

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/12/15 to 9/22/15

I am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it.

Because of my rental I was able to (check all that apply):

- ☐ Travel for business at a fair cost
- ☒ Travel for vacation at a fair cost
- ☐ Able to visit family I would normally not be able to visit
- ☐ Attend a city function I wouldn't have normally been able to attend
- ☐ Have more money to spend during my travels
- ☐ Visit Los Angeles for possible re-location

I did also book my rental with a company that has collected Transient Occupancy Tax and has remitted it to you. I feel I am a responsible guest and that I was well informed of my property rules upon my arrival. I was met at the door, I was asked to sign a rental agreement with all property rules, and I was notified of my rentals manager contact information (which was located in the building I am renting).

I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: Mike Mironov

Traveler Name Signed: _____

Date Signed 09.26.2015

Additional Notes or Comments for City Council _____

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

https://mail.google.com/_/scs/mail-static/_fjs/k=gmail.main.en.kkYYM-uyEbA.O/m=m_i,t/am=PqM-QOCOjPuDGGMK0Cx9gcLe--NnlxS7ObyoN2GAS-cC4P... 1/1

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/14/15 to 9/16/15

I am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it. Because of my rental I was able to (check all that apply):

- ☒ Travel for business at a fair cost
- ☒ Travel for vacation at a fair cost
- ☐ Able to visit family I would normally not be able to visit
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Traveler Name Printed: Matt Cing

Traveler Name Signed: Matt C

Date Signed 9/14/15

----- Additional Notes or Comments for City Council -----

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates:

https://mail.google.com/_scs/mail-static/_js/k=gmail.main.en.kkYYM-uyEbA.O/m=m_i,t/am=PqM-QOCOpuDGGMK0Cx9gcLe--NnlxS7ObyoN2GAS-cC4P... 1/1

https://mail.google.com/_scs/mail-static/_js/k=gmail.main.en.kkYYM-uyEbA.O/m=m_i,t/am=PqM-QOCOjPuDGGMK0Cx9gcLe--NnlxS7ObyoN2GAS-cC4P... 1/1

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/11/15 to 9/14/15

I am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it. Because of my rental I was able to (check all that apply):

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Traveler Name Printed: Ruthie Tait

Traveler Name Signed: Ruthie Tait

Date Signed 9/11/2015

----- Additional Notes or Comments for City Council -----

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

https://mail.google.com/ /scs/mail-static/ /js/k=gmail.main.en.kkYYM-uyEbA.O/m=m_i,t/am=PqM-QOCOjPuDGGMK0Cx9gcLe--NnIxS7ObyoN2GAS-cC4P... 1/1

— —

9/14/15 to 9/15/15

11/97

- ☒ Have more money to spend during my travels

I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Signed: GAP

----- Additional Notes or Comments for City Council -----

[illegible]

----- Additional Notes or Comments for City Council -----

9/14/15 to 9/16/15

- Visit Los Angeles for possible re-location

I do hope you will pass fair regulations for short-term rentals in this grand city.

Bi Dezhong

不端

04/14/2015

Additional Notes or Comments for City Council

[illegible]

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Traveler Name Printed: Rick Wilbers

Traveler Name Signed: [Signature]

Date Signed 09/14/2015

----- Additional Notes or Comments for City Council -----

11

9/14/15 to 9/17/15

- I did also book my rental with a company that has collected Transient Occupancy Tax and has remitted it to you. I feel I am a responsible guest and that I was well informed of my property rules upon my arrival. I was met at the door, I was asked to sign a rental agreement with all property rules, and I was notified of my rentals manager contact information (which was located in the building I am renting).

Traveler Name Printed: Robert Mayne

Traveler Name Signed: Renee Mene

Date Signed 9 / 14 / 2015

Additional Notes or Comments for City Council

[illegible]

()

9/17/15 to 9/21/15

POLYMER LETTERS, Vol. 7, Number 9, pp. 605-618
© Interscience Publishers Inc., 1969.

- ☒
- Have more money to spend during my travels

I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Signed: 7221 37

Additional Notes or Comments for City Council

[illegible]

— —

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Traveler Name Printed: Wu Jiafeng

Traveler Name Signed: [Signature]

Date Signed 9/16/2015

----- Additional Notes or Comments for City Council -----

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

9/16/15 to 9/18/15

- ☐ Travel for business at a fair cost
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- ☐ Visit Los Angeles for possible re-location

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Traveler Name Printed: Russo, Fabio

Traveler Name Signed: [Signature]

Date Signed 9/16/2015

----- Additional Notes or Comments for City Council -----

10



9/16/15 to 9/18/15

I am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it.
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Traveler Name Printed: Matthew Boccia

Traveler Name Signed: _____

Date Signed 9, 16, 2015

Additional Notes or Comments for City Council

This image shows a single page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

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9/17/15 to 9/19/15

- ☒
- Tr

I am a responsible guest and that I was well informed of my property rules upon my arrival. I was met at the door, I was asked to sign a rental agreement with all property rules, and I was notified of my rentals manager contact information (which was located in the building I am renting).

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Traveler Name Printed: Gio Marconato

Traveler Name Signed: P. Miller

Date Signed 9/17/2015

Additional Notes or Comments for City Council

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- ☐ Travel for business at a fair cost
- ☒ Travel for vacation at a fair cost
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- ☐ Visit Los Angeles for possible re-location

I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Signed: Thelma

Additional Notes or Comments for City Council

[illegible]

—

9/17/15 to 9/20/15

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- ☒ Travel for vacation at a fair cost
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- ☒ Have more money to spend during my travels
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I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: Muhammed Celik

Traveler Name Signed: M. C. H.

Date Signed 9, 17, 2015

----- Additional Notes or Comments for City Council -----

Blank lined paper with horizontal ruling lines.

—

09/17/2015 to 09/20/2015

.....

- Traveler Name Printed: Octavia Morris

Traveler Name Signed: Octavie Morris

Date Signed 09 / 17 / 2015

----- Additional Notes or Comments for City Council -----

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----- Additional Notes or Comments for City Council -----

Dear Los Angeles City Council,

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9/18/15 to 9/20/15.

I am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it. Because of my rental I was able to (check all that apply):

- ☐ Travel for business at a fair cost
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Traveler Name Printed: B. R. RODRIGUEZ

Traveler Name Signed: [Signature]

Date Signed 9/18/15

----- Additional Notes or Comments for City Council -----

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

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I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: Ben Gromley

Traveler Name Signed: [Signature]

Date Signed 9 / 18 / 2015

----- Additional Notes or Comments for City Council -----

[illegible]

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/16 to 9-18-15

I am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it.

Because of my rental I was able to (check all that apply):

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Traveler Name Printed: Li Bai

Traveler Name Signed: Ben W

Date Signed 9 / 16 / 15

Additional Notes or Comments for City Council

upon it.

upon it.

to you. I feel
the door, I
act

... ..

[illegible]

Dear Los Angeles City Council,

am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/13 to 9/18/15

am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it.

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Traveler Name Printed: Limeng Zhu

Traveler Name Signed: Zhu Wang.

Date Signed 9 / 13 / 15

Additional Notes or Comments for City Council

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates
9/17/15 to 9/18/2015.

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I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: Nicholas chuan

Traveler Name Signed: _____

Date Signed 01/17/15

-----Additional Notes or Comments for City Council-----

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/12/15 to 9/18/2015.

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Traveler Name Printed: Joanna Jamieson

Traveler Name Signed: Joanna M Jamieson

Date Signed 9/12/15

----- Additional Notes or Comments for City Council -----

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Traveler Name Printed: Sze Wong

Traveler Name Signed: [Signature]

Date Signed 9/13/15

----- Additional Notes or Comments for City Council -----

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9-11-15 to 9-15-2015.

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Traveler Name Printed: Alex Larraya

Traveler Name Signed: 

Date Signed 9 / 11 / 15

----- Additional Notes or Comments for City Council -----

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates
9/9/15 to 15/9/15.

- ☐ Travel for business at a fair cost
- ☒ Travel for vacation at a fair cost
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I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: Paula Griffin

Traveler Name Signed: Dan

Date Signed 9 / 9 / 1990

Additional Notes or Comments for City Council

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/9/15 to 15/9/15

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Traveler Name Printed: Paula Griffin

Traveler Name Signed: 

Date Signed 9/9/15

----- Additional Notes or Comments for City Council -----

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Traveler Name Printed: Elisa Duca

Traveler Name Signed: _____

Date Signed 9 / 11 / 15

Additional Notes or Comments for City Council

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Traveler Name Printed: LOUIS CHAMBRLEND

Traveler Name Signed: John M. Kelly

Date Signed 9/13/2015

Additional Notes or Comments for City Council

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Traveler Name Printed: LOUIS CHAMBERLAND

Traveler Name Signed: [Signature]

Date Signed 9/13/2015

----- Additional Notes or Comments for City Council -----

9/12/15 to 9/13/15

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Traveler Name Printed: Denys Suprun

Date Signed 01 / 12 / 15

[illegible]

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Traveler Name Printed: Faisal Alrashidi

Traveler Name Signed: 

Date Signed 9/11/15

----- Additional Notes or Comments for City Council -----

9-17-15 to 9-18-15

Because of my rental I was able to (check all that apply):

-

information (which was located in the building I am renting).

I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: James Sohre

Traveler Name Signed: [Signature]

Date Signed _____/_____/_____

----- Additional Notes or Comments for City Council -----

[illegible]

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/10/15 to 9/13/15.

I am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it. Because of my rental I was able to (check all that apply):

- ☒ Travel for business at a fair cost
- ☒ Travel for vacation at a fair cost
- ☐ Able to visit family I would normally not be able to visit
- ☐ Attend a city function I wouldn't have normally been able to attend
- ☐ Have more money to spend during my travels
- ☐ Visit Los Angeles for possible re-location

I did also book my rental with a company that has collected Transient Occupancy Tax and has remitted it to you. I feel I am a responsible guest and that I was well informed of my property rules upon my arrival. I was met at the door, I was asked to sign a rental agreement with all property rules, and I was notified of my rentals manager contact information (which was located in the building I am renting).

I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: Frederick Morris

Traveler Name Signed: 

Date Signed 9/10/15

----- Additional Notes or Comments for City Council -----

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/9/15 to 9/13/15.

I am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it.
Because of my rental I was able to (check all that apply):

- ☐ Travel for business at a fair cost
- ☒ Travel for vacation at a fair cost
- ☐ Able to visit family I would normally not be able to visit
- ☐ Attend a city function I wouldn't have normally been able to attend
- ☐ Have more money to spend during my travels
- ☐ Visit Los Angeles for possible re-location

I did also book my rental with a company that has collected Transient Occupancy Tax and has remitted it to you. I feel I am a responsible guest and that I was well informed of my property rules upon my arrival. I was met at the door, I was asked to sign a rental agreement with all property rules, and I was notified of my rentals manager contact information (which was located in the building I am renting).

I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: Dylan Dodonov

Traveler Name Signed: [Signature]

Date Signed 9/9/15

----- Additional Notes or Comments for City Council -----

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9-12-15 to 9-14-15.

I am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it.

Because of my rental I was able to (check all that apply):

☐ Travel for business at a fair cost

☒ Travel for vacation at a fair cost

☐ Able to visit family I would normally not be able to visit

☐ Attend a city function I wouldn't have normally been able to attend

☐ Have more money to spend during my travels

☐ Visit Los Angeles for possible re-location

I did also book my rental with a company that has collected Transient Occupancy Tax and has remitted it to you. I feel I am a responsible guest and that I was well informed of my property rules upon my arrival. I was met at the door, I was asked to sign a rental agreement with all property rules, and I was notified of my rentals manager contact information (which was located in the building I am renting).

I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: Sarah Hur

Traveler Name Signed: [Signature]

Date Signed 9/12/15

----- Additional Notes or Comments for City Council -----

3

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[illegible]

Dear Los Angeles City Council,

I am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/5/15 to 9/14/15

I am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it.

Because of my rental I was able to (check all that apply):

- ☐ Travel for business at a fair cost
- ☒ Travel for vacation at a fair cost
- ☐ Able to visit family I would normally not be able to visit
- ☐ Attend a city function I wouldn't have normally been able to attend
- ☐ Have more money to spend during my travels
- ☐ Visit Los Angeles for possible re-location

I did also book my rental with a company that has collected Transient Occupancy Tax and has remitted it to you. I feel I am a responsible guest and that I was well informed of my property rules upon my arrival. I was met at the door, I was asked to sign a rental agreement with all property rules, and I was notified of my rentals manager contact information (which was located in the building I am renting).

I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: Reel

Traveler Name Signed: _____

Date Signed 9/5/15

----- Additional Notes or Comments for City Council -----

Dear Los Angeles City Council,

am staying, or have stayed, in Los Angeles through the use of a vacation rental during the following dates

9/13/15 to 9/16/15

am personally concerned that you would be trying to ban this industry rather than to place fair regulations upon it.
Because of my rental I was able to (check all that apply):

- ☐ Travel for business at a fair cost
- ☒ Travel for vacation at a fair cost
- ☐ Able to visit family I would normally not be able to visit
- ☐ Attend a city function I wouldn't have normally been able to attend
- ☐ Have more money to spend during my travels
- ☐ Visit Los Angeles for possible re-location

I did also book my rental with a company that has collected Transient Occupancy Tax and has remitted it to you. I feel I am a responsible guest and that I was well informed of my property rules upon my arrival. I was met at the door, I was asked to sign a rental agreement with all property rules, and I was notified of my rentals manager contact information (which was located in the building I am renting).

I do hope you will pass fair regulations for short-term rentals in this grand city.

Traveler Name Printed: _____

Traveler Name Signed: Yany mei ou

Date Signed 9/13/15

----- Additional Notes or Comments for City Council -----



Etta Armstrong <etta.armstrong@lacity.org>

Fwd: FW: 8104 Billowvista Drive, Playa Del Rey

1 message

Richard Williams <richard.williams@lacity.org>

Mon, Sep 21, 2015 at 6:40 AM

To: Sharon Dickinson <sharon.dickinson@lacity.org>, Etta Armstrong <etta.armstrong@lacity.org>, Sharon Gin <sharon.gin@lacity.org>

----- Forwarded message -----

From: **Richard Williams** <richard.williams@lacity.org>

Date: Thu, Sep 17, 2015 at 6:58 AM

Subject: Re: FW: 8104 Billowvista Drive, Playa Del Rey

To: Colleen Phillips <cpmax82@hotmail.com>

Cc: "williamb7@verizon.net" <williamb7@verizon.net>, "tricia.keane@lacity.org" <tricia.keane@lacity.org>

Dear Ms. Phillips,

Thank you for your attached written comments regarding Short-Term rentals. I am no longer assisting the Economic Development Committee (EDC), however, I am copying Sharon Dickinson, the legislative assistant for Planning and Land Use Management Committee and her assistant Etta Armstrong, as well as the EDC's new legislative assistant, Sharon Gin, on this e-mail. (The short-term rental matter falls under the jurisdiction of both committees.)

