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May 3, 2017

The Honorable City Council
City of Los Angeles
City Hall, Room 395
Los Angeles, California 90012

Dear Honorable Members:

**SUBSEQUENT RESPONSES TO COMMENTS MADE BY CHANNEL LAW GROUP
REGARDING THE CEQA ENVIRONMENTAL ANALYSIS DONE FOR THE HOME SHARING
ORDINANCE SUBMITTED TO THE COUNCIL; CF 14-1635-S2**

The purpose of this memorandum is to respond to each of the claims made in letters from the Channel Law Group dated July 13, 2016 and August 26, 2016 on the environmental analysis prepared by the City for the City's proposed Home Sharing Ordinance. Attached to this memorandum are the City's response to comments and copies of the Channel Law Group's original letters.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

Kevin Keller, AICP
Deputy Director of Planning

VPB:KJK:CB:MG:mn

Enclosures

- Response to Channel Law Group's comment letter dated July 13, 2016
- Response to Channel Law Group's comment letter dated August 26, 2016
- Original Channel Law Group's comment letter dated July 13, 2016
- Original Channel Law Group's comment letter dated August 26, 2016

RESPONSE TO COMMENT FROM CHANNEL LAW GROUP DATED JULY 13, 2016

On or about July 13, 2016 the City received a letter from the Channel Law Group, LLP providing comments on the City's first Notice of Intent to Adopt a Negative Declaration which was dated June 16, 2016 ("CLG Letter"). The letter does not address the Negative Declaration but instead focuses upon the narrative included with the Initial Study which addresses the City's alternative determination that the Home Sharing Ordinance is exempt from CEQA because it can be seen with certainty the project will not have a significant effect on the environment, pursuant to CEQA Guidelines, section 15061(b)(3).

Prior to Channel Law Group's July 13, 2016 letter, the ordinance was considered by the City Planning Commission (CPC) at a public hearing conducted on June 23, 2016. After conducting the public hearing, the CPC voted to recommend amending the draft ordinance proposed by staff to extend the number of days a primary residence may be a short-term rental from 120 to 180 days and to provide an exception to the "primary residence" requirement to permit non-primary residences to be short-term rentals for up to 15 days a year.

In light of these recommendations from the CPC and out of an abundance of caution, staff prepared a new initial study to assess these amendments and published a new Notice of Intent to Adopt a Negative Declaration on or about July 22, 2016.

After the City published for comment the new Notice of Intent to Adopt a Negative Declaration, Negative Declaration and Initial Study, on December 7, 2016 the City Council's Housing Committee conducted a hearing on the revised Home Sharing Ordinance and after conducting the public hearing voted to recommend removal of the provision added by the CPC that would allow the short term rental of non-primary residences for up to 15 days per year.

Because the City continues to believe that the "common sense" exemption applies to the adoption of this ordinance and that a Negative Declaration is also appropriate for this project, the City responds to the main points of the Channel Law Group letter dated July 13, 2016.

The CLG letter provides assertions regarding the requirements for use of the "common sense" exemption, relying primarily on the case of *Davidon v. City of San Jose* (1997) 54 Cal.App.4th 106. However, the CLG letter fails to cite to the seminal case of *Muzzy Ranch v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372 in which the California Supreme Court utilized a different standard of review in determining that the adoption of the Travis Air Force Base Land Use Compatibility Plan was exempt from CEQA under the "common sense" exemption. In ruling in favor of use of the "common sense" exemption the Supreme Court stated, at pp. 388-89:

Determining whether a project qualifies for the commonsense exemption need not necessarily be preceded by detailed or extensive fact-finding. Evidence that is appropriate to the CEQA stage in issue is all that is required. Under CEQA, a public agency is not always required to make detailed analysis of the impacts of a project on future housing and growth. ...The detail required in any particular case necessarily depends on a multitude of factors, including, but not limited to, the nature of the project, the directness or indirectness of the contemplated impact and the ability to forecast actual effects the project will have on the environment... Less detail, for example, would be required where those effects are more indirect than effects felt within the project area, or where it would be difficult to predict them with any accuracy.

