use.

³ *Sherwin-Williams Co. v. City of L.A.*, 4 Cal. 4th 893, 897 (1993).

This new conversion provision included in the draft Mello Act Ordinance essentially changes the Mello Act, as follows:

“Conversion or demolition of any ~~Residential Structure~~ **residential unit or residential use**, for purposes of a non-residential use that is not Coastal-Dependent, is prohibited, unless a residential use is no longer feasible at that location.”

This new provision has the effect of replacing the word “structure,” as used in the Mello Act, the Settlement Agreement and IAP, with “unit or use.” The words “structure” and “unit” are not interchangeable. Nor are the words “unit” and “use.” The word “structure” refers to an entire building as an entity, while the word “unit” refers to an individual dwelling, which may be one of many within a single structure. This is an important distinction, because the use of the word “structure” in both the Mello Act and the IAP intentionally protects the entire residential building.

The terminology used in land use law is specific and purposeful. The use of “unit” in the Mello Act pertains to sections of the law related to protecting existing affordable housing or providing inclusionary affordable housing, whereas “structure” relates to the protection of housing from the desires of developers for more lucrative commercial uses, including mixed use.

A residential structure in a commercial zone may also not be changed to a mixed use, as the Mello Act specifically protects housing regardless of zoning. Furthermore, the definition of a “residential structure” does not include “mixed use,” which is considered a commercial use and is restricted to commercial zones. A “residential structure,” on the other hand, is permitted in both residential and commercial zones. They are far from equivalent. Therefore, the substitution of “unit or use” in the proposed ordinance amounts to a sleight of hand, *apparently to promote the substitution of mixed use structures in place of residential structures*. This was clearly not the intent of the clear and carefully chosen language of the Mello Act, the Settlement Agreement and the IAP.

Municipalities are permitted to strengthen the local implementation of a statute, but not to weaken it. As per the Mello Act, Government Code Section 65590(k):

...[t]his section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

The present use of the term, “residential structure” protects an entire building, whereas “residential unit or use” does not, necessarily. It would therefore weaken the implementation of the statute and is thus beyond the jurisdiction of the City.

IV. Conversion to mixed use is used as loophole to allow unpermitted conversions to commercial uses

The result of the change in terminology will destroy housing by allowing for conversion to commercial uses. Replacing the word “structure” with the words “unit” or “use” is beyond the jurisdiction of the City because it contradicts the Mello Act, a state law.

The City’s Mello Act Ordinance must also comply with the Mello Act’s intent. Since this new mixed use provision would effectively change the meaning, in direct contradiction to the Act’s intent, the City would be acting in excess of its jurisdiction.

The harm from the City’s attempt to exceed its jurisdiction by allowing conversion or demolition of residential structures for purposes of non-residential use is not just theoretical. Several recent projects have already seized on the current, draft language of the proposed Mello Act Ordinance, regarding “residential units” or “residential uses,” to justify approval of the conversion of residential properties to mixed-use properties. Many of these properties have then illegally converted the entire structure to commercial, non-residential use, with no consequence.

Thus, already the use of “units or uses” rather than “structures” has created a loophole to allow developers to convert one hundred percent residential use structures to “mixed use” and then fail to actually maintain any residential uses, in violation of state law and the Settlement Agreement.

A. Example #1: 1214 Abbot Kinney Blvd.

First, for the property at 1214 Abbot Kinney Blvd., in 2014, the City approved a change of use from residential to mixed use, in violation of the Mello Act. Since then the property has been used illegally as commercial office use, even though it was only approved for conversion to “mixed use.” Yet another example of ongoing use of residential structures for commercial use is 619-701 Ocean Front Walk, aka Thornton Lofts. When the tech industry moved in they took over residential structures for offices. There are numerous other similar examples of unpermitted mixed uses or full commercial uses where the structures are only permitted for residential use.

B. Examples #2 & #3: 811-815 Ocean Front Walk, and 1310 Abbot Kinney Blvd.

Other Coastal Zone projects are pending that would violate the Mello Act by allowing demolition of 100% residential structures for purposes of a mixed-use development. One example is the project at 811-815 Ocean Front Walk, which proposes the demolition of three residential structures for purposes of a mixed-use commercial development. Another example is the project proposed at 1301-1303 Abbot Kinney, which is requesting a change of use from a 100% residential triplex structure to two live/work mixed use units. The approvals of both of these projects have been appealed. If these projects are ultimately approved by the City it will be in clear violation of the state Mello Act and the Settlement Agreement. There are other examples where the City approved a residential structure to be replaced by “artist in residence” use, a mixed use, but they do not meet the code’s definition of artist and thus the structures have become essentially all commercial use.