If you wish, you can e-mail your comments below directly to the Councilmembers on the committee(s):
<http://lacity.org/city-government/elected-official-offices/city-council/council-directory>

Or, if you would like your comments posted to the Council files on this matter, please provide Ms. Dickinson and/or Ms. Gin with the appropriate Council file numbers. Ms. Dickinson and Ms. Gin can be reached at their respective e-mail address above if you have any questions or need any additional information. Thank you.

—
 Richard Williams
 Council and Public Services
 Office of the City Clerk
 City of Los Angeles
 (213) 978-1071 direct line
 (213) 978-1079 fax
richard.williams@lacity.org

Legislative Assistant to:

Los Angeles City Council's

- Budget and Finance Committee

- Rules, Elections, Intergovernmental Relations and Neighborhoods Committee



On Thu, Sep 17, 2015 at 1:11 AM, Colleen Phillips <cpmax82@hotmail.com> wrote:

North facing view of 8104 Billowvista Drive . Construction on the 3rd floor down the cliff is being done without permits and is to become a second AirBnB rental for the property . Large black rectangles in the load bearing

wall are to become new windows for the unit . Picture taken 9/16/2015 . Popular hiking trail runs beneath the property and is adjacent to the Ballona Wetlands Nature Preserve.

Will the city license such " Bootleg" units ? Will the city inspect every unit and make sure it was built to code and with permits before licensing ? Does one license cover the entire property or does each unit on a property require its own license ? Isn't the city opening itself up to potential lawsuits if guests are hurt on "licensed" but unsafe units ?

Building and Safety Code Enforcement Request # 357863 . Principal Inspector Cheryl Chism , Supervisor John Jones.

Will the legalization of Short term rental units in the R 1 zones unintentionally cause their proliferation ?

From: **Maryna Hrushetska** <cosmopolite.consulting@gmail.com>
Date: Wed, Sep 2, 2015 at 11:13 AM
Subject: In support of house sharing organizations | Council File #14-1635-S2
To: kevin.ocubillo@lacity.org
Cc: sharon.dickinson@lacity.org

I understand the City Council will be meeting to discuss changes to the legislation regarding house sharing programs, such as the popular Airbnb portal. As a 12 year resident of Los Angeles, who has voted in every election, a member of the city's creative community and Airbnb host, I enthusiastically support both the values of home sharing and the economic benefits.

My home is a beautiful sanctuary filled with art and artifacts from my world travels. It is a place of comfort and peace. I have created my home with love and carefully select who enters it. While I was at first hesitant of hosting on Airbnb, I was drawn to the values of the growing global movement of the "Shared Economy" sometimes called "collaborative consumption." I joined the site out of curiosity and after screening several candidates matched with someone that shared my values, aesthetic and even career. It was a wonderful experience hosting her from London and providing a fellow writer a comfortable place to stay while she pitched her film script in LA. I have also used Airbnb for my global travels and can tell you that the emotional satisfaction of exchanging money with a freelance graphic designer in Amsterdam is MUCH greater than giving money to a faceless corporation who seeks to "maximize profit" over all else.

Here is the thing to remember, the Sharing Economy and its main players arose in response to economic conditions that were created by policy CHOICES of elected officials and corporate special interests. Every single day, citizens are learning more and more about how our elected officials have abandoned the interests of the middle class and working class. The historic inequality of income that we are currently experiencing is no accident, it is the result of policy choices.

The entrepreneurial and collaborative spirit of the Sharing Economy should be applauded and nurtured by elected officials, not trampled. Naturally, those that benefit from status quo will oppose the collaborative economy and try to spread fear about the "new," but it is far too late for that. The economic, environmental, and emotional benefits to sharing and collaborating with like-minded people from around the world is a force that cannot be stopped. I would argue that the Sharing Economy is restoring the most fundamental element of a civilized society - TRUST.

I do hope the City Council of Los Angeles, a city that advertises itself as a "creative capital" will step up and champion the values of sharing and collaboration.

Sincerely,

Maryna Hrushetska

September 2, 2015

The Honorable Gil Cedillo
Chairperson
Housing Committee
City Hall
200 N. Spring Street, Suite 460
Los Angeles, CA 90012

RE: Council File No. 14-1635-S2
Via email: [councilmember.cedillo @lacity.org](mailto:councilmember.cedillo@lacity.org)

Dear Chairman Cedillo ,

Thank you for the opportunity to present this letter to you in anticipation of the City Council Housing Committee meeting today. I just found out about this crucial meeting and unfortunately cannot break away from my hectic schedule at this short notice but want my voice to be heard.

I am a Real Estate Broker on the Westside for the last 29 years and have ridden the waves of the ups and downs of the housing market. This last recession was the worst in my career and if it was not for the subsidy of short term rental housing, I would not have been able to save my home. I utilize all social resources to market my property. Through several of these sources I take advantage of the prescreening that they provide and do further screening when I can. I utilize a vacation rental agreement, incidental list, house rules, emergency contact list, and local emergency numbers as well as earthquake precautions with every guest via DocuSign. I make sure that guests park only in front of my unit and do not disturb any neighbors. I have been very lucky with this prescreening and have not had one problem. I have met some lovely people from all over the world who have welcomed me to come and visit them as well. Many are on a vacation, but others are here for business, and/or visiting their family locally or students at LMU and Otis. I educate them on all local shops, pharmacy and restaurants, and share coupons that I save for same. I have had only one complaint from a neighbor who unfortunately was

disturbed that I had an African-American couple staying here. They had recently been broken into and were super sensitive, I guess. They have since moved to a gated community in the valley.

I urge you to support home sharing and not ban this very important financial resource for me and others. I understand there is a coalition against it and I am sorry that people can't live together peacefully worldwide.

Sincerely yours,

Heather Lemmon R.N.
Broker

-
Cc: councilmember.bonin@lacity.org
Gerald.Gubatan@lacity.org
Tricia.Keane@lacity.org
sharon.dickinson@lacity.org



August 31, 2015

Honorable Gil Cedillo
Chairman
City Council Housing Committee
200 N. Spring Street
Los Angeles, CA 90012

Dear Chairman Cedillo:

I'm writing today on behalf of the Hotel Association of Los Angeles (HALA), which represents more than 130 Los Angeles area hotels and affiliates.

On Wednesday, September 2, the LA City Council Housing Committee will hear a motion put forth by Councilmember Mike Bonin regarding potential regulations and governance of short-term rentals in the City of Los Angeles such as Airbnb. This is an extremely important issue to hotels throughout our City.

As short-term rentals have multiplied over the past several years in communities throughout Los Angeles, HALA has many concerns regarding the impact that these facilities have on our local neighborhoods and businesses. Specifically regarding the impact that these businesses have on the quality of life in our residential neighborhoods, the availability of affordable housing, the loss of General Fund revenue for the City of Los Angeles without Transient Occupancy Taxes (TOT) being assessed, and the impact that these businesses have on the hotel industry in Los Angeles.

The truth of the matter is that these short-term rental locations are operating as commercial lodging facilities and should therefore be required to abide by the same standards and rules that the local hotel industry has to follow. This means that they should be mandated to pay Transient Occupancy Taxes, Gross Receipts Taxes, and be required to comply with the same set of health, accessibility, and zoning requirements as all other Los Angeles businesses. Absent these requirements, there is not a level playing field in Los Angeles and the hotel industry is at a competitive disadvantage.

At last week's Planning and Land Use Management Committee meeting, dozens of speakers including labor leaders, affordable housing advocates, and local homeowners testified regarding the negative impact that the proliferation of short-term rental facilities is having in our communities. As rental properties are taken off the market for use as Airbnb businesses, rents throughout our City continue to rise due to the lack of housing units in Los Angeles.

Other cities throughout California are tackling this issue and the City of Santa Monica seems to have adopted one of the most reasonable ordinances regulating the short-term rental industry that protects local neighborhoods, preserves affordable housing, and ensures that there is a level playing field for local hotels. HALA encourages the Housing Committee to review the best practices of other cities with a particular emphasis on using the recently enacted Santa Monica short-term rental ordinance as a guide.

Los Angeles hotels serve as the backbone for the tourism industry in our City. **Our hotels provide great jobs and nearly \$200 million dollars in Transient Occupancy Tax revenue to the City's General Fund each year.** With this in mind, it is essential for the City of Los Angeles to enact an ordinance regulating the short-term rental industry that is fair, supports local businesses that have been playing by the rules for decades, and preserves critical housing units in our City.

On behalf of our member hotels and affiliates located in every part of the City of Los Angeles, we thank you for your consideration of this incredibly important issue.

Sincerely,



Robert Amano
Executive Director

CC: Honorable Members, Housing Committee
Councilmember Mike Bonin
Mayor Eric Garcetti
Miguel Santana, City Administrative Officer
Sharon Tso, Chief Legislative Analyst
Los Angeles Area Chamber of Commerce
Valley Industry and Commerce Association
Central City Association

Dear Councilmember Huizar,

As a homeowner in East Los Angeles home sharing helps my husband and I tremendously each month.

We reside in El Sereno not far from Ernest Debs Regional Park. I am a full time freelance photographer and small business owner. My husband is an IT administrator at CalTech in Pasadena. We are expecting our first child in mid September.

The economy for small businesses has been at a stand still for quite some time. So, though I am still in business, my profits vary month-to-month and I depend on my husband for health insurance and other necessities. My business pays for itself and helps toward paying our mortgage and other bills but without the home sharing economy I would most likely be forced to close my business and pursue another career full time, perhaps even leave LA for other areas with more opportunities.

Businesses like AirBnB and Homeaway allow us to use our property and host people from all over the world. AirBnB boosts the local economy and helps us keep our home and live the American dream. Not only does the money help us pay down our mortgage but we refer our guests to local businesses like: Los Pinos Market, Food For Less, Thai Beam, Tamale Man and El Puerto Escondido. Our guests bring money to their businesses. It is a win-win for all of us. Taking away the home sharing economy would effect us and all of the businesses around us negatively.

Hosting guests from places like Denmark and Romania in East LA also gives them a different perspective and shows them there is more to Los Angeles than just Hollywood and Disney. Our guests appreciate our Latino neighborhood and enjoy having a different view of LA when they stay.

Lastly I would like to point out that with our first child on the way we feel so blessed to have the sharing economy help us with our bills while I am on maternity leave. As a small business owner you don't get much in terms of maternity leave but home sharing will help us get through the first few months without feeling as much of a monetary loss. If we were not allowed to home share our daughter would be forced into day care and we feel lucky that I can stay home for the first few months because of the extra income.

Please consider law abiding citizens like my husband and I when you make your decision and allow us to continue with the home sharing economy. It brings families together, makes community businesses stronger and creates a better life for us all.

Sincerely,

Naheed Choudhry Caballero
<http://www.naheedence.com>
3339 Thelma Avenue, Los Angeles, CA 90032

Dear Representatives:

Last year in California, 6 unprovoked shark attacks made headline news. But what of the thousands of trouble-free sharks? Not surprisingly, unlucky accounts involving home-sharing guests are equally infrequent and should be equally unsensational.

History has shown us that new information demands a shift in perspective.

Los Angeles can lead the way for this shift in perspective with legislation that **responsibly** integrates a sharing model into our current system, especially as it stands to directly benefit our local and state economy, but also because all of us deserve the right to use our homes as we see fit.

We talk about civil rights, not white rights; integration, not segregation; and about marriage for all, not straight marriage. All of these concepts seemed progressive at the time and ultimately resulted in a shift of perspective.

Is the sharing economy progressive? Yes.

Does that make it **wrong**? No.

I urge the council to be on the "*right side of history*" by **making** history.

Sharing with others is **not** a zero sum equation.

Respectfully,

Brian

September 1, 2015

To the City Clerk,

I love my neighborhood.....and have for 50 years. When I moved into Rosalind Wyman's district as an apartment owner, I participated in various community activities . During the next 6 years, I and my husband purchased two other apartment buildings. We then bought our home close by which I have lived in for the past 33 years rearing my children.....

During that time I rented to visiting doctors, college and ESL students. Due to a sharp drop after 2008 when my profession in the stock photography industry fell, I needed to replace income. I joined the Peace Corps for a year and rented my house. Upon my return I discovered **Airbnb**. **It has helped to save my home and given me both the international and national visitors whom I so enjoy.**

What I notice the most with these visitors is that they are middle income people who cannot afford the big rates at the hotels. They go out into the community small businesses and restaurants and bring in revenue to our neighborhoods.

These visitors are both international and US travelers and business people. They come for conferences in Century City, attendees at workshops at UCLA, take the bar at Century City, do business Los Angeles, visit their grandchildren and siblings and come to work weekly at the studios. They want the privacy of a small place. Whereas if they are staying at hotels, they usually stay within the confines, eating and shopping.

Air bnb has helped me and others to help the middle class person staying in our city. They bring income to all of us in the council members' districts. They help us to pay the transient taxes to the city and to pay the salaries of the council members.

Please keep the high points in mind when you vote to say YES for the home sharing plan.

Sincerely,

Mary Kate Denny

Paul Koretz district

dennyfoto@aol.com

Hello

I'm writing to you as a voting resident of Koreatown for the past 10 years and an Airbnb host for the past 3 years.

It's like you to consider people like me when weighing on the final legislation on home sharing in Los Angeles.

After a decline in my income and a raise of my rent, become an Airbnb host has helped me stay where I live and be able to make my payments. It is not that much a source of income as a means of remaining an L.A. resident.

Many of my guests have told me that they would not have been able to visit Los Angeles if it wasn't for the rates of home sharing provided by Airbnb. More locally, businesses have benefited from my hosting as I share a list of my favorite restaurants and shops near me.

I urge you to be favorable in the legislation of home sharing in my district and Los Angeles county at large, as it appears to me as a win-win-win opportunity for so many: hosts who can afford staying where they live, guests who can afford to visit my neighborhood and local businesses.