The narrative the City prepared and included in the Initial Study supporting the determination of a Negative Declaration and the “common sense” exemption, dated July 22, 2016 provides the necessary facts to support the City’s use of the “common sense” exemption. Furthermore, as the City prepared an initial study that concluded with the proposed adoption of a Negative Declaration, the standard for reviewing a negative declaration is the “fair argument” standard. Under the “fair argument” standard an agency must prepare an EIR only when substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. (See *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) An EIR is not required if there is no substantial evidence in the record showing the project may cause significant adverse impacts. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785. “Substantial Evidence” includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. It does not include argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment. (See CEQA Guidelines, section 15384.)

The CLG letter challenges the City’s determination that the Home Sharing Ordinance should result in an initial decrease in Home Sharing Activity from current levels. Instead, the CLG letter claims that the adoption of regulations that permit certain home sharing activities will result in an increase in Home Sharing Activities. The letter, however, fails to provide any substantial evidence to support this claim. Instead, it questions the evidence the City relies upon to support its determination that the ordinance should result in a decrease in home sharing activities. The City continues to believe that because the City’s ordinance will place the following restrictions on home sharing it will reduce home sharing activities from current levels: 1. Only primary residences may be used for home sharing; 2. No units subject to the City’s Rent Stabilization Ordinance may be used for home sharing; 3. All persons renting short term rentals for home sharing are required to register with the City; 4. Home sharing activities are limited to 180 days per year. In addition, the ordinance will result in new revenue that will be dedicated to the enforcement of the requirements of the ordinance. In its narrative, the City also noted that after the City of Santa Monica adopted its ordinance to regulate short term rentals and home sharing, it experienced a significant decrease in home sharing and short term rental activity.

The CLG letter then claims that increased level in home sharing and short term rental activities that it predicts will result from the adoption of the ordinance will result in reasonable foreseeable significant impacts in the following environmental categories: Utilities/Service Systems, Land Use/Planning, Hazardous & Hazardous Materials, Public Services, Transportation/Traffic, Air Quality and Greenhouse Gas Emission, Population/Housing and Noise. However, these claims of environmental impacts are all based upon the unsupported assumption that the ordinance will result in an increase in short term rental/home sharing activities from current levels. Again, the CLG contains only unsubstantiated opinion to support this prediction.

Accordingly, staff has concluded that this CLG letter fails to provide any substantial evidence to support its conclusion this ordinance will result in reasonably foreseeable indirect significant impacts on the environment. As such the City’s determination that the adoption of a Negative Declaration and use of the “common sense” exemption is appropriate for this project is legally warranted.

CITY'S REPOSE TO CHANNEL LAW GROUP'S LETTER DATED AUGUST 26, 2016

On or about August 26, 2016 the City received a letter from the Channel Law Group, submitted on behalf of Concerned Citizens of Beverly Grove/Beverly Hills (Concerned Citizens), commenting on the City's revised Negative Declaration and use of the "common sense" exemption as the CEQA clearances for its proposed Home Sharing Ordinance (CLG Letter). The letter purports to supplement Channel Law Group's previous letter dated July 13, 2016 and address the revised Negative Declaration published by the City on or about July 22, 2016.

Initially, the CLG Letter addresses the "fair argument" standard that applies to a decision to adopt a Negative Declaration. However, the CLG Letter fails to adequately address the requirements for establishing a "fair argument" of an environmental impact. Under the "fair argument" standard an agency must prepare an EIR only when substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. (See Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1994) 29 Cal.App.4th 1597, 1602.) An EIR is not required if there is no substantial evidence in the record showing the project may cause significant adverse impacts. Parker Shattuck Neighbors v. Berkeley City Council (2013) 222 Cal.App.4th 768, 785. "Substantial Evidence" includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. It does not include argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment. (See CEQA Guidelines, section 15384.) As set forth in more detail below, the CLG Letter fails to provide any substantial evidence to support Concerned Citizens' claim the Home Sharing Ordinance will result in reasonably foreseeable significant environmental impacts.

