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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 ROBERT KLEIN REGARDING THE
CEQA ENVIRONMENTAL ANALYSIS 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 Mr. Raymond Klein dated August 16, 2016 commenting on the environmental analysis prepared by the City for the City's proposed Home Sharing Ordinance. Attached to this memorandum are the City's responses to comments as well as a copy of Mr. Klein's letter that has been marked to identify each of his major comments.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

Kevin Keller, AICP
Deputy Director of Planning

VPB:KJK:CB:MG:mn

Enclosures

Response to Robert Klein comment letter dated August 16, 2016
Original Robert Klein comment letter dated August 16, 2016

RESPONSE TO COMMENT FROM RAYMOND KLEIN DATED AUGUST 16, 2016

RE: ENV-2016-1277-ND

Comment 1-1

The Commenter initially claims that the name of the City's ordinance, "Home Sharing Ordinance" is misleading as "sharing implies" the host/owner is present (or on-site) at the time of the short term rental but this is not required under the City's proposed ordinance.

Response 1-1

The commenter's claim the City's description of the ordinance is deceptive lacks merit. The term "sharing" does not imply that in all short-term rental situations the "host" will be present. The term "sharing" reflects the fact that persons may engage in short-term rentals of all or a portion of certain primary residences for up to 180 days a year. If it is a person's primary residence it indicates that person primarily lives at the residence and that "home sharing" occurs either to share a portion of the residence or to share all of the residence when the person is away, on vacation, or otherwise. Even cities that require the Host reside in the unit while it is being rented, allow for routine absences when they are away at work or other routine matters.

Comment 1-2

The commenter objects to the City's determination that it can be seen with certainty that the Home Sharing Ordinance will not have a significant impact on the environment, pursuant to CEQA Guidelines, section 15061(b)(3). To support his claim the ordinance has the potential to cause significant impacts the Commenter references an article written by a Harvard Law School student for the Harvard Law & Policy Review entitled, "How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations" ("Student Article") which the Commenter claims documents the environmental impacts caused if the City adopts the proposed Home Sharing Ordinance.

Response 1-2

The Commenter's reliance on the Student Article to provide substantial evidence the proposed Home Sharing Ordinance will cause significant impacts is misplaced. The Student Article does not describe the potential environmental impacts of implementation of the City's proposed ordinance. Instead, it focuses primarily on the current and potential socio-economic effects of the current short-term rental activity in the City which is currently generally illegal but otherwise unregulated and therefore difficult to enforce. The Student Article focuses on various phenomena that have resulted from the creation of the short-term rental market. Specifically, it states that currently any person who owns or rents a residence in the City may offer it as a short-term rental for an unlimited number of days a year. The Student Article then recounts at least a couple of situations where landlords have converted entire apartment buildings into short term rentals, effectively taking those units off of the long-term rental market. The City's proposed ordinance would significantly limit the number of days a residence may be rented as a short-term rental to 180 days a year. In addition, the City's ordinance permits only primary residences not subject to

the City's rent stabilization ordinance ("RSO") to be offered for short-term rentals. The ordinance also eliminates the ability for entire apartment buildings to be converted to short term use called a Transient Occupancy Residential Structure through a Conditional Use Permit. As such, the proposed ordinance would effectively preclude landlords from converting entire apartment buildings, or even significant numbers of long-term rentals, to short-term rentals. Furthermore, economic or social effects of a project are not be treated as significant effects on the environment unless those economic or social effects result in physical changes to the environment. (See CEQA Guidelines, section 15131.) In this case, the Student Article does not identify specific environmental effects resulting from the claimed socio-economic effects of short-term rentals. As such, the Student Article does not provide substantial evidence to support the Commenter's claim that the proposed Home Sharing Ordinance may or will cause a substantial adverse change to the environment.

Comment 1-3

The Commenter states that in evaluating the potential environmental effects of implementation of the proposed Home Sharing Ordinance the baseline for analyzing these impacts should not be the existing short term rental activity that is illegally occurring in the City. This is because short-term rentals have been illegal in most all residential areas of the City and the City has taken no action against this illegal activity. Petitioner asserts the City may not, intentionally or negligently, allow an illegal, environmental impact activity to get out of hand, and then claim that the situation the City created, despite the numerous complaints that were ignored, should be baseline.