Best

Philip SINSHEIMER

Dear Councilman Cedillo,

I would like to voice my strong support for legislation legalizing "Home Sharing". I am a homeowner in the Mid-City area and have been hosting on AirBnb since December of 2014. I live in a historic home and the extra income has allowed me to continue the costly maintenance and improvement of my home.

In addition I have had the pleasure of hosting people from all over the U.S. and all over the world. I have had visitors from Ireland, Austria, France, Australia and Mexico to name a few. The people who have stayed with us were primarily looking for an experience that could not be had at a traditional hotel. They have had an opportunity stay in one of Los Angeles' oldest and most historic neighborhoods. They have had an opportunity to visit local restaurants and shops that they would not have known existed.

I have also been able to provide a place to stay for a father coming to help his daughter through some medical issues. She didn't have room for him and a hotel would have been very costly for the extended stay required. One of the people I hosted was doing renovation on a house very near to us. Staying at our unit allowed them to be very close to their home and be able to conveniently supervise the work. I have hosted a neighbor's father and mother while they were visiting during holiday seasons. The neighbor's house couldn't accommodate the whole family so we were the overflow bedroom. We have hosted a couple from Washington DC three times who were coming to visit their new granddaughter.

I believe "homesharing" needs to be regulated. It is not appropriate to set up illegal hotels in residential areas. If I was living in an apartment and all of a sudden there were strangers in all of the other units coming and going at all hours I would not be happy. Hosts need to strictly monitor their units or rooms. Limits need to be placed, an illegal hotel in a residential area is not home sharing.

Thank you,

Edward Licht
Mid-City Los Angeles

9/01/15

Dear Councilman Cedillo and Councilman Fuentes,

I am aware that there has been and currently is some very intense controversy regarding short term rental of residence spaces in Los Angeles, neighboring cities and notably in New York and San Francisco, through the Airbnb organization.

I would like to speak directly to this issue from my experience as a Host of Airbnb over the last two and a half years here in Los Angeles.

Before I do, I'd like to share a little about myself. I have lived and worked in Los Angeles since 1970. Most of my life I have been self-employed as a general contractor and also a realtor however in my youth I worked in Los Angeles as an organizer with others in my community to provide much needed services. Together, with friends and committed community members, we established a child care center, food co-op, community law offices and other supportive services in the Echo Park and Silver Lake areas. Building and working with/in community has been a critical focus of my life and work.

I am now 67 years old and am proudly involved in building and connecting with networks of communities worldwide through Airbnb as a Host. Not only am I able to support myself, but I am able to share life, experiences and my amazing Echo Park/LA community with people from all over the world who have a keen interest in visiting and exploring Los Angeles and learning about our culture here. Airbnb came into my life just when I needed it! My financial reserves for retirement had been exhausted as the result of caring for my elderly parents. I was quite despairing as to how I was going to be able to provide for myself as I turned 65. A friend mentioned Airbnb as a possibility. I explored the idea for several weeks and decided to give it a try. It was possible to start up this wonderful business with a minimum outlay of cash and with low overhead. I also went to the LA City Department of Finance and obtained a business license as a short term residence provider and paid my Transient Tax and have continued to do so every month. So in a very short period of time, using only my existing resources, I was able to pull myself out of a financial crisis, generate steady and solid monthly income, provide a warm and welcoming local experience to visitors willing to spend lots of vacation dollars in LA, and provide a steady stream of cash to the LA City Finance coffers. I have made improvements to my property and its street appeal and have grown more knowledgeable of the resources and businesses in my community so that I can better inform my guests of what is available to them on their stay. I can truly say that I am an avid supporter of my local business as an Airbnb host. My guests also enlighten me as to what local businesses they have tried and loved. This completes the circle of synergistic and energetic involvement that I and my guests provide to my community through our involvement with Airbnb as I am able to give our combined feedback to my local businesses, along with any constructive feedback. More than any other money making career that I have had over the years, my Airbnb involvement has dramatically increased by connection to my community in the most positive, interactive ways.

Airbnb's support for their Hosts and Guests is impeccable and 24/7. Their internet infrastructure is mind-blowingly empowering and they are all about community and connection worldwide. In my mind they are one of the most powerful and positive worldwide organizations for building peace and genuine international people to people relationships, that exists. Because their peer review system is integral to

the Airbnb process, most hosts and guests are very concerned about being good citizens and this creates positive social awareness throughout the Airbnb “culture”.

Airbnb is at the forefront of providing leadership in establishing an exceedingly positive model for what the “Sharing Community” can be. There are always challenges when an old paradigm begins to dissolve and a new one takes its place. Fear seems to be at the forefront of this kind of change. As you know, I am sure, a reactive expression of fear often emanates from lack of knowledge and experience with the “New”. Please do not allow fear to play a role in any decision you may make regarding Airbnb. Please listen to those of us in your community who are grounded in the Airbnb experience. Please talk to my neighbors and find out what is really going on. This is the most positive work life experience I have ever had. My neighbors are very supportive of me and refer me to friends and family. Because of Airbnb I am now much more connected to my neighbors than I was before. I now know when new baby community members are about to be born because their grandparents stay at my airbnb “Cottage” and make return visits to see these new little “Echo Parkians”. I get to be a part of these families in a genuinely connected way.

I respectfully submit that Airbnb is a community builder and strengthener. Myself, my community and my business community would feel a profoundly negative effect if we lost the Airbnb connection and the City of LA would lose a very positive cash flow source as well as a good will generating positive business partner. Please support Airbnb because through its existence it truly empowers both local and worldwide community people in the most positive ways and on so many dense, rich levels.

Thank you for your time and consideration,

Stephanie Woods

Airbnb Host

Treatise

Report to the Federal Trade Commission and the U.S. Senate

The King Takes Your Castle

Economic Damages caused by Short-Term Rental Ordinances

Richard R. Sylvester, J.D., Ph.D.

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Airbnb host revenue data is from Scott Shatford, www.airdna.com.

The back cover photograph is by Kevyn Major Howard.

The book illustration and photography is by the author.

Dedicated to The Honorable Dianne Feinstein, United States Senate

Caveat

The facts and data in this document are accurate to the extent of the author's knowledge and belief. Within the scope of the subject, the relevant critical facts and relationships are disclosed. However, the scope of this document is limited; many related issues and many details are not discussed.

No opinion is rendered on whether the issues, methods or concepts would be applicable to a specific situation. Any financial projections presented are hypothetical and may not conform to any specific situation. Statutes and court interpretations are subject to change. The reader is cautioned to seek independent, unbiased, specialized counsel for any specific transaction.

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Foreword

This treatise is prepared in response to questions raised by federal agencies, city planners and leading attorneys regarding the sharing economy and city ordinances which restrict short term rentals. The current high interest in short term rentals is the result of several factors:

The substantial financial size and rapid growth of internet booking firms, such as Airbnb and HomeAway, and the subsequent major economic benefits to cities resulting from the multiplier effect of tourist and host expenditures.

The unusually stringent terms of the Ordinance passed by the City of Santa Monica on May 12, 2015, which appears to violate fundamental law: California Constitution Article XIII C and U.S. Constitution Fifth Amendment Taking and Substantive Due Process. If a court determines that the Santa Monica restrictive ordinance overreaches, and is therefore deemed to be a taking of property rights, Santa Monica will incur the financial risk of being required to **pay \$207 million for just compensation** to property owners.

The Supreme Court decision, *City of Los Angeles v. Patel*, 135 S.Ct. 2443 (2015), which made void a long standing city ordinance which interfered with a fundamental right of the U.S. Constitution.

The false economy of attempting to increase city tax revenue through lodging taxes, which results in lower tourism spending because tourists are sensitive to price. Thus, most of the lodging tax proceeds must be spent on increased tourist advertising, to offset the loss in tourism.

The questionable decisions of the Santa Monica city council which raise issues of possible impropriety of campaign contributions and undue influence from hotel worker unions. Although the city council asserts

concern for low-income rentals, the rental restrictions would cause over \$5 million reduction in tax revenue, resulting in substantially lower funds available to fund land purchases for low income rentals.

The Critical Issue—Overreaching

A finder of fact could determine that the Santa Monica Ordinance **goes too far**, resulting in a clear violation of the Fifth Amendment Taking Clause and substantive due process guaranteed by the U.S. Constitution. Property is a **bundle of rights**. The bundle of rights may be sliced and diced to the discretion of the owner, as shown by precise segregation of music rights which results in higher income for the owner.

For real property, several centuries of English common law establish that a property owner has a fundamental right to rent without limitation as to duration, whether for 1 day, 30 days, or 99 years. Despite the lack of supporting evidence, city councils assert that short-term rentals cause disruption of neighborhood values. By contrast, the reality is that the environmental and neighborhood effect of a short-term rental guest is comparable to an ordinary visit from a friend or relative. The economic effect of short-term rentals is profound, with sharply higher income for owners, improvements to property, and increased local spending, the result is higher property values for the entire neighborhood and a more prosperous local economy.

For example, in the Venice and Marina area of Los Angeles, an area with many short-term rentals, small homes that sold for \$260,000 in 1999 are now selling for \$1.2 million. The obvious benefit to the city is vigorous economic growth due to the multiplier effect of spending by the property owners, shopping and restaurant purchases by the international tourists, increase in sales tax income, and higher property tax income after each property is sold.

Calling a home a *de facto* hotel does not make a home a hotel; calling a tail a leg does not make a dog have five legs. Mischaracterization is fraud. To the extent that city ordinances restrict short-term rental income the result is a Taking which requires Just Compensation by the city. The amount of the just compensation is the economic damages caused by the ordinance. For the May 12,

2015 Santa Monica ordinance, calculations demonstrate that the required compensation is **\$207 million**.

The wording of the Santa Monica ordinance, by criminalizing ordinary economic behavior, is properly classified as **draconian**, a harsh, unforgiving and severe law with heavy punishments for mere *de minimus, de jure* offenses.¹

For centuries, a residence has protected status against government overreaching. The special status of a home is clearly stated in English Common Law:

The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; **but the King of England cannot enter** - all his force dares not cross the threshold of the ruined tenement!²

Risk. The danger of government overreaching is shown by the subtle trend toward **destruction of fundamental values from the inside**, not from a foreign power. As described by Lincoln in his 1838 Lyceum Address which warned of disrespect for fundamental freedoms established by the U.S. Constitution:

Shall we expect some transatlantic military giant to step the ocean and crush us at a blow? Never! All the armies of Europe, Asia, and Africa combined, with all the treasure of the earth (our own excepted) in their military chest, with a Bonaparte for a commander, could not by force take a drink from the Ohio or make a track on the Blue Ridge in a trial of a thousand years. At what point then is the approach of danger to be expected? I answer. If it ever reach us **it must spring up amongst us**; it cannot come from abroad. **If destruction be our lot we must ourselves be its author and finisher. As a nation of freemen we must live through all time or die by suicide.**³

Excessive Government Regulation. In a free economy, the best solutions are derived from innovation, freedom from oppressive regulation, and incentives for continuous improvement in quality and performance. City governments, like

¹ [https://en.wikipedia.org/wiki/Draco_\(lawgiver\)](https://en.wikipedia.org/wiki/Draco_(lawgiver))

² *Miller v. U.S.* (1958), 357 U.S. 301, 307, Justice Brennan citing William Pitt, Earl of Chatham, *Speech on the Excise Bill*, House of Commons (March 1763), as quoted in Lord Brougham, *Historical Sketches of Statesmen Who Flourished in the Time of George III* (1855), I, p. 42.

³ https://en.wikipedia.org/wiki/Abraham_Lincoln%27s_Lyceum_address

the Italian city-states of the Machiavelli era, focused on increasing revenue from taxes and expanding their employment and influence. The result was continuous overreaching in unnecessary regulation of activities that should have been left very much alone.

The historical example of excessive regulation is the United Kingdom Locomotive Act of 1865 (the "Red Flag Act") which limited the speed of an automobile to only 4 mph, and required a man carrying a red flag to walk at least 60 yards in front of road vehicles when hauling multiple wagons.⁴

Decline in Court Quality caused by Budget Cuts. The recent economic recession resulted in severe cuts in California court funding which has resulted in questionable court decisions which some now view as precedents. The minimal court budget is noted by the Chief Justice:

Marking an annual budget clash between California's courts and the other two branches of government, California Supreme Court Chief Justice Tani G. Cantil-Sakauye used her State of the Judiciary speech on Monday to once again urge Sacramento to augment funding for the judiciary. ...As California sought to dig itself out of a deep fiscal hole during the recession, the court system was one recipient of wide-ranging budget cuts...."It's not enough. We fall short," Cantil-Sakauye said, with consequences that include "courthouse closures, reduced hours, and employees who are still, yes, on furlough." ... "After having the judicial branch suffer over a billion dollars in cuts over five years, we understand the need to innovate and accelerate, and find efficiencies and innovations has to move faster..."⁵

The Importance of Small Changes. The current public resistance to the Santa Monica Ordinance may be viewed as a canary in the coal mine which gives notice of impermissible conditions. The growing concern for city councils to tax and regulate short-term rentals appears to be driven by greed and the drive for power,⁶ with no recognition that the regulations and restrictions will damage the income of property owners and the entire local economy.

For Santa Monica, the new ordinance is calculated to cause **\$207 million loss of income** for 700 property owners over the next decade. Additional damages are caused to the local economy. Due to the multiplying effect of decreased

⁴ https://en.wikipedia.org/wiki/Locomotive_Acts

⁵ <http://www.sacbee.com/news/politics-government/capitol-alert/article16132724.html>

⁶ As stated by John E. D. Acton, "Power tends to corrupt, and absolute power corrupts absolutely." <http://www.britannica.com/biography/John-Emerich-Edward-Dalberg-Acton-1st-Baron-Acton>

spending by each recipient, the total economic effect will result in **\$728 million damage** to the local economy.

It is the slow erosion in minor increments that produces total destruction. It is continuous rust that destroys a steel battleship over three decades. The minor change, termed the difference limen, or the Weber-Fechner law, is the threshold at which a change is perceived. Accordingly, if only minor changes are introduced, the public is unlikely to notice the changes.⁷

History is instructive regarding the cumulative effect of seemingly moderate changes. For example, incremental changes resulted in the Third Reich, based on subtle shifts in laws combined with stringent enforcement over several years:

...Under pressure from politicians, industrialists, and the business community, President Paul von Hindenburg appointed Hitler as Chancellor of Germany on 30 January 1933. This event is known as the *Machtergreifung* (seizure of power). In the following months, the NSDAP used a process termed *Gleichschaltung* (co-ordination) to rapidly bring all aspects of life under control of the party.