The City has not Pre-Committed to the Adoption of the Home Sharing Ordinance

The CLG Letter claims the City has "pre-committed" to the approval of the Home Sharing Ordinance because it entered into an agreement with AirBnB regarding the collection of taxes generated by short-term rentals. However, this argument lacks merit for several reasons. First, as acknowledged in the LA Time's July 18, 2016 article referenced in the CLG letter, the agreement with AirBnB merely facilitates the collection of Transient Occupancy Taxes (TOT) that area already owed to the City. The agreement does not attempt to regulate short-term rentals or home sharing in any way. In fact the City's then City Administrative Officer stated in the article that agreement with AirBnB does not legalize short-term rentals. As such, the agreement with AirBnB does not preclude the City's consideration of the potential environmental effects of the ordinance or its consideration of mitigation measures or alternatives to reduce potentially significant impacts from the adoption of the ordinance. Furthermore, as set forth in greater detail below, City staff has already concluded the adoption of the ordinance would not result in any significant impacts on the environment. As such, based upon the current record, there are no identified potentially significant impacts from implementation of the ordinance that require mitigation.

In addition, the agreement between the City and AirBnB to facilitate the collection of TOT isn't a "project" under CEQA as it falls within the category of activities associated with the creation of funding mechanisms or other government fiscal activities which do not involve any commitment

to any specific project which may result in a potentially significant physical impact on the environment. (See CEQA Guidelines, section 15378(b)(4).)

Finally, the pre-commitment argument is untimely at this point. Even if the argument had merit it should have been asserted prior to the City entering into the agreement with AirBnB. The City entered into that agreement more than 6 months ago and yet the Concerned Citizens have failed to initiate any litigation to challenge the agreement based upon the City's alleged failure to comply with CEQA when it approved the agreement.

Concerned Citizens Has Failed to Present Substantial Evidence The Home Sharing Ordinance Will Increase Short-Term Rental Activity From Existing Levels.

The CLG Letter again challenges the City's initial determination the Home Sharing Ordinance will not increase home sharing/short term rental activity from current levels. The letter now asserts that the ordinance will incentivize the construction of second dwelling units. However, this assertion is not supported by any substantial evidence. For instance, the CLG Letter fails to provide any evidence that the legalization of short-term rentals in other jurisdictions within California have resulted in a significant increase in the construction of second dwelling units. It should also be noted that the construction of second dwelling units are Categorically Exempt from CEQA pursuant to CEQA Guidelines, section 15303(a). As such, generally it has been concluded that the construction of second dwelling units do not result in any significant environmental impacts, including construction related impacts.

The CLG Letter then claims the significant growth of AirBnB contradicts the City's claim the Home Sharing Ordinance will not result in an increase in home sharing and short-term rental activity within the City. There are many reasons for the growth of AirBnB. For instance, it is common knowledge that over the last few years, AirBnB has expanded to advertise short-term rentals in cities all over the world. The fact that AirBnB has experienced significant growth does not lead to the conclusion the City's Home Sharing Ordinance will result in an increase in home sharing and short-term rental activity in the City. As stated in the narrative contained in the Initial Study supporting the Negative Declaration dated July 22, 2016, the Home Sharing Ordinance will implement the following restrictions: 1. Only primary residences may be used for home sharing; 2. No units subject to the City's Rent Stabilization Ordinance may be used for home sharing; 3. All persons renting short term rentals for home sharing are required to register with the City; and 4. Home sharing activities are limited to 180 days per year. In addition, the ordinance will dedicate revenue generated from the TOT to the enforcement of the requirements of the ordinance. In its narrative, the City also noted that after the City of Santa Monica adopted its ordinance to regulate short term rentals and home sharing, it experienced a significant decrease in home sharing and short term rental activity and that Santa Monica attributes the reduction to its increased enforcement efforts funded by revenue generated by its ordinance. As such, the City has provided substantial evidence to support its determination that the Home Sharing Ordinance will not result in an increase in home sharing and short-term rental activity in the City.