Response 1-3

Commenter's assertions are based upon a misunderstanding as to the purposes of CEQA. One of the key purposes of CEQA is to inform governmental decision makers and the public about the potential significant environmental effects of proposed activities. (See CEQA Guidelines, section 15002(a)(1). CEQA is supposed to provide an objective evaluation of the potential environmental impacts of a particular project. To that end, generally the existing physical conditions at the time of commencement of the environmental review shall serve as the baseline from which environmental impacts are evaluated. (See CEQA Guidelines, section 15125(a). Numerous courts have held that the proper environmental baseline is the existing conditions, even if those conditions are the result of prior illegal activities, including zoning and building code violations. (See *Riverwatch v. County of San Diego* (1999) 76 Cal. App. 4th 1428, 1452-1453 (determining that an EIR is not the proper forum for resolving claims of improper conduct); *Citizens for East Shore Park v. State Lands Commission* (2011) 202 Cal. App. 4th 549, 559-560 (upholding state agency's discretion to include the current and operative conditions of the terminal in the baseline even though those existing conditions had not previously been evaluated under CEQA); *Fat v. County of Sacramento* (2002) 97 Cal. App. 4th 1270, 1277 (upholding agency's discretion to use existing conditions baseline in adopting negative declaration for use permit for privately owner airport that had been operating without a county authorization for 30 years and had not previously been reviewed under CEQA). Instead, courts have found that illegal conduct is more properly treated as an enforcement issue and, as such, the City's environmental analysis is not the proper forum for resolving claims of improper conduct. Accordingly, the City has properly used the existing physical conditions at the time it commenced its environmental review of the Home Sharing Ordinance as the baseline for its environmental analysis.

Comment 1-4

The commenter claims the Project, which legalizes home-sharing, has the potential of expanding to every residence in the City and an EIR must be done to study this potential and its impacts. No provision in the proposed Ordinance limits the number of residences that could qualify by registering, except for the minor carve out for residences subject to the Rent Stabilization Ordinance. There has been no study or analysis regarding how many residences may become short-term rentals. This must be done in an EIR. Anything else is complete speculation. Furthermore, the Staff Report's use of the Santa Monica experience as a predictor is inappropriate because the size of the cities and impacts are very different, and the laws are very different (for example, Santa Monica requires the presence of the host/owner).

Response 1-4

The Commenter's assertion that under the proposed Home Sharing Ordinance, every residence in the City could be used for short-term rental activity is incorrect. The proposed ordinance prohibits multi-family residences that are subject to the City's Rent Stabilization Ordinance from being used as short-term rentals. Contrary to the Commenter's claim this limitation constitutes a "minor carve out," this prohibition results in precluding approximately eighty (80) percent of all multi-family residential units in the City from being offered as short-term rentals. This commenter also expresses concern about the reasonableness of using Santa Monica's experience with short term rentals as a predictor because of the difference in the size of the cities, impacts, and governing laws. For example, commenter notes that Santa Monica's ordinance requires that one of the residents be present to host each short term rental. However, as set forth in the environmental analysis, City staff contacted staff at the City of Santa Monica responsible for the enforcement of its short-term rental ordinance who advised Santa Monica is not able to enforce this particular provision of its ordinance as a practical matter and that they attribute the reduction in short-term rentals since its ordinance was adopted to the registration requirement and increased enforcement afforded by the regulatory structure provided by their ordinance.

Comment 1-5

The Commenter asserts the proposed Ordinance legalizes a new commercial, business activity throughout the City (See The Description of the Project is Misleading and Deceptive below) and the "common sense" conclusion must be that the potential for significant environmental impacts is great and must be studied and disclosed for the benefit of the decision makers and the public.

Response 1-5

As set forth in the proposed ordinance, short-term rentals shall be an accessory use and does not introduce new commercial uses within residential zones. This ordinance provides another type of residential rental activity.

Comment 1-6

The Commenter alleged the City's CEQA analysis is misleading, deceptive and erroneous as it relies upon the experiences of other communities that have adopted short-term rental regulations that the Commenter claims are significantly different the regulations contained in the City's proposed ordinance. Specifically, the Commenter questions the City's use of the City of Santa

Monica's experiences after it adopted and implemented its short-term rental ordinance because Santa Monica's ordinance expressly requires one of the "primary residents" to be on the premises during the short-term renter's stay.

Commenter contends other cities, such as San Diego, have made a similar distinction between vacation rentals and home sharing. However, the proposed Los Angeles Ordinance would allow vacation rentals that are entirely prohibited in Santa Monica and San Diego. (See The Description of the Project is Misleading and Deceptive below). The CEQA analysis of the proposed Ordinance is flawed because it ignores the environmental impacts of vacation rentals which are of an entirely different nature from true home-sharing. There are several studies that show the majority of short-term rentals in Los Angeles have been of whole houses or units, not shared space with the host/owner of the premises. The Negative Declaration analysis is based on "apples" whereas the proposed ordinance would permit "oranges."

Response 1-6

Commenter is mistaken regarding his claim that comparing the City's proposed ordinance to ordinances adopted by other cities is like comparing apples to oranges. In reality, the ordinances have many similar provisions including the general requirement that only primary residences may be used for home-sharing and allowance for basing enforcement upon advertising that does not include a registration number. However, in other respects the City's ordinance is more restrictive. The City's ordinance precludes residences subject to the City's Rent Stabilization Ordinance from short-term rental activity. The City of Santa Monica's ordinance has no such restriction. In addition, the City's ordinance limits the total number of days a primary residence may be rented as a short-term rental to no more than 180 days. The City of Santa Monica's ordinance has no such limitation. As such, the City believes the data related to the implementation of the City of Santa Monica's ordinance is quite relevant to the City's analysis of the impact of implementation of the City's proposed ordinance.