...In March 1933, the Enabling Act, an amendment to the Weimar Constitution, passed in the Reichstag by a vote of 444 to 94. This amendment allowed Hitler and his cabinet to pass laws—**even laws that violated the constitution**—without the consent of the president or the Reichstag.

... Everyone and everything was monitored in Nazi Germany. Inaugurating and legitimising power for the Nazis was thus accomplished by their initial revolutionary activities, then through the improvisation and manipulation of the legal mechanisms available, **through the use of police powers** by the Nazi Party ... and finally by the expansion of authority for all state and federal institutions....⁸

The Future View. Correct decisions require emphasis on prediction of future income and costs, translated into the present value of future cash flow. In error, many decisions are based on historical data and prior decisions instead of the paradigm shifts in circumstances and the necessary focus on future results. For example, it is a fundamental error to drive a car by looking through the rear view mirror. A prior historical decision, with different circumstances, is not a valid

⁷ https://en.wikipedia.org/wiki/Just-noticeable_difference

⁸ https://en.wikipedia.org/wiki/Nazi_Germany

precedent. Clearly, it is erroneous to repeat a mistake somehow expecting a different result. Prudent decisions require focus on foreseeable future events, and the futurity of present decisions.

Approach. This book emphasizes basic objectives, alternatives, the influence of relevant federal law, and feasible approaches. The first step is an accurate *description* of current status, including even unpalatable facts. The next step is a *creative* election of alternative courses of action. Then, detailed discussion and analysis can allow dispassionate review of the foreseeable financial effect of alternative courses of action, based on specific decision criteria. Ethics must provide the essential foundation for selection of the decision criteria.

The basic problem is the failure to correct errors. Mistakes happen. Instead of defending mistakes, the correct approach is continuous improvement⁹ based on prompt correction of mistakes. Even seemingly sound management decisions are subject to distortion because of hidden or seemingly minor factors which cause a major change in the result.

With regard to correct design of a city ordinance, the emphasis must be on what is right, not on who is right.¹⁰ Decisions can be improved, based on carefully defined issues, accurate measurement, and abiding by the results of measurement, as contrasted to a confused welter of conflicting opinion.

⁹ See: W. Edwards Deming, *Out of the Crisis*. Cambridge: The MIT Press, 2000.

¹⁰ As stated by Thomas Huxley, "It is not who is right, but what is right, that is of importance." <http://www.brainyquote.com/quotes/quotes/t/thomashux1152612.html>

1. Discussion of Fifth Amendment Taking

As shown by recent U.S. Supreme Court decisions, there is increased emphasis on protection of fundamental rights and liberties protected by the U.S. Constitution, with focus on **substantive due process** and **government taking of property rights** which requires just compensation under the Fifth Amendment Taking Clause.

The decisions of the U.S. Supreme Court reflect a variety of approaches which are refined over several decades, and early dissents may later become the foundation for holdings. With regard to whether a specific city ordinance overreaches and goes too far, specific facts and circumstances are reviewed are reviewed by the Court to determine whether the regulations exceed permissible limits. The primary issues are whether the ordinance is within a specific prohibition of the Constitution, whether the affected persons are insufficiently protected by ordinary political processes,¹ the extent of diminution in property value for a partial taking,² and whether the facts indicate excessive, unfair, or unscrupulous exercise of state or city power.

Recent case decisions demonstrate the continuous refinement of the meaning of the Constitution, and whether specific city actions exceed permissible limits.³ The following is an overview of the basic concepts.

¹ See: *U.S. v. Carolene Products*, 304 U.S. 144 153 n. 4 (1938)

² The magnitude of the economic impact is viewed as a central factor. See: *Penn Central Transportation v. New York*, 438 U.S. 104 (1978). "...Some values ...must yield to the police power. But obviously the implied limitation must have its limits, or the contract and due process clauses are gone. One fact ... in determination of such limits is the extent of the diminution...while property may be regulated to a certain extent, if regulation goes to far it will be recognized as a taking..." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413-415 (1922).

³ Sequential refinements in decision criteria are shown by *Agins v. City of Tiburon*, 447 U.S. 255 (1980), *Monterey v. Del Monte Dunes at Monterey*, 526 U.S. 687, 704 (1999), and *Lingle v. Chevron*, 544 U.S. 528, 542 (2005).

Substantive Due Process. *Substantive* due process is a principle used to protect fundamental rights from government interference under the authority of the due process clauses of the Fifth and Fourteenth Amendments, which prohibit the federal and state governments from **depriving any person** of life, liberty, or **property**, without due process of law.⁴ By contrast, *procedural* due process is intended to determine whether a person had sufficient notice and the opportunity for a fair and impartial hearing.

Fifth Amendment. The Fifth Amendment Takings Clause requires *just compensation* when a government takes property rights. Although city zoning actions are authorized by the police power, the city overreaches and goes to far when the property owner incurs significant economic loss.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.** *U.S. Constitution, Fifth Amendment.*

Fourth Amendment. Individuals have fundamental **right of privacy**. Without a court order signed by a judge and supported by probable cause, **a state law or city ordinance cannot require** any company or individual to provide information which would allow identification of persons who might be in violation of a law.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. *U.S. Constitution, Fourth Amendment.*

⁴ See: https://en.wikipedia.org/wiki/Substantive_due_process
Also see: https://www.law.cornell.edu/anncon/html/amdt5bfrag4_user.html

Supremacy. The U.S. Constitution and Federal Statutes are dominant over state or local law. Any state law or city ordinance which conflicts with the U.S. Constitution or federal statutes is void, *ab initio*.

...This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, **shall be the supreme law of the land; and the judges in every state shall be bound thereby**, anything in the constitution or laws of any state to the contrary notwithstanding.... *U.S. Constitution, Article Six*

Fourteenth Amendment. The Fourteenth Amendment requires the states to honor the fundamental rights granted by the U.S. Constitution.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. **No state shall make or enforce any law which shall abridge the privileges or immunities** of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws. *U.S. Constitution, Fourteenth Amendment, Section One.*

Discussion of Property Rights

Property is defined as a bundle of rights, which includes not only the tangible land and improvements, but also the intangible rights, such as the right to rent the property without unreasonable restrictions. The Fifth Amendment term “property” is defined as the entire group of rights owned by a person, such as the right to possess, the right to use, the right to improve, and the right to future income from rental.⁵

⁵ *United States v. General Motors Corp.*, 323 U.S. 373, 377-78 (1945).

The ownership of property rights without unlawful deprivation is essential. As noted by William Blackstone:

So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community, William Blackstone, I *Commentaries on the Law of England* 139 (1765). Also see: *Conger v. Pierce County*, 198 P. 377, 379 (Wash. 1921).

This concept is emphasized by James Madison:

Government is instituted to protect property of every sort This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own. 14 *Papers of James Madison* 266 (Robert A. Rutland et al. eds., 1983).

For several critical cases, the U.S. Supreme Court has recognized overreaching by the exercise of government police power and the critical role of the U.S. Constitution to protect property rights. The takings clause documents the fundamental entitlement of protected status for property rights.⁶

Modern Supreme Court regulatory taking cases often attribute the origin of regulatory taking analysis to Justice Holmes' opinion in the landmark case *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922) where Holmes stated that **"if regulation goes too far it will be recognized as taking."**

The police power "must have its limits" and "[w]hen it reaches a certain magnitude, in most if not in all cases there be an exercise of eminent domain and compensation to sustain the act." This point was emphasized in a later case by Justice Brennan:

Police power regulations such as zoning ordinances and other land-use restrictions can **destroy the use and enjoyment of property in order to promote the public good** just as effectively as formal condemnation or physical invasion of property. *San Diego Gas & Elec. Co. v. City of San Diego*. 450 U.S. 621, 652 (1981).

⁶ Lawrence H. Tribe, *American Constitutional Law* (2d ed. 1988). 608. See: *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972). Also see: John Lewis, *A Treatise on the Law of Eminent Domain in the United States* (3rd edition, 1909).

More recently, the Supreme Court expressly reaffirmed this position:

[I]f . . . the uses of private property were subject to unbridled, uncompensated qualification under the police power, 'the natural tendency of human nature would be to extend the qualification more and more until at last private property disappear[ed], *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992) (quoting *Pennsylvania Coal*, 260 U.S. at 415).

The imprecise and highly deferential rational basis standard of *Agins* and *Penn Central* is based on the proposition that providing a benefit can cure the harm, and that it is all right to let a criminal keep your cash because he will allow you to remain alive.⁷

Current journal articles discuss the legal challenges to short-term rental restrictions.⁸ Although a **rational basis is required** to support local ordinances, and although the courts often assume that a rational basis must exist, there is a significant lack of evidence to support current city ordinances that restrict property rental of less than 30 days.⁹

The issue is whether a specific city ordinance **goes to far** and results in overreaching. The court must weigh the evidence to determine if the government action may be classified as overreaching. The meaning of a law may be determined only by a judge.¹⁰

The facts and circumstances determine whether the ordinance fits one of

⁷ Douglas W. Kmiec, Inserting the Lost Remaining Pieces Into the Takings Puzzle, 38 *Wm. & Mary L. Rev.* 995, 1018-19 (1997)

⁸ Jamila Jefferson-Jones, Airbnb and the Housing Segment of the Modern Sharing Economy: Are Short-Term Rental Restrictions an Unconstitutional Taking, 42 *Hastings Const. L.Q.* 557 (2014-2015). Also see: Roberta A. Kaplan & Michael L. Nadler, Airbnb: A Case Study in Occupancy Regulation and Taxation, 82 *U Chi L Rev Dialogue* 103 (2015). In addition, see: Roberta A. Kaplan, Regulation and the Sharing Economy, *New York Law Journal* (2014).

⁹ The rational basis to support city ordinances is typically the unsupported assertion of facts which are contrary to the actual situation. Although fraud upon the Court, this deceptive approach results in suspension of disbelief and acceptance of an absurdity. See: "...in the big lie there is always a certain force of credibility..." https://en.wikiquote.org/wiki/Joseph_Goebbels.

¹⁰ It is emphatically the province and duty of the judicial department to say what the law is....a law repugnant to the constitution is void....the courts ...are bound by that instrument. *Marbury v. Madison*, 5 U.S. 137, 177-179 (1802).

the following classifications:

- (1) Mere permissible regulation that is authorized by the police power. For the regulation to be uncompensated, it must have only *de minimus* effects on income or property value.¹¹
- (2) A draconian regulation which goes to far, as shown by the *significant loss* of future cash flow and resulting property value for the property owner.

This critical classification is solved by measurement, and abiding by the results of measurement. As with many controversial issues involving economics and law, the problem is solved by calculation of the present value of foreseeable loss of future cash for the property owner. The calculation is based on the cash received under two conditions (1) without regulation (2) with regulation. The difference between the two values is the loss of value for the property owner.

Valuation Issues. Significantly, the U.S. Supreme Court has recognized that refined calculation methods allow precise valuation of property rights, based on the present value of future cash flow, even for intangible assets.¹² Dominant federal court decisions hold that loss of marketability results in an additional discount in value based on ownership of a partial interest.¹³

In summary, it is not reasonably questioned that a city ordinance which prevents or unduly restricts short-term rentals results in substantial economic damages, both for the property owners and for the local community. Because of the magnitude of the diminution in value, the result is a violation of substantive due process and requires just compensation for the government taking.

¹¹ William B. Stoebuck, A General Theory of Eminent Domain, 41 *Wash. L. Rev.* 553, 569-71 (1972).

¹² *Newark Morning Ledger v. United States*, 507 U.S. 546 (1993).

¹³ For a summary of relevant federal decisions regarding partial interest discounts, see: Farhad Agdhami, Estate Planning for Real Estate Investors (2008), *William & Mary Annual Tax Conference*, paper 47. <http://scholarship.law/wm.edu/tax/47>.

Discussion of the Santa Monica Ordinance

The Santa Monica Ordinance is shown as an example of the magnitude of economic damages caused by restrictive and draconian city ordinances which pretend to benefit the public, but are actually based on campaign contributions and special interests, such as hotel labor unions and the public interest in low income housing. This type of ordinance is of national importance, because many cities are now proposing similar ordinances.

Economic Damages. The data demonstrates substantial diminution in income and property value resulting from the Santa Monica Ordinance. The detailed calculations on page 45 demonstrate that the foreseeable economic damage over the next decade to Santa Monica property owners caused by the ordinance is \$207 million, and the **foreseeable economic damage to local economy is \$728 million.**

The economic factors that support the detailed calculation of foreseeable economic damages are shown in *Exhibit A*. The discussion of the method used for calculation of economic damages is shown at page 37. The verbatim wording of the Santa Monica Ordinance is shown by *Exhibit B*, at page 95. This ordinance is a clear violation of California Constitution Article XIII C, which requires voter approval for a new local tax. The local tax is new because a false classification of a home as a *de facto* hotel does not make a home a hotel. The verbatim wording of the California Senate Bill 593, is shown by *Exhibit C*, at page 107. This Bill proposes government actions which clearly violate Fourth Amendment privacy rights.

The economic magnitude of short-term rentals is substantial. As shown at *Exhibit D*, pages 117-124, for the first seven months of 2015, the gross revenue for Airbnb hosts in the City of Los Angeles was over \$65 million, not including gross revenue for HomeAway, Flip Key, and other internet booking agencies.

Although data for cities outside of Los Angeles County are not included in this book, it is clear that it is in the national interest to maintain liberties guaranteed by the U.S. Constitution, and to prevent the substantial economic damage that would be caused by overly restrictive and draconian local laws.

Overview of Recent Court Decisions

In *Pallazo*, the Court recognized that a taking occurs if the government even limits property use. Although property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking.

Even if the regulation merely reduces the property value, a taking nonetheless may have occurred, depending on the economic effect on the landowner, the extent of interference with reasonable return on investment, and the character of the government action. The Takings Clause allows a landowner to assert that a particular exercise of the State's regulatory power is so unreasonable or onerous as to compel compensation.

An ordinance which causes future loss of income, such as a new zoning ordinance, is a taking based on the decline in the value of land even without a physical destruction of all of the improvements. An ordinance which is unreasonable does not become less so through passage of time or title. See: *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393 (1922) at 415. Also see: *Penn Central Transp. Co. v. New York City*, 438 U. S. 104 (1978), at 124.