The CLG Fails to Provide Substantial Evidence of Potentially Significant Impacts

Finally, the CLG Letter again claims the Home Sharing Ordinance will result in reasonably foreseeable significant impacts in the following impact categories: Aesthetics, Air Quality, Cultural Resources, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and

Planning, Noise, Population and Housing, Public Services, and Transportation and Traffic. However, the letter fails to provide any substantial evidence to support any of these claims. Instead, the statements in the letter regarding these potential impacts amount to speculation and conjecture.

In conclusion, City staff have carefully reviewed the CLG Letter and has determined that it fails to provide any substantial evidence to support the Concerned Citizens' argument the adoption of the Home Sharing Ordinance will cause reasonably foreseeable significant environmental impacts. As such, City staff has concluded that this CLG Letter fails to present evidence that would preclude the City from adopting a Negative Declaration or determining the ordinance is exempt from CEQA pursuant to the "common sense" exemption.

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July 13, 2016

VIA ELECTRONIC MAIL

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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-queing, 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

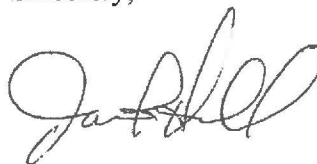
The City makes the erroneous assumption that the Home-Sharing Ordinance “could lead to the possible decrease in noise levels” because the ordinance should “reduce the number of large vacation rentals often used for parties and other gatherings in short-term rentals.” Noise disturbance does not only come 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,



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August 26, 2016

VIA ELECTRONIC MAIL

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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"). As you know, my office submitted comments to the City of Los Angeles on or about July 13, 2016 in response to the proposed Negative Declaration and Initial Study that was previously published by the City. I understand that the City has recirculated the proposed Negative Declaration and Initial Study based on the changes to the Ordinance made by the Planning Commission. This letter supplements the comments previously submitted to the City with regard to the Ordinance. My client continues to object to the adoption of the Ordinance on grounds that it does not comply with the California Environmental Quality Act ("CEQA"). There are numerous environmental issues that the City needs to meaningfully analyze and mitigate before the Ordinance may be adopted.

Legal Standards

It is important for the City to understand the applicable legal standards under CEQA. My previous letter to the City outlined 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. *See Myers v.*

Board of Supervisors (1976) 58 Cal.App.3d 413, 425. In this situation, the City has also conducted an Initial Study and has proposed to adopt a Negative Declaration. The so-called “fair argument” standard is therefore applicable. Under this standard, an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *No Oil Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82. This standard sets a “low threshold” for preparation of an EIR. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App. 4th 903, 928; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App. 3d 296. If substantial evidence supports a “fair argument” that a project may have a significant environmental effect, the lead agency must prepare an EIR even if it is also presented with other substantial evidence indicating that the project will have no significant effect. *See No Oil, Inc. v City of Los Angeles, supra*; also see 14 Cal Code Regs §15064(t)(l).

This “fair argument” standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. See California Administrative Hearing Practice §7.51 (2d ed Cal CEB 1997). The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. *Architectural Heritage Ass’n v County of Monterey* (2004) 122 Cal.App. 4th 1095, 1109.

Unlawful Pre-Commitment

Prior to the re-circulation of the proposed environmental clearance document for the Ordinance, the City announced that they had entered into a deal with Airbnb to collect taxes. *See LA Times Article* dated July 18, 2016 entitled “*Airbnb strikes deal with L.A. to collect millions in lodging taxes.*” This article is available at <http://www.latimes.com/local/lanow/la-me-ln-airbnb-taxes-20160718-snap-story.html>. This supports what has already become apparent in the processing of the drafting of the Ordinance – the City has precommitted to approve the Ordinance without completing the required environmental review under CEQA. The City should have conducted an environmental review for its decision to enter this agreement under CEQA.