Comment 1-7

Commenter claims the CEQA analysis makes erroneous and inconsistent assumptions. It describes the growth of short-term rental listings in the City as "increasing fast over the last few years (likely doubling every 12-16 months)." At the same time, the analysis assumes "the proposed ordinance would not likely induce any new short-term rental to take place." Commenter claims the City has come to this conclusion by assuming the City is made up of persons who ignore the laws, and all those who are interested in renting out residential space "are already engaging in short term rental activities." This is a conclusion not based on any substantial evidence and one that must be studied in an EIR. Also, it's only one glaring example of the flawed assumptions in the CEQA analysis. A more reasonable conclusion would be that many law-abiding residents are waiting for permission and that there will be an explosion of short-term rentals if a permissive ordinance is adopted. In any event, this must be studied in an EIR.

Response 1-7

As stated previously, the City's proposed ordinance will restrict the residential units that may be used for short-term rentals and the number of days such units may be rented as short-term rentals. The environmental impact analysis stated that it is unlikely that those who are interested

in engaging in short-term rental activities are waiting for the regulations to become effective to begin this activity – that they are already engaged. This is based on the current low levels of enforcement cited in the staff recommendation report (only 16 verified violation orders as of August 2016) and in listening to testimony from Hosts, many of which stated they believed they were following the law and are continuing their activity even after being notified of the illegality. The proposed ordinance would greatly increase enforcement

Furthermore, the proposed ordinance will require that all persons engaged in short-term rental activities register with the City and pay an annual registration fee and all short-term rentals pay the City's Transit Occupancy Tax. A portion of these revenues generated will be used to enforce the regulations contained in the City's proposed ordinance. Furthermore, as stated previously after the City of Santa Monica adopted its ordinance which is less restrictive than the City's ordinance in many ways, it experienced a significant decrease in the number of short-term rentals. For these reasons, the City's analysis of the effect of adoption of its proposed ordinance on the number of short-term rentals that may be offered in the future is reasonable and supported with substantial evidence.

Comment 1-8

The Commenter reiterates that the City's proposed ordinance permits rentals for exclusive transient use where the guest enjoys the exclusive private use of the entire unit. Commenter further claims the proposed ordinance permits a vacation rental for up to 180 days per year in a residence occupied by the permanent resident for only 5 months and 29 days per year. Hence, Commenter asserts, it would legalize a new commercial, business activity throughout most all residentially zoned areas of the City. Commenter opines that this would have enormous impacts on the very essence of land use planning and zoning laws, the City's General Plan, and all the Community Plan. These impacts must be studied in an EIR.

Commenter claims that despite the proposed Ordinance allowing this vacation rental business activity, the CEQA analysis includes the erroneous and misleading statement that "With the regulations set forth by the Home-Sharing ordinance, the operation of Home-Sharing uses would be similar to the operation of a regular occupied home in any residential neighborhood." Commenter claims the proposed Ordinance would allow the whole-house, absentee-owner mini hotels throughout all residential neighborhoods. The statement that a vacation rental for 180 days/year with an absentee owner would be similar to a regular residence occupied by its owners is patently absurd.

Response 1-8

Outside of criticizing the use of the term home-sharing, the commenter does not provide any specific comments on the key provisions contained in the proposed Ordinance. For example, the Ordinance provides for the following: (1) registration of all short-term rentals; (2) 180 day limitation on short-term rental of primary residences; (3) a prohibition on using units covered by the City's Rental Stabilization Ordinance as short-term rentals; and (4) a ban on full-time vacation rentals. The commenter has also not provided any relevant evidence, or identified any substantial evidence to support a conclusion that the proposed ordinance may have a significant environmental effect. In addition, as it relates to any improper conduct, the commenter has not presented any evidence to suggest that the City's code enforcement efforts and existing

regulatory measures would not be sufficient to address these concerns. As a result, the Commenter has failed to provide any substantial evidence of a fair argument that the project may have a significant effect on the environment.

Comment 1-9

Commenter contends the City may not declare with certainty that there is no possibility that the proposed Ordinance may have a significant effect on the environment when it bases its conclusion on the flawed analysis described above.

The proposed Ordinance would permit significant intensification of use and significant densification in residentially zoned areas across the City where all short-term rental activity is not illegal. The City previously determined that there were legitimate reasons for land use provisions that ban short-term rentals, including the protection of residents from the effects of commercial, business activity in residential zones. The long-standing land use distinction between commercial and residential must not be changed without a thorough EIR study and analysis of the impacts.

Response 1-9

The commenter has not provided any relevant evidence to support his land use claims of a de facto rezoning, or identified any substantial evidence in the administrative record. Commenter's statement consist of speculation or unsubstantiated opinion. Commenter fails to note the City prepared and circulated a Negative Declaration that requires those objecting to the environmental determination to present substantial evidence of a fair argument the proposed ordinance may have a significant effect on the environment. The City has also asserted that the "common sense" exemption applies. In any event, Commenter's opinions and statements that are not supported with any substantial evidence fail to meet the burdens imposed under both the "common sense" exemption and the "fair argument" standard.

