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July 13, 2016

VIA ELECTRONIC MAIL

Matthew Glesne
200 N. Spring Street, 2nd Floor
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Re: Home Sharing Ordinance CPC-2016-1243-CA; ENV-2016-1277-ND

Dear Mr. Glesne:

This office represents Concerned Citizens of Beverly Grove/Beverly Hills ("Concerned Citizens") with respect to the City of Los Angeles' ("City") proposed adoption of the Home Sharing Ordinance ("Ordinance"). I have reviewed the proposed Negative Declaration and Initial Study (with exhibits) that have been prepared for the Ordinance. This letter is intended to inform the City that the Ordinance is not exempt from the California Environmental Quality Act ("CEQA") and that there are legitimate issues that the City needs to meaningfully analyze before the Ordinance may be adopted.

Legal Standard for Common Sense Exemption

Initially, it is important to understand the legal standard for the common sense exemption. The common sense exemption is applicable when a public agency can see with *certainty* that there is *no possibility* that a project *may* have a significance effect on the environment. As the court in *Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 425, has observed, this exemption should be reserved for those "obviously exempt" projects, "where its absolute and precise language clearly applies."

The initial burden of demonstrating that the common-sense exemption is applicable rests with the City. As explained in *Davidon*,

In the case of the common sense exemption [] the agency's exemption determination is not supported by an implied finding by the Resources Agency that the project will not have a significant environmental impact. Without the benefit of such an implied finding, the **agency must itself provide the support for its decision before the burden shifts to the challenger**. Imposing the burden on members of the public in the first instance to prove a possibility for substantial adverse environmental impact would frustrate CEQA's fundamental purpose of ensuring that government officials “make decisions with environmental consequences in mind.”

54 Cal. App. 4th at 116 (emphasis added). An agency abuses its discretion if there is no basis in the record for its determination that the project is exempt from CEQA. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 81.

As explained in *Davidon*, the “showing required of a party challenging an exemption under common sense exemption is *slight*, since that exemption requires the agency to be certain that there is no possibility the project may cause significant environmental impacts. If *legitimate questions* can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt.” 54 Cal. App. 4th at 117 (emphasis added). Further, claims raised by opponents “even if exaggerated or untrue” may be sufficient to remove a project from the common sense exemption. *Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413. A petitioner must simply offer a reasonable argument to suggest a possibility that a project may cause a significant environmental impact. Once that occurs, a public agency must refute that claim to a *certainty* before finding that the common sense exemption applies. *Davidon Homes v. City of San Jose* (1997) 54 Cal. App. 4th 106, 118 (emphasis added).

In *Davidon*, the homebuilder simply argued that the activity in question “would result in noise, dust, and visual impacts on surrounding residents, wildlife and plantlife” and that was deemed adequate. *Id.* at 118-120. The court held that the City had failed to refute these claims to a certainty rendering the common sense exemption inapplicable. *Id.* at 120.

May Not Use Mitigation Measure to Demonstrate Project is Exempt from CEQA

It is also important to understand that evaluating whether an exemption may apply, the agency may not rely on mitigation measures as a basis for concluding that a project is categorically exempt, or as a basis for determining that one of the significant effects exceptions does not apply. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098. In other words, you cannot mitigate to an exemption under CEQA.

The City Has Erroneously Concluded that the Ordinance Will Result in Fewer Primary Residences Being Offered for Short Term Rentals

In the CEQA Narrative prepared for the Ordinance, the City notes that they may include illegal short-term rental activity in the baseline when comparing the potential impacts of the Ordinance with the baseline. The City then concludes that “implementation of the ordinance will result in fewer primary residences being offered for short-term rentals compared to what

currently exists in the City, and better regulation of the activity of sharing certain primary residences or short-term rentals.” However, this conclusion is deeply flawed because it rests on the unfounded assumption that adopting a regulatory framework for short-term rentals will not increase such activity. *In fact, this is exactly what will happen.* Indeed, Airbnb and other short-term rental providers will certainly engage in promotional activities once the Ordinance is adopted to spur additional rentals and hosts. Moreover, to the extent that there may be a decrease in certain rentals due to the regulatory requirements embodied in the Ordinance (specifically, the 120 day limit and the requirement that a homeowner “live” in the residence for at least 6 months out of the year, this demand will almost certainly be filled by other homeowners willing to rent their homes subject to the new requirements outlined in the Ordinance.

To support the City’s argument that short-term rental activity will decrease, the City notes that Santa Monica’s adoption of a regulatory ordinance resulted in a decrease in short term rentals by 30 percent. However, Santa Monica’s ordinance is more restrictive than that proposed by the City in that it requires a host to be present *at all times* and therefore cannot be used as a meaningful comparison. The City’s proposed ordinance will simply require a host to be “live” in the home at least six months of year. It is much more attractive for someone to rent a home if they have full access to a home without the homeowner present. Therefore, it is not surprising that Santa Monica’s ordinance resulted in a decrease in such activity. However, the City has proposed that homeowners be able to rent their homes up to 120 days a year and they need only “live” in their home for six months a year. This is much more attractive both for prospective short-term renters and persons desiring to rent their homes for profit.