Beginning CEQA review too late can mean a lead agency no longer comes to a project with an open mind, and that opportunities to implement feasible alternatives and mitigation measures will have been lost. In such a case, an agency has “pre-committed” to the project. Precommitment can occur under various circumstances, for example, conducting CEQA review after the agency has already made up its mind to go forward with a project; or when the agency has made such an investment of staff time and resources that the momentum for the project becomes so great that, as a practical matter, the agency's evaluation of alternatives is limited; or potentially when the agency has approved certain action which moves the project forward even though it technically reserves the right to reconsider its commitment to the entire project. Precommitment to a project has been repeatedly condemned by the California Supreme Court as rendering the CEQA review process as little more than a post hoc rationalization for a decision already made and defeating the fundamental purposes of CEQA. *See Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116. Precommitment has the potential to bias the results of the environmental review process. *Bozung v. Local Agency Formation Commission of Ventura County* (1975) 13 Cal. 3d 263.

Because the City has made such an investment of staff time and resources in the approval of the tax agreement with AirBnb and stands to make a significant amount of money if an Ordinance is adopted that ratifies the legality of such activity, the momentum towards approval of the Ordinance is so great that, as a practical matter, the City's evaluation of alternatives to the Ordinance will necessarily be limited. In sum, the City has unlawfully precommitted to the Ordinance in violation of CEQA.