Comment 1-10

Commenter claims the proposed Ordinance would have public safety impacts on residents and emergency services. An essential feature of any "Neighborhood Watch" program advocated by policy is "know your neighbor." This becomes impossible when there is a constant stream of strangers, and strange vehicles, in the neighborhood. The safety impact might be even greater in multi-family buildings where a constant stream of strangers are given keys, and given access to all common areas.

Response 1-10

The Commenter's claims are not supported by any substantial evidence, such as evidence of experiences in other communities that permit short-term rentals. As such, Commenter's statement amount to unsubstantiated fears and speculation about a project's environmental impacts and do not constitute substantial evidence.

Comment 1-11

The Commenter contends that though the proposed Ordinance limits rentals to one group and one booking at a time it does not limit the size of the group. Commenter expresses concerns that short-term renters may rent an entire house for special events such as weddings or fraternity

reunions that can result in an excessive number of people inhabiting the residence. Without identifying specific incidents, the Commenter claims there are documented complaints to the City and City Attorney and LADBS and police of such rentals in Los Angeles. As such, Commenter asserts that the City must prepare an EIR to study the impact of the proposed ordinance on traffic and air quality, noise, trash, and safety.

Response 1-11

The Commenter, once again, makes general claims regarding the reasons the proposed ordinance will cause significant impacts on the environment. However, he fails to provide any substantial evidence to support these claims. As such, these claims amount to mere speculation and conjecture. A party objecting to a Negative Declaration must present substantial evidence that supports a fair argument that the project may cause a significant impact on the environment. Furthermore, a party challenging a City's determination that the "common sense" exemption applies to a project must support that challenge by presenting substantial evidence supporting a reasonable argument the proposed ordinance may have a significant effect on the environment. Commenter has failed to present any substantial evidence to support his claims.

Comment 1-12

Commenter contends the environmental impact analysis is erroneous and deficient in concluding that the public service impacts will not be significant because the ordinance "only affects the use of existing residences." An EIR is necessary to study the change of uses of residences from the usual family to the use as vacation rentals, and the impacts associated with the need for more police protection and more police calls, more fire protection, and more use of parks and other public facilities. The impacts on schools must be studied to analyze the change from families with children to all adult vacation renters.

Response 1-12

The Negative Declaration states that there are no related public service impacts because the Ordinance only affects the use of existing residential structures in established neighborhoods and no new development is expected to occur. This is because the proposed ordinance prohibits full-time vacation rentals and generally permits only non-RSO primary residences to be used for short-term rentals and limits the number of days for short-term rentals to one-hundred-eighty 180. These limitations would not make it economically feasible to construct new units strictly to be used as short-term rentals.

Comment 1-13

The Commenter again claims the proposed Ordinance presents a fundamental change to the LAMC. It would violate the City's General Plan and adversely affect all elements of the Plan and Community Plans, including noise, housing, traffic, air quality, services and safety.

Response 1-13

The Commenter, once again, has failed to provide any relevant evidence, or identified any substantial evidence to support these claims. As such, his claims amount to no more than

speculation and unsubstantiated opinion. Therefore, the Commenter has failed to establish any factual basis to support the need for additional analysis.

Comment 1-14

The Commenter claims the proposed ordinance affects aesthetics because an EIR study would show that short-term renters pile large amounts of trash at the curb when they leave and it remains there until the trash pickup day that might be 6 days later.

Response 1-14

The commenter has not provided any relevant evidence, or identified any substantial evidence in the administrative record to support a fair argument that the proposed Ordinance may have a significant environmental effect. Therefore, there is no basis for additional analysis.

Comment 1-15

Commenter asserts that hotels that wish to operate in a residential zone must obtain a conditional use permit and that an EIR is necessary to study the impacts of allowing an unlimited number of mini-hotels in all residential areas to analyze how this will affect the physical appearance of neighborhoods.

Response 1-15

As stated previously, the restrictions on short-term rentals will preclude the establishment of mini-hotels in neighborhoods. As stated previously, except in very limited circumstances only a person's non-RSO primary residence may be used for short-term rentals and the days a non-RSO primary residence may be rented is limited to one-hundred-eighty (180) days a year. Given the cost of construction in Los Angeles, the limited ability to offer short-term rentals does not make it economically feasible to construct new primary residences to be used as short-term rentals. Commenter has failed to present any substantial evidence to the contrary.

Comment 1-16

The Commenter again claims an EIR is necessary to study the cumulative effects of changing the accessory dwelling unit laws in Los Angeles and the short-term rental laws. Without providing any evidentiary support, Commenter claims there will be an enormous incentive to build accessory dwelling units throughout the City and list them as short-term rentals. Commenter asserts that such alleged massive construction activity in residential zones, and all the environmental impacts from that construction, is exactly the type activity for which CEQA requires a full EIR study and analysis before decisions are made.