C. Example #4: 1047 Abbot Kinney Blvd.

One final example is the three bungalows at 1047 Abbot Kinney Blvd., which have certificates of occupancy as residential units but have for years been illegally used for a non-residential use. The City recently approved the demolition of those bungalows for purposes of the Venice Place mixed use project, for which they will be covered by the hotel's CUB, and they will be included in the hotel buildings, very likely losing their identity as housing.

These examples illustrate that because the as-now-proposed Mello Act Ordinance provisions regarding conversion to mixed use contradict the Mello Act's language and intent to protect housing, developers have exploited, are currently exploiting, and will likely continue to exploit this "mixed-use" loophole to effectively destroy residential housing, including and especially affordable housing for low-income residents and communities of color, thus causing a gross, unacceptable, adverse cumulative impact on housing, including affordable housing, in the Los Angeles Coastal Zones.

All of this is an unfortunate, perhaps unconscious, continuance of the City's practices of institutional racism.⁴

V. If not amended, the draft Mello Act Ordinance will disproportionately harm low income communities of color in the Coastal Zone as new mixed use development will be encouraged

The impact of the destruction of housing that has and will continue to result from the Mello Act Ordinance if the ability to convert residential structures to mixed uses is not eliminated, disproportionately harms communities of color. In 2017, California had nearly two million rent burdened households of color that spent more than thirty-percent of the household income on rent and utilities.⁵ There were also 1.6 million extremely low-income renter households, two-thirds of which were households of color.⁶ During the COVID-19 pandemic, there has been a disproportionate financial impact on populations of color, which has created even greater disparities.⁷ All housing will be put in jeopardy in the Coastal Zone if the draft Mello Act Ordinance is not amended to prohibit demolition or conversion of residential structures for purposes of mixed use developments, and those who will be impacted most are low-income people and communities of color.

This is especially true because by allowing such mixed use developments to replace residential structures the current draft of the Ordinance actually encourages, rather than discourages,

⁴ On top of these egregious practices, the City has a pattern and practice of using the rent paid by existing unpermitted commercial uses (this was done for 1301-1303 Abbot Kinney and 1047 Abbot Kinney, among many others) to determine whether affordable housing must be replaced, a gross double violation of the Mello Act and a practice that the City must never allow, and yet it openly does allow it.

⁵ AMEE CHEW & CHIONE LUCINA MUÑOZ FLEGAL, POLICY LINK, FACING HISTORY, UPROOTING INEQUALITY: A PATH TO HOUSING JUSTICE IN CALIFORNIA 14 (2020), https://www.policylink.org/sites/default/files/pl_report_calif-housing_101420a.pdf.

⁶ *Id.*

⁷ See Kelly Anne Smith, *Covid and Race: Households of Color Suffer Most From Pandemic's Financial Consequences Despite Trillions in Aid*, FORBES (Sept. 17, 2020), <https://www.forbes.com/advisor/personal-finance/covid-and-race-households-of-color-suffer-biggest-pandemic-consequences/>.

displacement. With the “mixed use” loophole, developers are encouraged to demolish the building and erect a new building in its place, thus displacing families currently living in older housing stock which is always, by definition, more affordable than new units deemed “affordable” pursuant to federal and state law. It makes no sense for the City to encourage destruction of existing housing, including affordable housing, so that more lucrative commercial mixed use projects can be built in the Coastal Zone, especially when such a concept runs completely contrary to the Mello Act’s intent. This would be a boon to developers and would cause a steady stream of property owners getting richer on the backs of our existing renters in the L.A. Coastal Zones as they will be displaced when mixed use projects replace residential structures.

VI. Conclusion

We understand that the City’s priority is to increase housing, but it must be done within the confines of the law and not by allowing conversions of residential structures to mixed use, in violation of the Mello Act.

We too support mixed use developments, but only where they replace existing commercial uses and thus add housing.

The Mello Act’s purpose is to protect all housing in the Coastal Zone, as well as to protect existing and provide for new affordable housing.

For the foregoing reasons, we respectfully urge you to eliminate any and all proposed Mello Act Ordinance language that would allow for demolition or conversion of residential structures for purposes of non-residential/commercial mixed use projects, in order to comply with state law and the Settlement Agreement and to ensure the City is acting within its jurisdiction.

Sincerely,

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