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

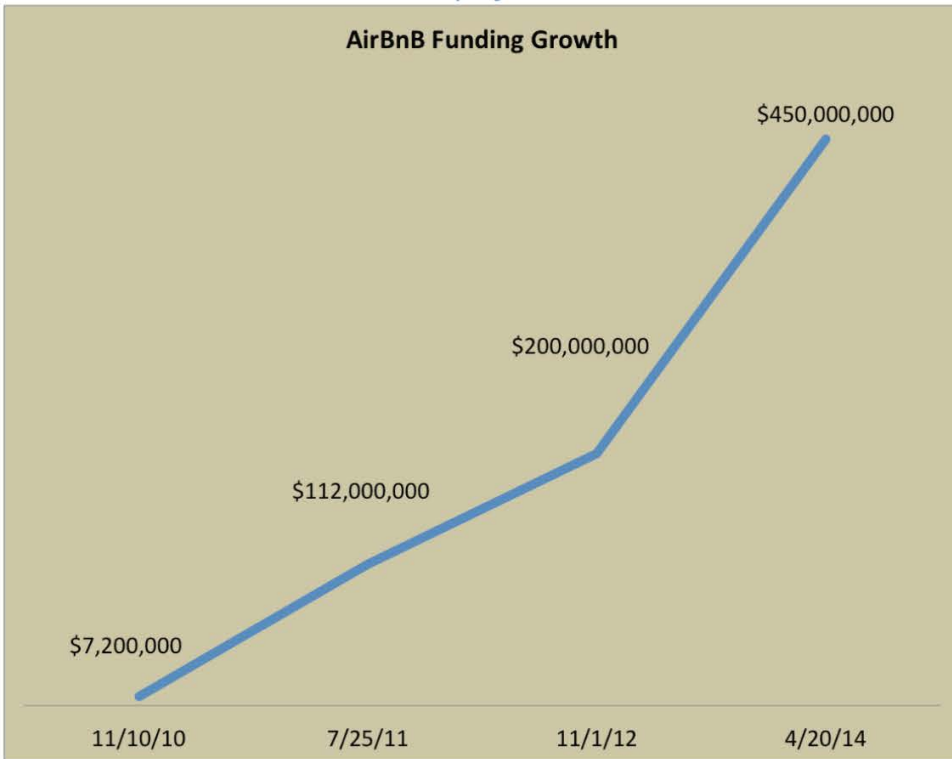
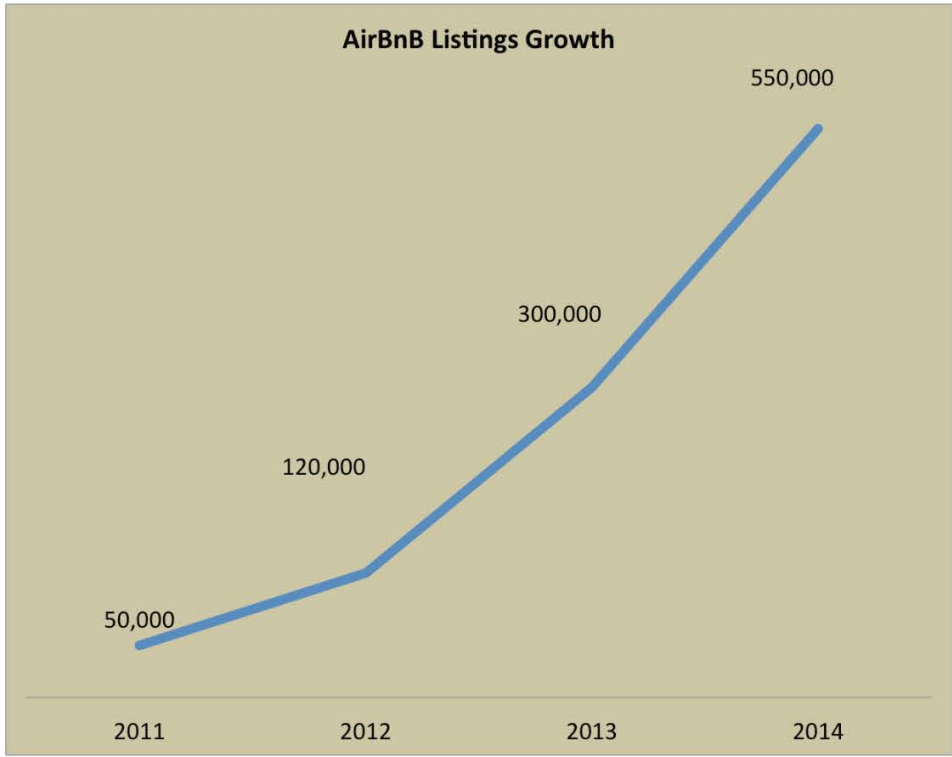
As noted in the previous letter, the City's conclusion that adoption of the Ordinance will result in "fewer primary residences being offered for short-term rentals compared to what currently exists in the City" is deeply flawed. This is because it rests on the unfounded assumption that adopting a regulatory framework for short-term rentals will not increase such activity. *In fact, this is exactly what will happen.* The Planning Commission's proposal to increase the number of days that a home may be rented from 120 days to 180 days further increases the likelihood that such activity will grow. This is a simple byproduct of the fact that there is more money to be made. As noted in the previous letter, the City's comparison to the City of Santa Monica's regulatory ordinance is unpersuasive. 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.

Airbnb itself provides the best evidence that the City's conclusion is flawed. Airbnb has published an advocacy website to promote the legalization of the home sharing industry. On that website, Airbnb has quantified the additional revenue that cities can gain (including the City of Los Angeles) if they authorize home sharing. Airbnb specifically states on this website that it is "**extremely unlikely** . . . that the Airbnb community [will] remain[] static at its current size . . ." See <https://www.airbnbaction.com/airbnb-generating-2-billion-in-potential-tax-revenue-for-america-cities/>.