Response 1-16

The Commenter provides no specific comment on the environmental conclusions of the Notice of Exemption and the Negative Declaration. As it stands, the Commenter has not provided any relevant evidence, or identified any substantial evidence in the administrative record to support his predictions. As such, Commenter's statements amount to speculation and unsubstantiated opinion.

Comment 1-17

The Commenter states an EIR is necessary to study the impacts on the hospitality industry in Los Angeles, and the impacts if that hospitality industry is hurt.

Response 1-17

This comment expresses a concern that short-term rentals may have an impact on the hospitality industry. However, the commenter has not provided any relevant evidence, or identified any substantial evidence in the administrative record to support a fair argument that the proposed Ordinance may have a significant environmental effect on the physical environment. Commenter's statement amount to speculation and unsubstantiated opinion.

Comment 1-18

Commenter claims the proposed ordinance amounts to a rezoning of all of Los Angeles through short-term rental legislation is not an appropriate method of city planning without a thorough EIR in compliance with CEQA. Commenter claims an EIR is necessary to study alternatives to, and mitigation for, the impacts of the Project.

Response 1-19

This commenter states that an EIR should be required. However, the commenter has not provided any relevant evidence, or identified any substantial evidence in the administrative record to support a fair argument that the proposed Ordinance may have a significant environmental effect on the physical environment.

Comment 1-19

Commenter again states an EIR is necessary to study the likelihood of compliance with the provisions of the proposed Ordinance, the likelihood and cost of enforcement of non-compliance, and the environmental impacts of non-compliance on noise, traffic congestion, air pollution, safety, water, and the housing stock and affordability of housing. Commenter again asserts the example of Santa Monica to judge potential impacts is misleading, deceptive and erroneous, not only because hosts must be present in Santa Monica, but because there is a private right of action in Santa Monica (and an EIR must study the effect of this threat in Santa Monica that would not be in the Los Angeles law).

The impacts of the proposed ordinance cannot be separated from the likelihood of compliance and enforcement of related rules and regulations. The past compliance and enforcement in Los Angeles of the illegal short term rentals, and the compliance and enforcement in other cities, must be rigorously studied in an EIR before decision makers may reasonably anticipate environmental impacts – otherwise the potential significant impacts are unknown.

Response 1-19

Once again, the Commenter has not provided any relevant evidence, or identified any substantial evidence in the administrative record to support a fair argument that the proposed Ordinance may have a significant environmental effect on the physical environment. His comments amount to unsupported opinion and conjecture. Enforcement of the current rules is difficult because the City

must obtain evidence that specific short term rental activity took place, including the collection of fees. The proposed ordinance will remove this limitation and allow enforcement against Hosts and property owners that advertise short-term rental. This is expected to dramatically increase the amount of enforcement against short-term rental activity, which will deter future use and reduce current illegal use.

Comment 1-20

Commenter claims that since the Environmental Impact Analysis there have been at least two major events that must be considered. One is a proposal in the U.S. Congress to study the impacts of short-term rentals. A declaration by the City of Los Angeles that no study is required is irrational and erroneous in view of the information supporting the proposed study by Congress. Further, any action by Los Angeles should wait for complete of the Federal study.

The other major recent event is a lawsuit filed by Airbnb against the City of San Francisco. Any action by Los Angeles should wait for a determination of the claims in that lawsuit. At the very least, an analysis of the impacts of the proposed Los Angeles ordinance that is based upon the enforceability of the rules and regulation is obviously deficient without a thorough analysis of the Airbnb claims that it is not subject to local jurisdiction because of Federal internet laws.

Response 1-20

The commenter has not provided any relevant evidence, or identified any substantial evidence in the administrative record to support a fair argument that the proposed Ordinance may have a significant environmental effect on the physical environment. The fact that the U.S. Congress may initiate a study on the “impacts” of short-term rentals in and of itself does not identify environmental impacts from short-term rentals. In addition, the litigation that AirBnB has filed against the City of San Francisco does not challenge the City of San Francisco’s CEQA analysis associated with its ordinance. Therefore, these “events” do not provide a basis for additional analysis.

Comment 1-21

Commenter concludes that an EIR would identify significant impacts the City would be unable to mitigate, including depleting housing stock, noise pollution, air pollution, traffic congestion, additional and unmanageable stress on City services, in particular first responders – fire and law enforcement, water, trash, and parks and recreation personnel and facilities. Commenter further states that adoption of the proposed ordinance allowing short-term rentals, both true home sharing as well as absentee vacation rentals, in residential zones would have multiple, foreseeable, direct and indirect significant physical impacts upon the environment and constitutes a non-exempt “project” under CEQA that is not subject to an MND or ND to avoid a full EIR.