***Palazzolo v. Rhode Island*, 533 U.S. 606 (2001)**

...Petitioner filed an inverse condemnation action in Rhode Island Superior Court, asserting that the State's wetlands regulations, as applied by the Council to his parcel, had taken the property without compensation in violation of the Fifth and Fourteenth Amendments. See *id.*, at 45. The suit alleged the Council's action deprived him of "economically, beneficial use" of his property, *ibid.*, resulting in a total taking [616] requiring compensation under *Lucas v. South Carolina Coastal Council*, 505 U. S. 1003 (1992). He sought damages in the amount of \$3,150,000, a figure derived from an appraiser's estimate as to the value of a 74-lot residential subdivision. The State countered with a host of defenses. After a bench trial, a justice of the Superior Court ruled against petitioner, accepting some of the State's theories. App. to Pet. for Cert. B-1 to B-13.

The Rhode Island Supreme Court affirmed. 746 A. 2d 707 (2000). Like the Superior Court, the State Supreme Court recited multiple grounds for rejecting petitioner's suit. The court held, first, that petitioner's takings claim was not ripe, *id.*, at 712-715; second, that

petitioner had no right to challenge regulations predating 1978, when he succeeded to legal ownership of the property from SGI, *id.*, at 716; and third, that the claim of deprivation of all economically beneficial use was contradicted by undisputed evidence that he had \$200,000 in development value remaining on an upland parcel of the property, *id.*, at 715. In addition to holding petitioner could not assert a takings claim based on the denial of all economic use, the court concluded he could not recover under the more general test of *Penn Central Transp. Co. v. New York City*, 438 U. S. 104 (1978). On this claim, too, the date of acquisition of the parcel was found determinative, and the court held he could have had "no reasonable investment backed expectations that were affected by this regulation" because it predated his ownership, 746 A. 2d, at 717; see also *Penn Central*, *supra*, at 124.

We disagree with the Supreme Court of Rhode Island as to the first two of these conclusions; and, we hold, the court was correct to conclude that the owner is not deprived of all economic use of his property because the value of upland portions is substantial. We remand for further consideration of the claim under the principles set forth in *Penn Central*.

The Takings Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226 (1897), prohibits the government from taking private property for public use without just compensation. The clearest sort of taking occurs when the government encroaches upon or occupies private land for its own proposed use. Our cases establish that even a minimal "permanent physical occupation of real property" requires compensation under the Clause. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U. S. 419, 427 (1982). In *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393 (1922), **the Court recognized that there will be instances when government actions do not encroach upon or occupy the property yet still affect and limit its use to such an extent that a taking occurs. In Justice Holmes' well-known, if less than self-defining, formulation, "while property may be regulated to a certain extent, if a regulation goes too far it will be recognized as a taking."** *Id.*, at 415.

Since *Mahon*, we have given some, but not too specific, guidance to courts confronted with deciding whether a particular government action goes too far and effects a regulatory taking. First, we have observed, with certain qualifications, see *infra*, at 629-630, that a regulation which "denies all economically beneficial or productive use of land" will require **compensation** under the Takings Clause. *Lucas*, 505 U. S., at 1015; see also *id.*, at 1035 (Kennedy, J., concurring); *Agins v. City of Tiburon*, 447 U. S. 255, 261 (1980).

Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. *Penn Central*, *supra*, at 124. These inquiries are informed by the purpose of the [618] Takings Clause, which is to prevent the government from "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U. S. 40, 49 (1960).

The right to improve property, of course, is subject to the reasonable exercise of state authority, including the enforcement of valid zoning and land-use restrictions. See *Pennsylvania Coal Co.*, 260 U. S., at 413 ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law"). **The Takings Clause, however, in certain circumstances allows a landowner to assert that a particular exercise of the State's regulatory power is so unreasonable or onerous as to compel compensation. Just as a prospective enactment, such as a new zoning ordinance, can limit the value of land without effecting a taking because it can be understood as reasonable by all concerned, other enactments are unreasonable and do not become less so through passage of time or title.**

Were we to accept the State's rule, the postenactment transfer of title would absolve the State of its obligation to defend any action restricting land use, no matter how extreme or unreasonable. A State would be allowed, in effect, to put an expiration date on the Takings Clause. This ought not to be the rule. Future generations, too, have a right to challenge unreasonable limitations on the use and value of land.

Nor does the justification of notice take into account the effect on owners at the time of enactment, who are prejudiced as well. Should an owner attempt to challenge a new regulation, but not survive the process of ripening his or her claim (which, as this case demonstrates, will often take years), under the proposed rule the right to **compensation** may not be asserted by an heir or successor, and so may not be asserted at all. The State's rule would work a critical alteration to the nature of property, as the newly regulated landowner is stripped of the ability to transfer the interest which was possessed prior to the regulation.

The State may not by this means secure a windfall for itself. See *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U. S. [628] 155, 164 (1980) ("[A] State, by *ipse dixit*, may not transform private property into public property without **compensation**"); cf. Ellickson, Property in

Land, 102 Yale L. J. 1315, 1368-1369 (1993) (right to transfer interest in land is a defining characteristic of the fee simple estate). The proposed rule is, furthermore, capricious in effect. The young owner contrasted with the older owner, the owner with the resources to hold contrasted with the owner with the need to sell, would be in different positions. The Takings Clause is not so quixotic. A blanket rule that purchasers with notice have no compensation right when a claim becomes ripe is **too blunt an instrument to accord with the duty to compensate for what is taken.**

Direct condemnation, by invocation of the State's power of eminent domain, presents different considerations from cases alleging a taking based on a burdensome regulation. In a direct condemnation action, or when a State has physically invaded the property without filing suit, the fact and extent of the taking are known. In such an instance, it is a general rule of the law of eminent domain that any award goes to the owner at the time of the taking, and that the right to compensation is not passed to a subsequent purchaser. See *Danforth v. United States*, 308 U. S. 271, 284 (1939); 2 Sackman, Eminent Domain, at § 5.01[5][d][i] ("It is well settled that when there is a taking of property by eminent domain in compliance with the law, it is the owner of the property *at the time of the taking* who is entitled to compensation").

A challenge to the application of a land-use regulation, by contrast, does not mature until ripeness requirements have been satisfied, under principles we have discussed; until this point an inverse condemnation claim alleging a regulatory taking cannot be maintained. It would be illogical, and unfair, to bar a regulatory takings claim because of the postenactment transfer of ownership where the steps necessary to make the claim ripe were not taken, or could not have been taken, by a previous owner. [629]

There is controlling precedent for our conclusion. *Nollan v. California Coastal Comm'n*, 483 U. S. 825 (1987), presented the question whether it was consistent with the Takings Clause for a state regulatory agency to require oceanfront landowners to provide lateral beach access to the public as the condition for a development permit. The principal dissenting opinion observed it was a policy of the California Coastal Commission to require the condition, and that the Nollans, who purchased their home after the policy went into effect, were "on notice that new developments would be approved only if provisions were made for lateral beach access." *Id.*, at 860 (Brennan, J., dissenting). A majority of the Court rejected the proposition. "So long as the Commission could not have deprived the prior owners of the easement without compensating them," the Court reasoned, "the prior owners must be understood to have transferred their full property rights in conveying the lot." *Id.*, at 834, n. 2.

It is argued that *Nollan*'s holding was limited by the later decision in *Lucas v. South Carolina Coastal Council*, 505 U. S. 1003 (1992). In *Lucas* the Court observed that a landowner's ability to recover for a government deprivation of all economically beneficial use of property is not absolute but instead is confined by limitations on the use of land which "inhere in the title itself." *Id.*, at 1029. This is so, the Court reasoned, because the landowner is constrained by those "restrictions that background principles of the State's law of property and nuisance already place upon land ownership." *Ibid.*

It is asserted here that *Lucas* stands for the proposition that any new regulation, once enacted, becomes a background principle of property law which cannot be challenged by those who acquire title after the enactment. We have no occasion to consider the precise circumstances when a legislative enactment can be deemed a background principle of state law or whether those circumstances are present here. **It suffices to say that a regulation that otherwise [630] would be unconstitutional absent compensation is not transformed into a background principle of the State's law by mere virtue of the passage of title.** This relative standard would be incompatible with our description of the concept in *Lucas*, which is explained in terms of those common, shared understandings of permissible limitations derived from a State's legal tradition, see *id.*, at 1029-1030.

A regulation or common-law rule cannot be a background principle for some owners but not for others. The determination whether an existing, general law can limit all economic use of property must turn on objective factors, such as the nature of the land use proscribed. See *id.*, at 1030 ("The 'total taking' inquiry we require today will ordinarily entail . . . analysis of, among other things, the degree of harm to public lands and resources, or adjacent private property, posed by the claimant's proposed activities"). A law does not become a background principle for subsequent owners by enactment itself. *Lucas* did not overrule our holding in *Nollan*, which, as we have noted, is based on essential Takings Clause principles. ***Palazzolo v. Rhode Island*, 533 U.S. 606 (2001)**

In *Goldblatt*, the U.S. Supreme Court noted that the Fifth Amendment **requires compensation for property taken for public use**. However, if the government proves that the prohibition is necessary due *to risk of injury to health, morals, or safety* of the community, or proves *noxious use* of the property, then the taking does not require compensation.

For short term rental circumstances, with prior screening of the guest background and reviews from prior hosts, there is NO reasonable risk of injury to health, morals, or safety. Accordingly, due to lack of noxious use, there is NO valid exercise of police power for short term rental circumstances.

***Goldblatt v. Hempstead*, 369 U.S. 590 (1962)**

...Concededly the ordinance completely prohibits a beneficial use to which the property has previously been devoted. However, such a characterization does not tell us whether or not the ordinance is unconstitutional. It is an oft-repeated truism that every regulation necessarily speaks as a prohibition. If this ordinance is otherwise a valid exercise of the town's police powers, the fact that it deprives the property of its most beneficial use does not render it unconstitutional. *Walls v. Midland Carbon Co.*, 254 U. S. 300 (1920); *Hadacheck v. Sebastian*, 239 U. S. [593] 394 (1915); *Reinman v. Little Rock*, 237 U. S. 171 (1915); *Mugler v. Kansas*, 123 U. S. 623 (1887); see *Laurel Hill Cemetery v. San Francisco*, 216 U. S. 358 (1910).

As pointed out in *Mugler v. Kansas*, *supra*, at 668-669: "[T]he present case must be governed by principles that do not involve the power of **eminent domain, in the exercise of which property may not be taken for public use without compensation**. A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit.

Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the State that its use by any one, for certain forbidden purposes, is prejudicial to the public interests. . . . **The power which the States have of prohibiting such use by individuals of their property as will be prejudicial to the health, the morals, or the safety of the public**, is not—and, consistently with the existence and safety of organized society, cannot be—burdened with the condition that the State

must compensate such individual owners for pecuniary losses they may sustain, by reason of their **not being permitted, by a noxious use of their property, to inflict injury upon the community.**" Nor is it of controlling significance that the "use" prohibited here is of the soil itself as opposed to a "use" upon the soil, cf. *United States v. Central Eureka Mining Co.*, 357 U. S. 155 (1958), or that the use prohibited is arguably not a common-law nuisance, e. g., *Reinman v. Little Rock*, *supra*. [594]

This is not to say, however, that governmental action in the form of regulation cannot be so onerous as to constitute a taking which constitutionally requires compensation. *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393 (1922); see *United States v. Central Eureka Mining Co.*, *supra*. **There is no set formula to determine where regulation ends and taking begins. Although a comparison of values before and after is relevant**, see *Pennsylvania Coal Co. v. Mahon*, *supra*, it is by no means conclusive, see *Hadacheck v. Sebastian*, *supra*, where a diminution in value from \$800,000 to \$60,000 was upheld.

How far regulation may go before it becomes a taking we need not now decide, for **there is no evidence in the present record** which even remotely suggests that prohibition of further mining will reduce the value of the lot in question.^[3] Indulging in the usual presumption of constitutionality, *infra*, p. 596, we find no indication that the prohibitory effect of Ordinance No. 16 is sufficient to render it an unconstitutional taking if it is otherwise a valid police regulation.

The question, therefore, narrows to whether the prohibition of further excavation below the water table is a valid exercise of the town's police power. The term "police power" connotes the time-tested conceptional limit of public encroachment upon private interests. Except for the substitution of the familiar standard of "reasonableness," **this Court has generally refrained from announcing any specific criteria.** The classic statement of the rule in *Lawton v. Steele*, 152 U. S. 133, 137 (1894), is still valid today:

"To justify the State in . . . interposing its authority in behalf of the public, it must appear, first, that [595] the interests of the public . . . require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals."

Even this rule is not applied with strict precision, for this Court has often said that "debatable questions as to reasonableness are not for the courts but for the legislature" E. g., *Sproles v. Binford*, 286 U. S. 374, 388 (1932). The ordinance in question was **passed as a safety measure**, and the town is attempting to uphold it on that basis. To evaluate its reasonableness we therefore need to know such things as **the nature of the menace against which it will protect, the availability**

and effectiveness of other less drastic protective steps, and the loss which appellants will suffer from the imposition of the ordinance.....

Although one could imagine that preventing further deepening of a pond already 25 feet deep would have a *de minimis* effect on public safety, we cannot say that such a conclusion is compelled by facts of which we can take notice. Even if we could draw such a conclusion, [596] we would be unable to say the ordinance is unreasonable; for all we know, the ordinance may have a *de minimis* effect on appellants.

Our past cases leave no doubt that appellants had the burden on "reasonableness." *E. g., Bibb v. Navajo Freight Lines*, 359 U. S. 520, 529 (1959) (exercise of police power is presumed to be constitutionally valid); *Salsburg v. Maryland*, 346 U. S. 545, 553 (1954) (the presumption of reasonableness is with the State); *United States v. Carolene Products Co.*, 304 U. S. 144, 154 (1938) (exercise of police power will be upheld if any state of facts either known or which could be reasonably assumed affords support for it).

This burden not having been met, the prohibition of excavation on the 20-acre-lake tract must stand as a valid police regulation. *Goldblatt v. Hempstead*, 369 U.S. 590 (1962)

The Fifth Amendment protects private property by providing that any government action that decreases the value of the property or decreases the foreseeable income from use of the property requires just compensation for the taking. Although this absolute protection is argued to be qualified by the police power of a city, human nature will extend the absolute protection more and more until at last private property disappears. Such city intrusion on property rights is prohibited by the Fifth Amendment. Generally, although property rights may be regulated to a certain extent, **if regulation goes too far it will be recognized as a taking**. Even a strong public desire to improve the public condition still requires the government to pay for the change.