Other reputable articles are easily found that validate that Airbnb is poised to grow exponentially – not retreat. One of the most impressive articles backed up with actual financial data is entitled "*Uber and Airbnb's incredible growth in 4 charts*," published by VentureBeat. This article is found at <http://venturebeat.com/2014/06/19/uber-and-airbnbs-incredible-growth-in-4-charts/>. This article states the following:

"Despite opposition from governments, neighborhoods, the businesses they're disrupting, and unions, the titans of the sharing economy, Uber and Airbnb, are growing exponentially. With Uber's latest funding round of \$1.2 billion, it's investment has grown 6,000% in five years. The company's valuation has reached \$18 billion, and it has around 550 employees. **Airbnb has grown 750% since 2009 to \$450 million in funding, a \$10 billion valuation, and over 600 employees.**"

The following are charts contained in the article relevant to Airbnb:



Other articles with information contradicting the City's assumptions are found below:

- *Airbnb will have a 100% growth rate in 2015* (see <https://www.tnooz.com/article/airbnb-will-have-a-100-growth-rate-in-2015-says-report/>)
- *Airbnb to double bookings to 80 million this year - investors* (see <http://mobile.reuters.com/article/idUSKCN0RS2QK20150928>)

Impacts of Construction of Secondary Dwelling Units

On or about August 31, 2016, the City Council will consider a repeal of the City's secondary dwelling ordinance. See Council File No. 14-0057-S8. The City has proposed that the City revert to the state's default standards. This means that secondary dwelling units (up to 1200 square feet) will be authorized "by right" in all areas of the City assuming certain minimum standards are met. Currently, secondary dwelling units are prohibited in hillside communities in the City of Los Angeles, which is a prime area for renting homes out on Airbnb and other home sharing services. It is certainly reasonably foreseeable that individuals will construct secondary dwelling units in hillside areas of the City specifically for the purpose of renting them out on Airbnb. Therefore, the City's statement that "no new development is expected to occur" as a result of the Ordinance is patently flawed and erroneous. It goes without saying, there are significant environmental impacts associated with construction of new homes in hillside communities.

Reasonably Foreseeable Indirect Impacts Caused by Adoption of Ordinance

In addition to the previous issues identified, there are numerous additional environmental issues that the City has failed to analyze including the following:

- AESTHETICS:

COMMENT: Residential neighborhoods are not designed for Transient Occupancy. They are designed for residential use. In turn, guest parking in residential neighborhoods is not designed for Transient Occupancy. The City's conclusion that the Ordinance will have "no impact" is therefore flawed.

- AIR QUALITY

COMMENT: Hotels are often located in various nexus of development, such as downtown, or along, for example, Hollywood Boulevard. Air Quality Mitigation is attempted for large-scale development. Further, transient occupancy in residential neighborhoods has likely never been considered, and therefore no mitigation has likely ever taken place. The City's conclusion that the Ordinance will have "no impact" is therefore flawed.

- CULTURAL RESOURCES

COMMENT: If a host resides in either a Historic District and/or a property deemed historically significant, there is the potential for additional damage through overuse and/or lack of care. The City's conclusion that the Ordinance will have "no impact" is therefore flawed.

- HAZARDS AND HAZARDOUS MATERIALS

COMMENT: Neighborhoods are designed for permanent residents. In the case of emergencies, permanent residents usually have pre-conceived or pre-ordained evacuation plans. Further, Transient Occupants have no idea as to an evacuation plan, and none is provided by either the host or the facilitating company. The City's conclusion that the Ordinance will have "no impact" is therefore flawed.

- HYDROLOGY AND WATER QUALITY

COMMENT: Water systems are designed for specific type of use. The requirements for a group of hotels downtown or along Hollywood Boulevard are different than a residential area. Further, if there is an intensification of use, such as multiple families (or groups of) Transient Occupants dominate an area, water use could be impacted. The City's conclusion that the Ordinance will have "no impact" is therefore flawed.

- LAND USE AND PLANNING

COMMENT: Having any non-primary residence serving as a host, for even fifteen days a year, takes apartments off the market. For example, in one neighborhood, the reduction of units by non-primary residence hosts resulted in vacancy reduction of less than 2%, resulting in higher rents and lower availability. If there was no permitted hosting at non-primary residences, a major complaint will be eliminated. In turn, 180 days use of a non-hosted primary-residence is far too broad. The City's conclusion that the Ordinance will have "no impact" is therefore flawed.