Response 1-21

The commenter has again failed to provide any relevant evidence to support his land use claim of a de facto rezoning, or identified any substantial evidence in the administrative record to support a fair argument that the proposed Ordinance may have a significant environmental effect on the physical environment. Therefore, there is no basis for additional analysis.

RAYMOND KLEIN

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August 16, 2016

Department of City Planning
Los Angeles City Council
200 North Spring Street,
Los Angeles, CA 90012

Darlene.Navarrete@lacity.org
Matthew.Glesne@lacity.org

Re: **Response to Notice of Intent to Adopt**
Negative Declaration-NG-16-242-PL
Case: DIR-2016-1243-CA; ENV-2016-1277-ND

Dear Addressees:

The Proposed Project

The Notice describes intent to adopt a Mitigated Negative Declaration or Negative Declaration in connection with a proposed ordinance amending multiple sections of the LAMC and Administrative Code to permit “sharing of one’s primary residence” including related provisions, all referred to as the City’s proposed “Home Sharing Ordinance.”

The entire file, proposed project, and proposed ordinance is misleading, deceptive, and deficient because it is not limited to **sharing** one’s residence, because “sharing” implies the host/owner is present and that is not required (as in Santa Monica and New York City). Further, the number of short-term rental days permitted and the number of days the owner may be entirely absent from the premises is entirely inconsistent with what a reasonable person would conclude from use of the term “sharing.” All public notices and hearings must be redone in order to correct this deceptive and misleading description.

Erroneous Claim of CEQA Exemption

The Staff Report recommends that:

“the City Council, based on the whole of the administrative record, determine that

the ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) and direct staff to file the Notice of Exemption with the County Clerk's office (See Exhibit C); and, pursuant to CEQA Guidelines Section 15074(b), adopt ENV-2016- 1277-ND and find that based on the whole of the administrative record, in the independent judgment of the decision-maker, the project will not have a significant effect on the environment and direct staff to file a Notice of Determination with the County Clerk's office."

The Proposed Project description in the Staff Report quoted above is different from the Project Description in the "CEQA Narrative (Exhibit B.-1) which reads, in part:

"imposing regulations to permit sharing of certain primary residences as short-term rentals"

The claim for CEQA exemption is under the "common sense" CEQA exemption pursuant to CEQA Guidelines Section 15061(b)(3) and 15060(c)(2), which provides that, where it can be seen with certainty that there is no possibility that a project may have a significant effect on the environment, the project is not subject to CEQA. However, this Project has that possibility. CEQA applies to this Project because it has the potential for causing a significant effect on the environment - either through a direct impact or reasonably, foreseeable indirect impact. The burden is on the City to provide substantial evidence to justify its use of the "common sense" exemption. It cannot meet this burden by argument, speculation, or unsubstantiated opinion. See 10 Harv. L. & Pol'y Rev. 229 for some of the many environmental impacts.

The baseline for analyzing impact should not be the current conditions. Short-term rentals have been illegal in most all residential areas of the City. The City has taken no action against this illegal activity. The City may not, intentionally or negligently, allow an illegal, environmentally impactful activity to get out of hand, and then claim that the situation the City created, despite numerous complaints that were ignored, should be baseline. Over several years, despite documented complaints to the City Attorney and LADBS, the City took no action while thousands of illegal short-term rentals operated throughout the City. Allowing the City to benefit from its lack of action to enforce its laws would be tantamount to allowing a developer to kill all of an endangered species on his land and then claim that his development will not have any environmental impact.

The Analysis for the claim of CEQA exemption wrongly looks at the existing conditions, which the City acknowledges are illegal. The Project, which legalizes the activity, has the potential of expanding to every residence in the City and an EIR must be done to study this potential and its impacts. No provision in the proposed Ordinance limits the number

of residences that could qualify by registering, except for the minor carve out for residences subject to the Rent Stabilization Ordinance. There has been no study or analysis regarding how many residences may become short-term rentals. This must be done in an EIR. Anything else is complete speculation. And the Staff Report use of the Santa Monica experience as a predictor is inappropriate because the size of the cities and impacts are very different, and the laws are very different (for example, Santa Monica requires the presence of the host/owner).

The proposed Ordinance legalizes a **new commercial, business activity throughout the City** (See **The Description of the Project is Misleading and Deceptive** below) and the “common sense” conclusion must be that the potential for significant environmental impacts is great and must be studied and disclosed for the benefit of the decision makers and the public.

Erroneous Analysis of Potential Effects

The City’s CEQA analysis is misleading, deceptive and erroneous. It states:

“One way to get a better sense of potential effects is to look at the results in a city that adopted similar regulations.”

It then proceeds to discuss the effects of what it describes as a similar ordinance adopted by Santa Monica about a year ago. However, the Santa Monica ordinance prohibits any vacation rentals where at least one of the primary residents does not live on-site throughout the visitor’s stay.

<https://www.smgov.net/Departments/PCD/Permits/Short-Term-Rental-Home-Share-Ordinance/>

Other cities, such as San Diego, have made a similar distinction between vacation rentals and home sharing.

