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Second Dwelling Unit Repeal Ordinance

1 message

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HOMEOWNERS OF ENCINO
"Serving the Homeowners of Encino since 1983"

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May 26, 2016

Los Angeles City Council
Planning and Land Use Committee
200 North Spring Street, Room 350
Los Angeles CA 90012

PLUM Hearing Date: *Pending*

Councilmember Jose Huizar, Chair
Councilmember Marqueece Harris-Dawson
Councilmember Gilbert A. Cedillo
Councilmember Mitchell Englander
Councilmember Felipe Fuentes
Sharon Dickinson - Legislative Assistant - (213)-978-1074 Sharon.Dickinson@lacity.org)

Subject: Proposed Second Dwelling Unit Repeal Ordinance CF- *Pending*

Homeowners of Encino (HOME) strongly objects to repealing the City's adopted Second Unit Ordinance. It is imperative that the PLUM Committee leave in place those standards while it studies new, improved second unit standards that will provide needed additional neighborhood protections. PLUM should immediately drop its proposal to repeal the City's adopted second unit standards. There is no urgency to act immediately.

Before addressing Homeowners of Encino's objections to the ordinance repeal, it is important to understand what the State mandates and what it does and does not require of Los Angeles. Government Code Sec. 65852.150 states:

> "The Legislature finds and declares that second units are a valuable form of housing in California. *Second units provide housing* for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing

neighborhoods. *Homeowners who create second units benefit from added income,* and an increased sense of security. It is the intent of the Legislature that any second-unit ordinances adopted by local agencies have the effect of providing for the creation of second units and that provisions in these ordinances relating to matters including unit size, parking, fees and other requirements, are not so *arbitrary, excessive, or burdensome* so as to *unreasonably restrict* the ability of homeowners to create second units in zones in which they are authorized by local ordinance."
(Added by Stats. 1994, Ch. 580, Sec. 1. Effective January 1, 1995.)

The constitutionality of zoning ordinances was upheld under the police power rights of state governments and *local governments* to exercise authority over privately owned real property. Clearly Government Code Sec. 65852.150 does more then merely induce housing. It encourages housing density as a money maker for those who seek to lease, rent or encourage short term tourist housing rentals. State law does not take over control of local housing regulations, nor restrict local housing regulations, as long as they are not "arbitrary", "excessive", "burdensome" or "unreasonably restrictive". Clearly Los Angeles has full domain to impose almost unlimited zoning rules and regulations as long as they are not "arbitrary", "excessive", "burdensome" or "unreasonably restrictive".

Homeowners of Encino has the following objections and concerns regarding the proposed repeal of the City's adopted second unit standards:
1. The Planning Director's Report [May 12, 2016] on the proposed ordinance repealing the City's existing second unit standards is very misleading. It incorrectly asserts that the City cannot legally continue to administer its adopted second unit standards. According to Judge Chalfont, the City can continue to use its adopted standards -- just as it successfully did between 2003 and 2010, when it issued hundreds of second unit permits.
2. We strongly object to the proposed repeal ordinance because the City's adopted second unit standards provide important protections for surrounding neighborhoods that otherwise could be negatively impacted by second unit development. The adopted standards limit second units to a maximum size of 640 SF, and they forbid development of second units in designated "hillside" areas or that would be visible from the street. In contrast, the very weak State "default" standards that the proposed repeal ordinance would put into place would allow second units as big as 1,200 sq. ft. without any protections regarding the location or visibility of second units.

3. In 2002 because of AB 1866, local governments lost their ability to hold public hearings on second unit applications, to reject them or to impose mitigating conditions. This forced cities to approve second unit applications on a ministerial ("by right") basis, so long as the units meet their adopted local standards. Like other cities, Los Angeles can adopt new, improved local standards in order to better protect neighborhoods. Los Angeles standards could limit a second unit's maximum to 550 sq. ft. and could entirely forbid second units in areas where existing infrastructure capacity (e.g., traffic, sewers, water) cannot adequately serve increased residential density.

4. The asserted "emergency" is vastly overstated. According to the Director's Report, it would take approximately one year to study and adopt new, improved second unit standards. There is no reason why Los Angeles should not study and adopt a new, more protective second unit standards that reduce and or eliminate the negative impacts of second units on surrounding neighborhoods and that preclude second unit construction in areas with substantial infrastructure constraints. During this relatively short period, the City could enforce its existing adopted second unit standards to protect surrounding neighborhoods.

5. The Report contends that the City's existing adopted standards should not be enforced during this one-year period, because some applicants and developers "in the pipeline" would be inconvenienced. In fact, the Report contends that the proposed repealing ordinance needs to be passed on an "urgency" basis to protect these "in the pipeline" developers. But there is no "urgency," and the City should take sufficient time to allow public study and input on its proposed repeal of important existing neighborhood protections.
Unless an administrative appeal was timely filed, no builder with a second unit permit issued prior to

the Superior Court's April 4th injunction is jeopardized, since the injunction is prospective only. The Report speculates that up to 175 developers may have already-issued permits in legal jeopardy, but it fails to note how many of these permits were issued prior to April 4th and how many of those have administrative appeals timely filed. The amount of housing stock that might be affected by the injunction in Los Angeles is minuscule and should not be the basis of a wholesale zoning change.

6. The Director's Report and the proposed repeal ordinance are premised on two fundamentally flawed economic premises. First, the Report asserts that repealing the City's adopted standards will increase the supply of second units and thus the amount of affordable housing within the City. But this assertion totally ignores the fact that repealing existing neighborhood protections might increase the number of second unit permits, at most, by the paltry amount of only about 30 permits per year -- not even a "drop in the bucket" given the Report's concession that the City needs to build many thousands of affordable units in the next few years. Certainly, this paltry amount is not sufficient to positively impact in any meaningful way the overall price of housing within the City. Further, none of the contemplated additional 30 second units that supposedly would be built under the lenient state "default" standards are proposed to have any imposed "affordability" constraints. Second unit developers' will set their rental charges at whatever the market will bear. In the great majority of the City's single family neighborhoods, new second units will rent at rates far beyond any affordability criteria. Another rational the Planning Dept contends that this will help low income, and "moderate income homeowners with supplemental income." This is a fallacy as they will be the least likely to be able to finance such projects. This will thereby open up more affluent areas to SDU and jeopardize the quality of life in these areas thru higher density and a more transient population, with no roots or anchors in the community.

7. Second, the Report contends that a key positive result of abandoning neighborhood protections will be that applicants who build second units in accord with the weak "default" standards will be able to make more money -- thereby incentivizing additional residential construction. Unstated, however, is that, in seeking to maximize their profits, second unit developers operating under the state "default" standards will very likely list these units for short term rental on AirBNB and similar websites, thereby greatly magnifying potential negative impacts on surrounding neighborhoods. It is also conceivable that many low and middle income families seeking additional cash-flow from the SDU could fall prey to unscrupulous financing schemes that were so prevalent prior to the 2008 Financial Crisis.

8. The Director's Report wrongly asserts that, even without the protections of the adopted second unit standards, only a relatively few second units will likely be in the high 1,200 SF range, will be overly visible from the street or will otherwise adversely impact their surrounding neighborhoods. The Superior Court expressly found that virtually the entire increase in second unit permits that began in 2010 (when the City began enforcing the lenient state "default" standards, rather than the City's adopted standards) consisted of permits that substantially exceeded the adopted standards designed to protect surrounding neighborhoods.

Cordially yours,

Gerald A. Silver
President

Cc: Council offices
City Clerk