- NOISE

COMMENT: One of the main complaints has been constant noise at non-primary residence hostings. If the requirement was that the hosts must be physically present, then noise complaints would be minimized if not eliminated, providing the maximum number of days was reduced (to perhaps 90 days). The City's conclusion that the Ordinance will have "no impact" is therefore flawed.

- POPULATION AND HOUSING

COMMENT: Even non-primary residence use of 15 days a year will affect the rental market. It also changes the complexion of the neighborhood from a purely residential use. Eliminating the provision of 15 days of non-primary residencies coupled with the requirement that a host always be present, along with the requirement of off-street parking, would ameliorate, if not eliminate, all of the basic problems that host sharing has caused. The City's conclusion that the Ordinance will have "no impact" is therefore flawed.

- PUBLIC SERVICES

COMMENT: Having any Transient Occupancy in a residential neighborhood changes the nature of what public services are needed. The City's conclusion that the Ordinance will have "no impact" is therefore flawed.

- TRANSPORTATION AND TRAFFIC

COMMENT: Home Sharing in the hillside areas is fraught with peril. Transient Occupancy in the hillside areas, must be carefully evaluated and monitored, until the permanent guidelines can be established. The City's conclusion that the Ordinance will have "no impact" is therefore flawed. Also, Home Sharing does not encourage use of mass transit, much less other forms of transportation such as bicycling. The City's conclusion that the Ordinance will have "no impact" is therefore flawed.

- ADDITIONAL ENVIRONMENTAL IMPACTS

The Initial Study failed to examine a number of different environmental issues:

(1) The assumption that the TOT was not impacted is not supported by the Initial Study. If Home Sharing did not exist, where would these people stay?

(2) Home Sharing has an economic advantage over the existing hospitality industry.

There should be different tiers of the TOT. The existing rate would apply to those permitted facilities. For Host Sharing, however, the TOT should be double, and that tax should be incorporated into the quote rate, as opposed to an add-on.

(3) The Initial Study seemed to indicate that was only a 1.4% reduction in the vacancy rate overall throughout the City. This is fallacious. If the vacancy rate is only 3% currently in many parts of the City, that means Home Sharing has reduced the vacancy rate to basically zero.

Long-term residents have been turned out of their neighborhoods.

It is also a fallacy that non-hosted primary residences can be used for Home Sharing 180 days a year. That means that swathes of units will be converted to Transient Occupancy.

If the Home Sharing ordinance required the host to be present, and could be rented out no more than two days a week, that might be an equitable solution.

(4) Austin is not a viable equivalent to Los Angeles, and should not be used as an example, from a geographic, demographic, and/or tourism basis.

(5) It is specious to stated that Home Sharing has not affected hotel development. The factors behind hotel development have nothing to do with Home Sharing.

(6) The City states that Home Sharing regulations cannot be enforced, citing the difficulties in Santa Monica. Effectively, the City of Los Angeles is stating it has a failed enforcement department, using Santa Monica as an example

There are three potential solutions for enforcement of Home Sharing regulations:

(A) The Home Sharing companies collectively develop the software to make

registration automatic with the City.

(B) The Home Sharing companies collectively monitor the number of days a specific location is used, by using a shared database that is hosted by the City, but accessed by the Home Sharing companies.

(C) As to enforcement, if Twitter and Facebook can permanently ban an offender, the Home Sharing companies, in turn, can be the judge and jury.

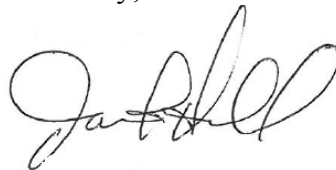
The ordinance should have provisions that it will be the responsibility of the Home Sharing companies to prove the complaint is not valid. Until that determination is made, the host would be suspended.

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. 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". The signature is fluid and cursive, with the first name "Jamie" being the most prominent part.

Jamie T. Hall