However, the proposed Los Angeles Ordinance would allow the vacation rentals that are entirely prohibited in Santa Monica and San Diego. (See **The Description of the Project is Misleading and Deceptive** below.) The CEQA analysis of the proposed Ordinance is flawed because it ignores the environmental impacts of **vacation rentals** which are of an entirely different nature from true **home sharing**. There are several studies that show that a majority of short-term rentals in Los Angeles have been of whole houses or units, not shared space with the host/owner on the premises. The Negative Declaration analysis is based on “apples” whereas the proposed ordinance would permit “oranges.”

Erroneous and Inconsistent Assumptions

The CEQA analysis makes erroneous and inconsistent assumptions. It describes the growth of short-term rental listings in the City as “increasing fast over the last few years

(likely doubling every 12 - 16 months).” At the same time, the analysis assumes “the proposed ordinance would not likely induce any new short-term rental to take place.” It comes to this conclusion by assuming the City is made up of persons who ignore the laws, and all those who are interested in renting out residential space “are already engaging in short term rental activities.” This is a conclusion not based on any substantial evidence and one that must be studied in an EIR. Also, it’s only one glaring example of the flawed assumptions in the CEQA analysis. A more reasonable conclusion would be that many law-abiding residents are waiting for permission and that there will be an explosion of short-term rentals if a permissive ordinance is adopted. In any event, this must be studied in an EIR.

The Description of the Project is Misleading and Deceptive

The Project is called a Home-Sharing Ordinance. However, the traditional understanding of a home-sharing rental is an activity whereby a resident hosts visitors in their home while at least one of the primary residents lives on-site throughout the visitor’s stay. The guest enjoys the non-exclusive shared use of the unit with the person who is domiciled at the location.

The proposed Ordinance is not limited to home-sharing. It permits rentals for exclusive transient use where the guest enjoys the exclusive private use of the entire unit. It permits a vacation rental for up to 180 days per year in a residence occupied by the permanent resident for only 5 months and 29 days per year. Hence, it would legalize a new commercial, business activity throughout most all residentially zoned areas of the City. This would have enormous impacts on the very essence of land use planning and zoning laws, the City’s General Plan, and all the Community Plans. These impacts must be studied in an EIR.

Despite the proposed Ordinance allowing this vacation rental business activity, the CEQA analysis includes the erroneous and misleading statement that “With the regulations set forth by the Home-Sharing ordinance, the operation of Home-Sharing uses would be similar to the operation of a regular occupied home in any residential neighborhood.” On the contrary, the proposed Ordinance would allow whole-house, absentee-owner mini hotels throughout all residential neighborhoods. The statement that a vacation rental for 180 days/year with an absentee owner would be similar to a regular residence occupied by its owners is patently absurd.

The Project Will Have Potential Significant Effects on the Environment

The City may not declare with certainty that there is no possibility that the proposed

Ordinance may have a significant effect on the environment when it bases conclusions on the flawed analysis described above.

The proposed Ordinance would permit significant intensification of use and significant densification in residentially zoned areas across the City where all short-term rental activity is now illegal. The City previously determined that there were legitimate reasons for land use provisions that ban short-term rentals, including the protection of residents from the effects of commercial, business activity in residential zones. The long-standing land use distinction between commercial and residential must not be changed without a thorough EIR study and analysis of the impacts.

The proposed Ordinance would have public safety impacts on residents and emergency services. An essential feature of any "Neighborhood Watch" program advocated by police is "know your neighbor." This becomes impossible when there is a constant stream of strangers, and strange vehicles, in the neighborhood. The safety impact might be even greater in multi-family buildings where a constant stream of strangers are given keys, and given access to all common areas.

The proposed Ordinance limits rentals to one group and one booking at a time, but there is no limit on the size of the group. The Ordinance allows a group of 35 to occupy a 4 bedroom home, unsupervised by the permanent resident. Such bookings occur for events such as a wedding or fraternity reunion. There are documented complaints to the City and City Attorney and LADBS and police of such rentals in Los Angeles, and an EIR must study such rentals in order to know whether there are impacts that should be mitigated by regulation. Other cities have recognized the potential impacts by limiting rentals to 2 per bedroom plus 2 more. These large groups amplify the impacts related to traffic and air quality, noise, trash, and safety. An EIR is necessary to study these impacts, consider mitigation of the impacts, and propose alternatives. It is erroneous to state that there will be no impacts on traffic, parking, air quality, noise, trash and safety because the proposed ordinance "only affects the use of existing residences" - - obviously the short-term renters will number more than a usual family of two adults, they will have more vehicles than a usual family, they will make more vehicle trips while on vacation than the usual family, and they will have other guests, more guests, and more frequently than a usual family. Since the number of persons that can reasonably be anticipated is more than a usual family, the level of noise will be greater, particularly since the short-term renters are on vacation or celebrating an event such as a wedding or reunion. The noise analysis in the Environmental Impact Analysis is erroneous and deficient when stating an unfounded conclusion that "there is a potential decrease in number of vacation rentals" since the

opposite conclusion is at least as likely - - an EIR is required. Many of the complaints to police and other City agencies related to existing vacation rentals are about noise - - there are potentially significant noise impacts from legalizing short-term rentals.