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)

The protection of private property in the Fifth Amendment presupposes that it is wanted for public use, but provides that **it shall not be taken for such use without compensation**. A similar assumption is made in the decisions upon the Fourteenth Amendment. *Hairston v. Danville & Western Ry. Co.*, 208 U.S. 598, 605. When this seemingly absolute protection is found to be qualified by the police power, **the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States.**

The general rule at least is, that while property may be regulated to a certain extent, **if regulation goes too far it will be recognized as a taking**. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go — and if they go beyond the general rule, [416] whether they do not stand as much upon tradition as upon principle. *Bowditch v. Boston*, 101 U.S. 16. In general it is **not** plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbor's shoulders. *Spade v. Lynn & Boston R.R. Co.*, 172 Mass. 488, 489. **We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.** As we already have said, this is a question of degree — and therefore cannot be disposed of by general propositions. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922)

As explained in *Coniston*, property is a bundle of rights, and if the state confers rights with one hand and takes them away with the other by a zoning decision that deprives the owner of a property right, then the property owner is denied substantive due process, even without considering the Fifth Amendment just compensation.

In the context of judicial review, an ordinance that is not "shown to have any `substantial relation to the public health, safety, morals or general welfare'" and that "cuts deeply into a fundamental right associated with the ownership of residential property" violates the Constitution. See: *Moore v. City of East Cleveland*, *supra*, 431 U.S. at 520, 97 S.Ct. at 1946.

***Coniston Corp. v. Village of Hoffman Estates,*
844 F.2d 461 (7th Cir 1988).**

The taking is complete when it occurs, and the duty to pay just compensation arises then, see, e.g., *First Evangelical Lutheran Church v. County of Los Angeles*, ___ U.S. ___, 107 S.Ct. 2378, 2389 n. 10, 96 L.Ed.2d 250 (1987), **but the suit for just compensation is not ripe until it is apparent that the state does not intend to pay compensation,** *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194, 105 S.Ct. 3108, 3121, 87 L.Ed.2d 126 (1985); *Unity Ventures v. County of Lake*, 841 F.2d 770, 773-74 (7th Cir.1988). These plaintiffs have not explored the possibility of obtaining compensation for an alleged regulatory taking. In fact, they do [464] not want compensation; they want their site plan approved.

One might have thought that the takings clause would occupy the field of constitutional remedies for governmental actions that deprive people of their property, and hence that the plaintiffs' waiver of their takings claim would drag their due process claims down with it. But this is not correct; pushed to its logical extreme, the argument would read "property" out of the due process clause of the Fifth and Fourteenth Amendments. Even limited to claims of denial of substantive due process the argument may fail.

Rather than being viewed simply as a limitation on governmental

power the takings clause could be viewed as the source of a governmental privilege: to take property for public use upon payment of the market value of that property, since "just compensation" has been held to be satisfied by payment of market value, see, e.g., *United States v. Reynolds*, 397 U.S. 14, 16, 90 S.Ct. 803, 805, 25 L.Ed.2d 12 (1970).

Compensation in the constitutional sense is therefore not full compensation, for market value is not the value that every owner of property attaches to his property but merely the value that the marginal owner attaches to *his* property. Many owners are "intramarginal," meaning that because of relocation costs, sentimental attachments, or the special suitability of the property for their particular (perhaps idiosyncratic) needs, they value their property at more than its market value (i.e., it is not "for sale"). Such owners are hurt when the government takes their property and gives them just its market value in return. The taking in effect confiscates the additional (call it "personal") value that they obtain from the property, but this limited confiscation is permitted provided the taking is for a public use.

It can be argued that if the taking is not for a public use, it is unconstitutional, but perhaps not as a taking; for all the takings clause says is "nor shall private property be taken for public use, without just compensation." This language specifies a consequence if property is taken for a public use but is silent on the consequences if property is taken for a private one. Perhaps the effect of this silence is to dump the case into the due process clause. The taking would then be a deprivation of property without due process of law. The victim could bring suit under section 1983 against the governmental officials who took or are threatening to take his property, seeking an injunction against the taking (or an order to return the property if, it has been taken already — subject to whatever defense the Eleventh Amendment might afford against such a remedy) or full tort damages, not just market value.

There are two objections to this approach. First, the takings clause may be broad enough to take care of the problem without the help of the due process clause. The Supreme Court may believe that **the takings clause, of its own force, forbids any governmental taking not for a public use, even if just compensation is tendered....** see, e.g., *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 241, 104 S.Ct. 2321, 2329, 81 L.Ed.2d 186 (1984), though it may be inadvertent, and there is language in some cases that looks the other way ...compare *First English Evangelical Lutheran Church v. County of Los Angeles*, ___ U.S. ___, 107 S.Ct. 2378, 2385, 96 L.Ed.2d 250 (1987), with *id.* 107 S.Ct. at 2386 (takings clause requires compensation "in the event of otherwise proper interference amounting to a taking").

In *Midkiff* the Court cited, as an example of a case where it had "invalidated a compensated taking of property for lack of a justifying public purpose," 467 U.S. at 241, 104 S.Ct. at 2329, a case (*Missouri Pac. Ry. v. Nebraska*, 164 U.S. 403, 417, 17 S.Ct. 130, 135, 41 L.Ed. 489 (1896)) where in fact the Court, after finding there was no public use, had held that the state had denied the owner due process of law. In other words, once the privilege created by the takings clause was stripped away, the state was exposed as having taken a person's property without due process of law. But this was before the takings clause had been held applicable to the states (via the due process clause of the Fourteenth Amendment) in *Chicago, Burlington & [165] Quincy R.R. v. City of Chicago*, 166 U.S. 226, 236, 17 S.Ct. 581, 584, 41 L.Ed. 979 (1897) — though only a year before.

It seems odd that the takings clause would require just compensation when property was taken for a public use yet grant no remedy when the property was taken for a private use, although the semantics of the clause are consistent with such an interpretation, as we have seen. Yet well after the takings clause was deemed absorbed into the due process clause of the Fourteenth **Amendment**, the Supreme Court reviewed a zoning ordinance for conformity to substantive due process. See *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

Justice Stevens has said that the Court in *Euclid* "fused the two express constitutional restrictions on any state interference with private property — that property shall not be taken without due process nor for a public purpose without just compensation — into a single standard." *Moore v. City of East Cleveland*, 431 U.S. 494, 514, 97 S.Ct. 1932, 1943, 52 L.Ed.2d 531 (1977) (concurring opinion).

The other objection to the due process route in a case such as the present one is that it depends on the idea of "substantive" due process. This is the idea that depriving a person of life, liberty, or property can violate the due process clause of the Fifth and Fourteenth Amendments even if there are no procedural irregularities — even if, for example, the state after due deliberation has passed a statute establishing procedures for taking private homes and giving them to major campaign contributors or people with red hair, and in taking the plaintiff's home has complied scrupulously with the statute's procedural requirements.

Substantive due process is a tenacious but embattled concept. Text and history, at least ancient history, are against it, though perhaps not decisively. (See generally Jurow, *Untimely Thoughts: A Reconsideration of the Origins of Due Process of Law*, 19 Am.J. Legal Hist. 265 (1975).)

A provision which states that life, liberty, or property may not be taken without due process of law implies that life, liberty, or property *can* be taken with due process of law, and hence that the only limitations are procedural ones.

The term "due process of law" has been traced back to a fourteenth-century English statute, in which the term plainly referred to procedure rather than substance. See 28 Edw. III, ch. 3 (1354) ("no man ... shall be put out of land ..., nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought into answer by due process of law"). In the seventeenth century Sir Edward Coke confused the picture by equating the term to Magna Carta's much vaguer expression "by the law of the land." The Supreme Court adopted Coke's approach in *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 276, 15 L.Ed. 372 (1856), pointing out that the Northwest Ordinance and several state constitutions had used the Magna Carta language and implying that the terminology was interchangeable in the Fifth Amendment as well. ...

It also and by the same token invites the federal courts to sit in judgment on almost all state action — including, to come back to the present case, all zoning decisions. For it is tempting to view every zoning decision that is adverse to the landowner and in violation of state law as a deprivation of property.

Property is not a thing, but a bundle of rights, and if the state confers rights with one hand and takes them away with the other, by a zoning decision that by violating [466] state law deprives the owner of a property right and not just a property interest (the owner's financial interest in being able to employ his land in its most valuable use), why is it not guilty of denying substantive due process?

No one thinks substantive due process should be interpreted so broadly as to protect landowners against erroneous zoning decisions. But it is difficult to come up with limiting concepts that are not completely ad hoc. Justice Stevens tried — though in the context of judicial review of an ordinance, rather than of an individual decision applying an ordinance — in his concurring opinion in *Moore v. City of East Cleveland*, *supra*, 431 U.S. at 520, 97 S.Ct. at 1946, where he suggested that **an ordinance that is not "shown to have any 'substantial relation to the public health, safety, morals or general welfare'" and that "cuts deeply into a fundamental right associated with the ownership of residential property" violates the Constitution.**

The present case is so remote from a plausible violation of substantive due process that we need not decide whether, or to precisely what extent, the concept limits takings by state and local governments; or, finally, whether the plaintiffs can force us to confront difficult

questions of substantive due process by their decision to waive a seemingly more straightforward claim under the takings clause.

The Village of Hoffman Estates did not *take* the plaintiffs' land (or in the language of the due process clause, deprive them of the land) for a *private* (hence presumptively unreasonable) purpose, so even if we assume that if both conditions were fulfilled the taking or deprivation would violate the due process clause, the plaintiffs cannot prevail.

As to whether there was a deprivation: Granted, the rejection of the plaintiffs' site plan probably reduced the value of their land. The plan must have represented their best guess about how to maximize the value of the property, and almost certainly a better guess than governmental officials would make even if the officials were trying to maximize that value, which of course they were not. But the plaintiffs **do not even argue that the rejection of the site plan reduced the value of their parcel much**, let alone that the parcel will be worthless unless it can be used to create 181,000 square feet of office space.

A taking is actionable under the takings clause even if it is of just a sliver of the owner's property (e.g., a one-foot strip at the back of a 100-acre estate), see *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982), and we can assume that the same thing is true under the due process clause. But in cases under the takings clause the courts distinguish between **taking away all of the owner's rights to a small part** of his land and **taking away (through regulation) a few of his rights to all of his land**, and grant much broader protection in the first case. With *Loretto* compare *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668, 674 and n. 8, 96 S.Ct. 2358, 2362 and n. 8, 49 L.Ed.2d 132 (1976); *Barbican v. Panagis*, 694 F.2d 476, 483-85 (7th Cir.1982), and cases cited there.

The plaintiffs in this case have been deprived of their "right" to create 181,000 square feet of office space on a 17-acre parcel of a much larger tract, and that deprivation is a limited, perhaps minimal, incursion into their property rights. If so it is not a deprivation at all, in the constitutional sense, and the due process clause is not in play. See *Wells Fargo Armored Service Corp. v. Georgia Public Service Comm'n*, 547 F.2d 938, 941 (5th Cir.1977); cf. *Brown v. Brienen*, 722 F.2d 360, 364 (7th Cir.1983) (dictum); *York v. City of Cedartown*, 648 F.2d 231 (5th Cir.1981) (per curiam). ***Coniston Corp. v. Village of Hoffman Estates*, 844 F.2d 461 (7th Cir 1988)**

Although some judges might view *Carmel* as a precedent, the *Carmel* decision merely reflects an incorrect decision which was not appealed to the U.S. Supreme Court. In *Carmel*, the Court of Appeals 6th District held that a local ordinance prohibiting short term rentals in a R-1 zone was not void under procedural due process grounds. The following issues distinguish *Carmel*, so *res judicata* or collateral estoppel are not applicable to the Santa Monica case.

1. In *Carmel*, the court comments regarding Fifth Amendment taking were merely dicta, because the court remarks were not necessary for the decision, *Redevelopment Agency v. Gilmore*, 38 Cal.3d 790, 799. Judicial estoppel cannot apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate that issue in the earlier case. *Montana v. United States* (1979) 440 U.S. 147 at 153; *Blonder-Tongue Laboratories v. University of Illinois Foundation* (1971) 401 U.S. 313, 328-329. Although the court discussed Fifth Amendment taking, the Plaintiffs failed to present evidence or arguments to support their potential Fifth Amendment claims. There is "... a sound judicial policy against applying collateral estoppel in cases which concern matters of important public interest...", *Chern v. Bank of America* (1976) 15 Cal.3d 866, 872.

2. The *Carmel* circumstances are not sufficiently similar to the Santa Monica circumstances. *Carmel* concerned only R-1 zoning restrictions, but Santa Monica has conceded specific types of short term rentals in R-1 zone.

3. *Carmel* is a 6th District decision which is not binding on Santa Monica, which is in the 2nd District. There is NO California Supreme Court decision and NO U.S. Supreme Court decision on the *Carmel* issues.

4. Zoning regulations are founded in the state police power, which is justified only if this power clearly supports the public welfare. Police power is limited by the specific facts and circumstances, *Euclid v. Ambler Co.*, *supra*, 272 U.S. at p. 387. A void city ordinance is demonstrated by *de minimus* public welfare benefit compared to substantial economic damages for property owners.

5. When a city ordinance conflicts with a Constitutional right, the ordinance is deemed facially invalid and unconstitutional, *Los Angeles v. Patel*, 135 S.Ct. 2443 (2015), decided on Forth Amendment grounds.

Ewing v. City of Carmel-By-The-Sea,
34 Cal.App.3d 1579 (6th Cir 1991)

Plaintiff homeowners challenge the constitutionality of a zoning ordinance prohibiting transient commercial use of residential property for remuneration for less than 30 consecutive days. The trial court upheld the ordinance. We affirm.

Plaintiffs are owners of single-family, residential property zoned R-1 in the City of Carmel-by-the-Sea. Plaintiffs challenge Ordinance No. 89-17...May 1989...The ordinance prohibits the "Transient Commercial Use of Residential Property for Remuneration ... in the R-1 District."