In sum, it is entirely reasonable to believe that adoption of the Ordinance will spur even more homeowners to engage in this activity.

Reasonably Foreseeable Indirect Impacts Caused by Adoption of Ordinance

There are numerous environmental issues that the City has failed to analyze including the following:

- Utilities/Service Systems

The City’s initial study determines “no impact” for every CEQA item under this category. However, given the delicate reality of our infrastructure, especially in the hillsides, it is a huge and unjustifiable risk to assume “no impact” without transparent and purposeful guidelines for a study, such as an appropriate measure of time over which actually collected and analyzed data gives an accurate picture. Whatever the existing conditions are that the City has assumed to indicate “no impact” would also very likely change upon legalization of the currently illegal activity, exposing communities to the risk of greater impacts.

The reality of our infrastructure is that many underground pipes are already compromised in hillside communities. A critical concern, for instance, is how the passage of an increased number of cars, or of vehicles of a heavier weight, on hillside roads (many of which are substandard) results in the rupture of these pipes, causing severe property damage and severe safety hazards. Without proper study, it is impossible to know the true impacts of the ordinance.

A study on impacts on waste systems/sewers is also warranted. Can the City’s current infrastructure handle the increased density? Residences in hillsides are primarily single family

homes, which can often accommodate more than just one or two people. In the instances that rental parties of families or groups of friends rent a home, there will be increased water usage. For renters on vacation, or in any case, paying top dollar, there may be less attention on water conservation. Normal single-family homes are not set up to conserve water in the same way that hotels are.

- Land Use/Planning

The City assumes no impact since “the ordinance only affects the use of existing residential structures in established neighborhoods and no new developments will occur. There will be no physical division of an established community.” However, the ordinance is essentially creating a commercial use in a residential environment and all normal issues associated with commercial uses should be evaluated.

- Hazardous & Hazardous Materials

Short-term renters, often not being stakeholders in the community in the same way that homeowners and long-term residents are, will not have the acute concern and adapted behaviors of residents to, for instance, act appropriately relative to the tremendous fire hazards in the hillsides that can be caused by simple activities such as smoking, bar-b-quing, outdoor fire pits and even a hot muffler. They will be unaware of the critical importance of, for instance, how to respond on red flag days. Vehicles left parked because renters may have forgotten or did not fully take in any instructions they might be given will increase the need for vehicle towing on red flag days which will result in increased safety hazards on the roads, since maneuvering towed-vehicles on many of the steep and narrow hillside roads is risky and will create temporary blockages.

- Public Services

Since legalizing will increase the activity, and since the single-family homes in the hills can accommodate larger rental parties, the resulting increased number of cars on the roads of the hillside communities will increase congestion that will impact the ability of emergency responders to operate to the same as extent otherwise possible. Further people unaware of the realities of living in hillside environment will increase the occurrence of illegal parking.

- Transportation/Traffic, Air Quality and Greenhouse Gas Emission

The increased number of people using the residences of the hillside communities will come with increased motor vehicle traffic, either in the form of car services or rental cars, creating not only more traffic congestion but more vehicle emissions. Furthermore, roads are severely failing in hillside communities and additional cars will simply further degrade the roads.

- Population/Housing

The ordinance will result in a reduction of available rental housing stock because of the incentive of the higher profits over short periods than a homeowner could receive from the profits of monthly rates over a long term.

- Noise

The City makes the erroneous assumption that the Home-Sharing Ordinance “could lead to the possible decrease in noise levels” because the ordinance should “reduce the number of large vacation rentals often used for parties and other gatherings in short-term rentals.” Noise disturbance does not only come from large-scale gatherings. A few people can blare loud music and voices enough to disturb the peace of their neighbors. Also, vacationers can just as easily avail themselves of large homes that fall under the “primary residence” category since the owner would still be able to be away for 6 months or could still rent out their house for a one day or weekend party event. Many people who are bi-coastal or spend part of the year abroad would still be able to rent out their large home for parties and events during the 6 months that they are away. Vacationers in a festive mood, other visitors, or people here for stints of work, can still, as mentioned before, generate additional noise that could disturb the neighborhood, especially not being stakeholders in the community.

Conclusion

Citizens of Beverly Grove/Beverly Hills urges the City to reject the proposed Negative Declaration and conduct the required analysis under the California Environmental Quality Act. It simply cannot be seen with *certainty* that there is *no possibility* that the Ordinance *may* have a significance effect on the environment. The City has erroneously determined that adoption of the Ordinance will result in a decrease in short term rental activity and there are numerous reasonably foreseeable impacts caused by the adoption of the Ordinance that the City has failed to analyze.

I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jamie T. Hall', written in a cursive style.

Jamie T. Hall