The Environmental Impact Analysis is erroneous and deficient in concluding that the public services impacts will not be significant because the ordinance "only affects the use of existing residences." An EIR is necessary to study the change of use of residences from the usual family to the use as vacation rentals, and the impacts associated with the need for more police protection and more police calls, more fire protection, and more use of parks and other public facilities. The impacts on schools must be studied to analyze the change from families with children to all adult vacation renters.

The proposed Ordinance represents a fundamental change to the LAMC. It would violate the City's General Plan and adversely affect all the elements of the Plan and Community Plans, including noise, housing, traffic, air quality, services, and safety.

The proposed Ordinance affects aesthetics because an EIR study would show that short-term renters pile large amounts of trash at the curb when they leave and it remains there until the trash pickup day that might be 6 days later.

Hotels that wish to operate in a residential zone must obtain a conditional use permit. An EIR is necessary to study the impacts of allowing an unlimited number of mini hotels in all residential areas. How will the physical appearance of the neighborhood change?

An EIR is necessary to study the cumulative effects of changing the accessory dwelling unit laws in Los Angeles and the short-term rental laws. There will be an enormous incentive to build accessory dwelling units throughout the City and list them for short-term rentals. Such massive construction activity in residential zones, and all the environmental impacts from that construction, is exactly the type activity for which CEQA requires a full EIR study and analysis before decisions are made. There can be no doubt that if one developer were proposing such a project, the City would require an EIR - - the City is not exempt. The inter-relationship between the proposed ordinance regarding second dwelling units and the proposed ordinance regarding short-term rentals must be studied in an EIR - otherwise, it's like studying a developer's twenty-story apartment building but ignoring a proposed shopping center across the street. The Environmental Impact Analysis erroneously concludes there will be no new development or change in the size of existing residences - - however, there will be aesthetic impacts from the incentive to build even larger ADUs than now permitted.

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An EIR is necessary to study the impacts on the hospitality industry in Los Angeles, and the impacts if that hospitality industry is hurt.

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Re-zoning all of Los Angeles through short-term rental legislation is not an appropriate method of city planning, certainly not without a thorough EIR in compliance with CEQA. An EIR is necessary to study alternatives to, and mitigation for, the impacts of the Project.

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An EIR is necessary to study the likelihood of compliance with the provisions of the proposed Ordinance, the likelihood and cost of enforcement of non-compliance, and the environmental impacts of non-compliance on noise, traffic congestion, air pollution, safety, water, and the housing stock and affordability of housing. The example of Santa Monica to judge potential impacts is misleading, deceptive and erroneous, not only because hosts must be present in Santa Monica, but because there is a private right of action in Santa Monica (and an EIR must study the effect of this threat in Santa Monica that would not be in the Los Angeles law).

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The impacts of the proposed ordinance can not be separated from the likelihood of compliance and enforcement of related rules and regulations. The past compliance and enforcement in Los Angeles of the illegal short-term rentals, and the compliance and enforcement in other cities, must be rigorously studied in an EIR before decision makers may reasonably anticipate environmental impacts - - otherwise the potential significant impacts are unknown.

Recent Events

Since the Environmental Impact Analysis (Exhibit B.2 - Negative Declaration - 6/14/16) there have been at least two major events that must be considered. One is a proposal in the U.S. Congress to study the impacts of short-term rentals. A declaration by the City of Los Angeles that no study is required is irrational and erroneous in view of the information supporting the proposed study by Congress. Further, any action by Los Angeles should wait for completion of the Federal study.

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The other major recent event is a lawsuit filed by Airbnb against the City of San Francisco. Any action by Los Angeles should wait for a determination of the claims in that lawsuit. At the very least, an analysis of the impacts of the proposed Los Angeles ordinance that is based upon the enforceability of the rules and regulation is obviously deficient without a thorough analysis of the Airbnb claims that it is not subject to local jurisdiction because of Federal internet laws.

Conclusion

The results of an EIR will not support legalizing short-term rentals in residential zones in Los Angeles. On the contrary the EIR would identify significant impacts the City would be **unable to mitigate**, including depleting housing stock, noise pollution, air pollution, traffic congestion, additional and unmanageable stress on City services, in particular first responders - fire and law enforcement, water, trash, and parks and recreation personnel and facilities. Turning a residential neighborhood of families into a commercial zone of mini-hotels would have significant impacts on the public school system, and these impacts must be studied in an EIR.

The adoption of the proposed Ordinance allowing short-term rentals, both true home sharing as well as absentee vacation rentals, in residential zones would have multiple, foreseeable, direct and indirect significant physical impacts upon the environment and constitutes a non-exempt "project" under CEQA that is not subject to an MND or ND to avoid a full EIR.

Sincerely,

Raymond Klein