The ordinance defines the "transient commercial use of residential property" as "the commercial use, by any person, of Residential Property for bed and breakfast, hostel, hotel, inn, lodging, motel, resort or other transient lodging uses where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession or tenancy is for less than thirty (30) consecutive calendar days." ...In August 1989, the trial court preliminarily enjoined Carmel from enforcement of the ordinance.... The trial court permanently enjoined enforcement of the 1981 ordinance, finding it to be "unconstitutional as it invades the rights of association, privacy, and due process. The Court further finds that the Ordinance is over-broad and does not substantially effect its stated goals." Carmel did not appeal. ...

(2a) We turn to the constitutionality of Ordinance No. 89-17, beginning with plaintiffs' argument that the ordinance constitutes a "taking" in violation of the Fifth Amendment. (U.S. Const., 5th Amend. ["No person shall be ... deprived of ... property, without due process of law; nor shall private property be taken for public use, without just compensation."]; *Chicago, Burlington &c. R'd v. Chicago* (1897) 166 U.S. 226, 235-241 [41 L.Ed. 979, 984-986, 17 S.Ct. 581] [Fifth Amendment applies to the states through the Fourteenth Amendment].) **Although plaintiffs offer their "taking" argument almost as an afterthought by way of supplemental briefing,** we view it as the logical starting point for our constitutional analysis.

The dawn of the 20th century marked the beginning of zoning laws in this country. (*Euclid v. Ambler Co.* (1926) 272 U.S. 365, 386 [71 L.Ed. 303, 310, 47 S.Ct. 114, 54 A.L.R. 1016].) Until then, "urban life was comparatively simple...." (*Ibid.*) But the "great increase and concentration of population" and "the advent of automobiles and rapid transit street railways" [1587] created problems necessitating land-use regulation. (*Id.* at pp. 386-387 [71 L.Ed. at p. 310].) ...The Supreme

Court declared that zoning regulations must find their justification in the police power, asserted for the public welfare. (*Euclid v. Ambler Co.*, *supra*, 272 U.S. at p. 387 [71 L.Ed. at p. 310].) The court noted that **the extent of the police power "varies with circumstances and conditions."** (*Ibid.*) Likewise, "while the meaning of constitutional guaranties never varies, **the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation.**" (*Ibid.*)...

The Supreme Court upheld the Euclid ordinances as a proper exercise of the police power. The court concluded that even if Euclid's reasons for adopting the scheme, such as the preservation of residential areas, "do not demonstrate the wisdom or sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." (*Euclid v. Ambler Co.*, *supra*, 272 U.S. at p. 395 [71 L.Ed. at p. 314].) [1588]

Like the court in *Euclid*, the court in *Miller* stressed the elasticity of the police power: "as a commonwealth develops politically, economically, and socially, the police power likewise develops, **within reason**, to meet the changed and changing conditions. What was at one time regarded as an improper exercise of the police power may now, because of changed living conditions, be recognized as a legitimate exercise of that power." (*Miller v. Board of Public Works*, *supra*, 195 Cal. at p. 484; see current Cal. Const., art. XI, § 7 [a city may "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations **not in conflict with general laws**"].)

The law has also evolved, but the basic principles survive. (3) Zoning ordinances are still presumptively constitutional. (*Goldblatt v. Hempstead* (1962) 369 U.S. 590, 594 [8 L.Ed.2d 130, 133-134, 82 S.Ct. 987]; *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604-605 [135 Cal. Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038].) But "[t]he application of a general zoning law to particular property **effects a taking if** [1589] **the ordinance does not substantially advance legitimate state interests**, see *Nectow v. Cambridge*, 277 U.S. 183, 188 (1928), or **denies an owner economically viable use of his land**, see *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 138, n. 36 (1978). The determination **that governmental action constitutes a taking is, in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of state power in the public interest.** Although no precise rule determines when property has been taken, see *Kaiser Aetna v. United States*, 444 U.S. 164

(1979), the question necessarily requires a weighing of private and public interests." (*Agins v. Tiburon* (1980) 447 U.S. 255, 260-261 [65 L.Ed.2d 106, 112, 100 S.Ct. 2138].)

.... The council found that the use of single-family residential property for transient lodging was a commercial use inconsistent with the purpose of the R-1 District. **Plaintiffs submit declarations intended to show that transient use of R-1 property does not create the "unmitigatable, adverse impacts" cited by the council. ... [1590] District. She found no complaints regarding "light and glare," "noise," or "transient rental use."**In *Miller* and *Euclid*, the highest courts of this state and of the land recognized that maintenance of the character of residential neighborhoods is a proper purpose of zoning. The California Supreme Court employed language now a bit dated yet plainly relevant to the case at hand: "[W]e think it may be safely and sensibly said that justification for residential zoning may, in the last analysis, be rested upon the protection of the civic and social values of the American home." (*Miller v. Board of Public Works*, *supra*, 195 Cal. at p. 493.) ...[159] **It stands to reason that the "residential character" of a neighborhood is threatened when a significant number of homes — at least 12 percent in this case, according to the record — are occupied not by permanent residents but by a stream of tenants staying a weekend, a week, or even 29 days. ...**

Plaintiffs attempt to equate this case with *Parr v. Municipal Court* (1971) 3 Cal.3d 861 [92 Cal. Rptr. 153, 479 P.2d 353], in which the Supreme Court confronted a Carmel zoning ordinance prohibiting, among other things, sitting or lying upon a public lawn. The court concluded that the ordinance **violated appellant's right of equal protection by discriminating against a social class.** Plaintiffs quote from the concurrence in *Building Industry Assn. v. City of Camarillo* (1986) 41 Cal.3d 810, 825 [226 Cal. Rptr. 81, 718 P.2d 68]: "An impermissible elitist concept is invoked when a community constructs a legal moat around its perimeter to exclude all or most outsiders." Plaintiffs argue that the ordinance challenged in *Parr* and Ordinance No. 89-17 demonstrate Carmel's desire to build a legal moat. The ordinance challenged in *Parr* was struck down; thus, plaintiffs reason, Ordinance No. 89-17 should meet the same fate.

.... (5) A zoning ordinance does not constitute a taking simply because it narrows a property owner's options. In fact, "[m]any zoning ordinances place limits on the property owner's right to make profitable use of some segments of his property." (*Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 498 [94 L.Ed.2d 472, 496, 107 S.Ct. 1232]; see, e.g., *Griffin Development Co. v. City of Oxnard* (1985) 39 Cal.3d 256 [217 Cal. Rptr. 1, 703 P.2d 339] [condominium conversion ordinance]; *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d

129 [130 Cal. Rptr. 465, 550 P.2d 1001] [rent control law].) Justice Holmes stated the test in *Penna. Coal Co. v. Mahon* (1922) 260 U.S. 393, 413 [67 L.Ed. 322, 325, 43 S.Ct. 158, 28 A.L.R. 1321]: "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized, some values are enjoyed under an implied limitation and must yield to the police power. **But obviously the implied limitation must have its limits, or the contract and due process clauses are gone.** One fact for consideration in determining such limits is **the extent of the diminution. When it reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to sustain the act.** So the question depends upon the particular facts."

Plaintiffs also complain that Carmel has drawn the line arbitrarily by permitting rentals of 30 consecutive days but not 29. Line drawing is the essence of zoning.... In *Euclid*, the Supreme Court recognized that **"in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation."** (*Euclid v. Ambler Co.*, *supra*, 272 U.S. at p. 389 [71 L.Ed. at p. 311].) Nonetheless, the line must be drawn, and the legislature must do it. Absent an arbitrary or unreasonable delineation, **it is not the prerogative of the courts to second-guess the legislative decision.** (See *Village of Belle Terre v. Boraas* (1974) 416 U.S. 1, 8 [39 L.Ed.2d 797, 803-804, 94 S.Ct. 1536]; *Berman v. Parker* (1954) 348 U.S. 26, 35-36 [99 L.Ed. 27, 39-40, 75 S.Ct. 98].)

In this case, it appears that Carmel did not wish to discourage month-to-month tenancies. Indeed, long-term tenants may create as stable a community as resident homeowners. Through Ordinance No. 89-17, Carmel wished to curtail only short-term occupancies for remuneration. **We believe that the 30-day cutoff is not arbitrary but, rather, is reasonably linked to that goal.** (See Rev. & Tax. Code, § 7280 [establishing 30-day cutoff for city or county tax upon short-term occupancy in "hotel, inn, tourist home or house, motel, or other lodging"]; Civ. Code, § 1943 [tenancy presumed to be month-to-month unless otherwise designated in writing].)

(7a) Plaintiffs offer yet another Fifth Amendment argument, contending that Ordinance No. 89-17 is unconstitutionally vague and overbroad. [1594] (8) Indeed, **"a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process."** (*Connally v. General Const. Co.* (1926) 269 U.S. 385, 391 [70 L.Ed. 322, 328, 46 S.Ct. 126].) In *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108 [33

L.Ed.2d 222, 227, 92 S.Ct. 2294], the Supreme Court observed that a vague law may offend "several important values." First, the person of ordinary intelligence should have a **reasonable opportunity to know what is prohibited**. A vague law may trap the innocent by **not providing fair warning**. Second, a vague law **impermissibly delegates the legislative job** of defining what is prohibited to policemen, judges, and juries, creating a danger of arbitrary and discriminatory application. Third, a **vague law may have a chilling effect**, causing people to steer a wider course than necessary in order to avoid the strictures of the law.

Yet, "[c]ondemned to the use of words, we can never expect mathematical certainty from our language." (*Grayned v. City of Rockford*, *supra*, 408 U.S. at p. 110 [33 L.Ed.2d at pp. 228-229], fn. omitted.) (9) "Often the requisite standards of certainty can be fleshed out from otherwise vague statutory language by reference to any of the following sources: (1) long established or commonly accepted usage; (2) usage at common law; (3) judicial interpretations of the statutory language or of similar language; (4) legislative history or purpose. [Citation.] While **the dangers of discriminatory enforcement and ex post facto punishment posed by vague penal provisions must be considered** in construing statutory language [citation], liberal regard will be given to legislative intent so as to give effect to the salutary objects of the particular law. [Citations.] Zoning regulations are no exception to the foregoing principles. [Citation.]" (*Sechrist v. Municipal Court* (1976) 64 Cal. App.3d 737, 745 [134 Cal. Rptr. 733].) "In fact, a substantial amount of vagueness is permitted in California zoning ordinances...." (*Novi v. City of Pacifica* (1985) 169 Cal. App.3d 678, 682 [215 Cal. Rptr. 439] [antimonotony ordinance]; see also *Guinnane v. San Francisco City Planning Com.* (1989) 209 Cal. App.3d 732 [257 Cal. Rptr. 742] [residential character ordinance].)....

...we do not presume to know how expansively Carmel will interpret Ordinance No. 89-17. Although a very broad reading of "remuneration" or "bargained for consideration" **might lead to absurd applications**, as Carmel's attorney admitted, the legislative purpose is clearly to prohibit transient *commercial* use of residential property. ...

(10) Finally, we turn to plaintiffs' contention that Ordinance No. 89-17 violates their constitutional rights of substantive due process and equal protection. They argue first that the ordinance infringes upon their rights of freedom of association and of privacy guaranteed by the federal and state Constitutions. (See U.S. Const., 1st, 3d, 4th, 5th, & 9th Amends.; *Griswold v. Connecticut* (1965) 381 U.S. 479 [14 L.Ed.2d 510, 85 S.Ct. 1678]; Cal. [1596] Const., art. I, § 1; *White v. Davis* (1975) 13 Cal.3d 757 [120 Cal. Rptr. 94, 533 P.2d 222].)

Because these are fundamental rights (see *Griswold v. Connecticut*, *supra*, 381 U.S. at pp. 484-486 [14 L.Ed.2d at pp. 514-516] [privacy]; *N.A.A.C.P. v. Alabama* (1958) 357 U.S. 449, 460-461 [2 L.Ed.2d 1488, 1498-1499, 78 S.Ct. 1163] [association]), they contend **the ordinance is not presumed valid**, as would be the normal zoning ordinance. Rather, they maintain that **Carmel has the burden of demonstrating that the infringement upon constitutional rights is necessary to meet a compelling public need and that the ordinance is the least intrusive means of meeting that need.** (See *Moore v. East Cleveland* (1977) 431 U.S. 494, 499 [52 L.Ed.2d 531, 537-538, 97 S.Ct. 1932]; *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 213 [211 Cal. Rptr. 398, 695 P.2d 695].)

Second, plaintiffs argue that even if the ordinance does not infringe upon fundamental rights, it still violates substantive due process and equal protection because it is **not rationally related to the goals sought to be achieved.** (See *Village of Belle Terre v. Boraas*, *supra*, 416 U.S. at p. 8 [39 L.Ed.2d at pp. 803-804]; *Roman Cath. etc. Corp. v. City of Piedmont* (1955) 45 Cal.2d 325, 331 [289 P.2d 438].)

We have already determined that the ordinance is rationally related to the stated goal. Carmel wishes to enhance and maintain the residential character of the R-1 District. Limiting transient commercial use of residential property for remuneration in the R-1 District addresses that goal. We have also concluded there is a rational basis for the 30-day cutoff and for the allowance of home occupations in the R-1 District despite the prohibitions contained in Ordinance No. 89-17....

In *Moore v. East Cleveland*, the United States Supreme Court struck down an ordinance limiting the occupancy of a single dwelling unit to members of a single "family"... When the government so intrudes ... **"the usual judicial deference to the legislature is inappropriate."** (*Moore v. East Cleveland*, *supra*, 431 U.S. at p. 499 [52 L.Ed.2d at p. 537].) **Review of Carmel's specific application and enforcement of the ordinance, if appropriate, must await another day.** (See *Euclid v. Ambler Co.*, *supra*, 272 U.S. at pp. 395-397 [71 L.Ed. at pp. 313-315]; *People v. Wingo* (1975) 14 Cal.3d 169, 180 [121 Cal. Rptr. 97, 534 P.2d 1001] ["A statute valid on its face may be unconstitutionally applied."].)...The judgment is affirmed....A petition for a rehearing was denied November 5, 1991, and appellants' petition for review by the Supreme Court was denied January 8, 1992.

Ewing v. City of Carmel-By-The-Sea, 34 Cal.App.3d 1579 (6th Cir 1991)

2. Discussion of Low Income Housing and The Changes Required for Traditional Hotels

It is noted that the Santa Monica city council discussions appeared to weigh heavily the concerns regarding available low income housing and the complaints from the hotel workers union of the possible effect on hotel revenue and the effect on their jobs. The purpose of this discussion is to review basic economic factors that must be considered to resolve these issues.

Changed Circumstances, Vast Expansion of Tourism

For future years, it is foreseeable that hotels cannot keep pace with the tourist demand, as wealthy travelers from China, Korea, India, and Europe seek elegant lodging. Accordingly, the best strategy for a city is to simply accept the new economic circumstances, and promote short-term rentals as a way to stimulate the local economy.

Relevant evidence shows that the vast majority of short-term guest cause fewer problems than long-term residents. The tourist spends most of each day away from the place of lodging, fully occupied with spending at local restaurants, shopping and sightseeing. The net effect of tourist guests is substantial cash input to the local economy.

As a fundamental error, it is a mistake to stifle innovation through going too far with stringent regulations. Economic freedom is essential for natural forces to achieve a balance, without government interference. The required tax revenue to support city functions should come from increased economic activity, with funds from sales tax, property taxes, and selective excise taxes. Taxes on net income are designed by the federal and state governments with tax credits and deductions to stimulate the economy.

Lodging Tax is Ineffective and Inefficient

Typical city taxes and penalties, such as parking violations, lodging taxes, and excessive emergency vehicle fees, are inefficient because the net effect is to create opportunities to hire and pay more city employees to administer the newly created regulations.

The short term rental tax ordinance does not solve or improve either issue. The lodging tax and restriction of short-term rentals damages the interests of both low-income renters and the hotel workers. Lodging taxes are not efficient nor effective for increasing net city income because guests are price sensitive, so the reduction in revenue must be offset by using most of the hotel tax revenue for advertising to attract tourists. ¹

It is possible to design taxes so there is minimum interference with the economy.² As an alternative to a lodging tax, an excise tax could raise substantial funds with minimal controversy. For example, with voter approval, it may be feasible to increase the existing documentary transfer tax for real property sales, by simply increasing the current Santa Monica rate of 0.030 percent of sales to 2.00 percent of sales. Similarly, an excise tax could also be imposed on sales of securities, and on corporate mergers and acquisitions. As with broker commissions, typically 6% for houses and 1.5% to 3% for securities, the selling taxpayer would find the tax payment affordable due to the large amount of funds received from the sale.

¹ James Mak, Taxing Hotel Room Rentals in the U.S., *Journal of Travel Research*, July 1988, vol 27, No. 1, 10-15. Also see: S.J.Hiemstra and J.A. Ismail, Occupancy Taxes: No Free Lunch, *The Cornell Hotel and Restaurant Admin. Quarterly*, Vol 33, no. 5, Oct 1992, pp. 84-89.

² As stated by Jean Baptiste Colbert, Minister of Finance under King Louis XIV of France, "The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing"
http://thinkexist.com/quotation/the_art_of_taxation_consists_in_so_plucking_the/158604.html

Housing for Low Income Persons

As stated in various court decisions and economic studies, rent control and city regulation is not effective as a method to promote low rental prices for apartments or houses. Federal tax credits have provided some incentives for investors, but rents are still beyond the reach of many poor households without additional subsidy.³

Although it is typically asserted at city council hearings that short-term rentals increase the price of rent for apartments, the facts do not support this speculation. It is argued that short-term rental use reduces the available stock of apartments for long-term rentals. However, the large number of apartments and the small number of short-term rentals show that the effect on the local market is *de minimus*. Instead, apartment price for rent is driven by fundamental economic factors, such as inflation, construction cost, mortgage interest rate, location, quality, supply, and demand. Significantly, the primary factor in the price of rent is the local zoning and land-use constraints which inhibit land development for new residential use.

Based on informed city planning, there are several feasible methods that can result in improved housing and affordable prices. The first step is to increase the income of individuals. This increase can be in the form of a bonus paid from the city to the low income person, such as doubling the amount of income earned from employment or as contract labor. City funding for education and training can improve the earning potential of low income persons.

The next step is to provide incentives to land development investors and property owners. This incentive can be in the form of free land to qualified builders, provided that a reasonable proportion of the improvements are designed to be rented at bargain prices to low income persons. The free land can be

³ Jean L. Cummings and Denise DiPasquale, The Low Income Housing Tax Credit, An Analysis of the First Ten Years, *Housing Policy Debate*, 10, 2, 251-307 (2010). Also see: Garvin A. Wood, Promoting the Supply of Low Income Housing, *Urban Policy and Research*, 19, 4, 425-440 (2007).

purchased by the city at market value in zones that are not now residential, or are areas already owned by the city. A city bond issue can pay for the acquisition cost of the land. An additional step is for the city to work closely with charity firms that are specialists in development and building of low income housing, such as *Habitat for Humanity* (www.habitat.org). Also, cities can work with banks to provide low interest loans for land development specialists. New ideas and improved methods can be applied to provide adequate housing for low income individuals. For example, the following arrangement would not require city expenditures or increased taxes. A city could provide loan guarantees to low income persons, who could then purchase a home with extra space that could be used for short term rentals. The extra income from rental would pay the mortgage, so that the renter is transformed to a property owner.

Hotel Income Issues

The basic reason that Airbnb rentals are rapidly becoming a preferred alternative to hotels is because Airbnb hosts typically offer a much higher quality lodging experience. By contrast, even five-star hotels fail to provide peace and quiet, a place away from congested city traffic, a private outside yard and patio with flowers, trees, and grass, high quality 600-thread 100% Egyptian cotton sheets, Smart water, premium towels, foam mattresses, a duvet with Austrian goose feathers, plus beverages and food in each room at no additional cost, and premium Khie's, Fresh, and Neutrogena bath products. By contrast, a typical hotel has sensors on refrigerator contents, so a mere touch creates a charge on the hotel bill, the wifi is slow, the computer printer is in the lobby, and guests understand that it is not safe to leave a computer or other valuables in a hotel room. Recent studies show that Airbnb has only minor effect on business travelers, and results in pressure for lower hotel prices, which benefits hotel guests.⁴

⁴ Zervas, Georgios and Proserpio, Davide and Byers, John, The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry (May 7, 2015). *Boston U. School of Management Research Paper* No. 2013-16. Also see: Kenneth T., Randall Sakamoto, & David Bank, *Short-Term Rentals and Impact on the Apartment Market*. Berkeley, CA: Rosen Consulting Group, 2013.
<http://publicpolicy.airbnb.com/wp-content/uploads/2014/04/Short-TermRent>.

People will pay for quality. However, hotels fail to create an atmosphere of excellence. It is common for the hotel employees to be underpaid and overworked, so that the interaction with guests lacks empathy and refined consideration. The low salaries must be supplemented by tips from guests, so that a guest lacks the freedom that would come from a fixed price for all services. Instead, as in a cafeteria or automat, the cumulative small charges result in a total price that is excessive. A substantial increase in salary for hotel workers and investment in top quality fixtures such as HansGrohe Rainshower bath fixtures, top quality lotions, and luxury furnishings such as 1926 Iranian rugs, solid oak hardwood floors, and oil paintings would result in higher total profits, resulting from improved guest relations and a more enjoyable stay.

In summary, each hotel must search for new ways to improve the lodging experience. For some hotels, this may require acquisition or building of separate high-quality homes in selected locations, so that a guest can select a villa at \$950 a night instead of a small room for \$525 a night. For specific locations, the rapid increase in house prices would make this strategy a good investment, even if there were minimal cash flow over a decade, based on the effect of inflation and increased demand in the local area, which would support triple the acquisition price on eventual sale of the villas after a decade of rental income.⁵

As shown by independent economic studies, short-term rentals are not a problem which needs government regulation. Instead, short-term rentals provide a practical solution to the requirement for economic stimulus and growth.

⁵ Michael A. Cusumano, How Traditional Firms must Compete in the Sharing Economy, *Communications of the ACM*, 58,1, 32-34 (2015)

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<http://www.airdna.co>
- Interest Rate and Points on 30-Year Fixed-Rate Mortgages, July 2015
<http://www.freddiemac.com/pmms/pmms30.htm>
- Monthly House Price Index for U.S., Federal Housing Finance Agency, 2015.
<http://www.fhfa.gov/AboutUs/Reports/ReportDocuments/MonthlyHPIJuly072215.pdf>

Selected Interest Rates (Weekly)-H.15, Board of Governors of the Federal Reserve System, 2015. <http://www.federalreserve.gov/releases/h15/default.htm>

Jefferson Williams
906 Crestwood Terrace
Los Angeles, CA 90042

Re: City Council File #14C1635

August 31, 2015

Dear Councilmember Huizar,

I am a homeowner in your district who has used Airbnb to supplement my income when my business has gone through difficult stretches. I prefer to rent my guest house short term so that I can make the place available for friends and relatives when they come to visit. I also like the social media aspect of airbnb which allows me to screen my guests . I would add that I have been pleasantly surprised by the people who have stayed in my guest house. I have enjoyed dealing with them and helping introduce them to Los Angeles.

I would appreciate if you could preserve this emerging and vibrant part of the economy and not saddle it with so much taxes that it loses its luster. I appreciate the need for affordable housing but I think short term rentals are only a small contributor to these problems which I think is outweighed by the many benefits it provides. As you are well aware, we have to build large apartment buildings near metro hubs in a systematic way to increase the supply of housing if we are to accommodate demand. Trying to regulate supply and demand in very draconian ways is not a good substitute for a real solution.

I urge you to adopt reasonable legislation and ignore radical solutions by advocates who want to restrict the rights of property owners and whose concepts of economics are rooted in bad ideas from the 19th century.

Sincerely yours,

Jefferson Williams

Dear PLUM members,

I am the owner/occupant of a duplex at 848-850 Hyperion Avenue . Before buying this property in 2002, I rented an apartment for five years at 852 Hyperion Avenue.

I was surprised to learn that a small lot subdivision at 853-857 Hyperion Avenue received conditional approval. A subdivision at that site will add density to a substandard street that can ill afford it. These two properties are located behind a blind curve. All of the neighbors on this street have to back their cars out of their garages and driveways. As it stands right now, that can be an dangerous proposition. The addition of 18 cars plus guests will exponentially increase that danger.

This street will already have to absorb the traffic and the overflow parking from a small lot subdivision that is currently under construction right around the bend in the 900 block. From where the curve on the street starts in the 900 block to where Hyperion ends at Hoover, there is no parking at anytime on the west side of the street. The neighborhood's parking needs are already sorely underserved. Adding multiple subdivisions to this street will only make matters worse.

The three story buildings that the developer has proposed will tower over the single story, single family homes that are located on either side of the subdivision. They will deprive homes on Sanborn Avenue of sunlight. They will destroy the view corridors and the privacy of many properties on the east side of the street.

I hope that City Planning will take a long hard look at that blind curve and veer towards protecting the safety and well being of the current residents of Hyperion Avenue south of Sunset and the many motorists who use Hyperion as a thru street on a daily basis.

Thank you for taking the time to read my email.

Sincerely,

Corinne Johnson

848-850 Hyperion Avenue

Los Angeles, CA 90029

Dear Chair Cedillo and Vice-Chair Fuentes,

I'm writing in regards to the housing committee meeting on Sept. 2, and to ask you to help create clear and fair legislation regarding home sharing. I'm a homeowner in Koreatown and Los Feliz, who has lived in the area for over 5 years, and an Airbnb host. I've been witness to a remarkable economic and social transformation of this area since I first began calling it home.

My wife and I started sharing our home as a way to support this development; we primarily host young adults from all over the world who come to LA with 2-3 month internships or cooperative employment opportunities, and are looking for an experience that convinces them to stay, and become new members of the community. In the last 3 years, we've hosted over 10 such individuals, ranging from a teacher at the French immersion school in Los Feliz, a production assistant with Sony, an urban interior designer working in Chinatown, a researcher of Mexican migration patterns in urban Los Angeles, a sound artist here for a 3-month course, and an intern with Wells Fargo in downtown. Our guests actively use the Metro public transportation system, are patrons at neighborhood restaurants and lounges, interact with other members of the community, and continue to support Los Angeles' growth. Several of them now make LA their permanent home, and one even started a thriving business with a strong presence in LA!

We are a small family of just the two of us and two adorable little dogs, but we enjoy hosting people with diverse backgrounds and captivating life stories, and to make efficient use of our space. We take tremendous pride in the effort we've made to share our home, and contribute our small part to this wonderful community's continuing revitalization.

Please help create clear and fair legislation regarding home sharing. We hope that by sharing our experiences with you (which are not unique), we can help you and the community better understand the service we are performing by sharing our home.

Thank you for your consideration,
Rohit Subramaniam

August 31, 2015

The Honorable Mike Bonin
200 N. Spring St. #475
Los Angeles, CA 90012

RE: Council File No. 14-1635-S2

Dear Councilmember Mike Bonin,

I am a resident in Mar Vista and a single father with an 11 year old daughter. I am writing to ask you to support home sharing. I am part owner of a restaurant and we have been struggling mightily for many years now. As a result, I have had to take several pay cuts to keep our doors open.

Since 2013, I have been using Airbnb to rent out my guesthouse on a short term basis. Very simply, without the income from this small space, I would have lost my house. In addition, this supplemental income allows me to set aside a small amount every month for my daughter's college education.

The unexpected bonus of renting my guesthouse has been meeting new people from all over the world. Most of these people could easily afford a hotel room. In fact, I've had a Grammy-award winning set designer and a former Los Angeles Laker stay at my guest house amongst other very interesting people. For the most part, people use Airbnb because they don't like the sterile and impersonal experience provided by hotels. They get a quiet, safe space and don't have to put up with hallway noise, elevators and valet parking. For me, it has been a great experience meeting people from all walks of life.

Since I began hosting, many of my guests ask me for suggestions to local businesses and I always recommend local small businesses in Mar Vista. I provide them with a map (attached) so they can take advantage of businesses in the immediate vicinity.

I am aware that there are those against short term rentals, but urge you to support rules that do not ban the practice, but regulate this industry, not only for the benefit of people like me, but also to contribute to LA's economy. My guests consist of mostly families and they are very considerate of our house rules, neighbors and the neighborhood in general. I have not had a single complaint from a neighbor.

The ability to share my property allows me to keep my home and help pay for my daughter's education. I feel more secure financially, which lifts a heavy burden off my shoulders and makes me nicer to be around, especially for my daughter. When you are under stress, people feel it, no matter how hard you try to hide it.

Please consider a clear, fair, and progressive legislation for short - term rentals in Los Angeles. Thank you very much.

Sincerely,

Patrick Healy

Cc: Ms. Sharon Dickinson, Legislative Assistant