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August 27, 2018

VIA EMAIL

Chairman Huizar and Honorable Committee Members
Planning and Land Use Management Committee
200 N. Spring Street
Los Angeles, CA 90012-4801
Attn: Zina Cheng, Deputy City Clerk
clerk.plumcommittee@lacity.org

Re: Purported August 17, 2018 Categorical Exemption for Lyric Theatre
(520 North La Brea Ave.): ENV-2016-2549-CE; Council File No. 18-0166-S1

Dear Chairman Huizar and Honorable Committee Members:

On behalf of Yeshiva Rav Isacsohn Torath Emeth Academy (“Torath Emeth”), an orthodox Jewish school serving over 1,000 children from ages 2 to 14, this letter supplements our appeal of the Mitigated Negative Declaration (“MND”) approved by the Central Area Planning Commission (“APC”) with regard to the proposed conditional use permits (“CUP”) for the Lyric concert venue, nightclub and theater project (the “Project”),¹ as well as our prior letters submitted to this Committee regarding that appeal.

Torath Emeth objects to the completely new proposed Categorical Exemption (“Cat Ex”) for the Project dated August 17, 2018 and issued by the Planning Department without any notification to us, the appellant or the community long after our appeal and others were filed. The Cat Ex reflects an abandonment of the prior approved MND which was the basis for the action by the APC *and* the purported Negative Declaration (“Neg Dec”) issued on July 5, 2018 after the action by the APC. This is the second CEQA document issued after the APC acted and now somehow this is a third CEQA document purportedly before the Planning and Land Use Management Committee for the same project. As explained in our July 25, 2018, Comment Letter to the Committee,² the only item that is properly before the Planning and Land Use Management Committee is the appeal of the MND, the document acted on by the APC. The Planning Department’s attempt to issue a new Cat Ex is a violation of the California Environmental Quality Act (“CEQA”) and other laws.

¹ The Lyric intends to sell and serve alcohol for on-site consumption with dancing in the midst of orthodox Jewish schools, synagogues, a senior assisted living facility, a senior nursing home and rehabilitation facility and an adjacent residential area. In total, there are at least 13 sensitive uses within 1,000 feet of the Lyric.

² Letter to Planning and Land Use Committee, “Comment Letter on Purported July 5, 2018 Negative Declaration for Lyric Theatre (520 North La Brea Ave.): ENV-2016-2549-CE; Council File No. 18-0166-S1,” (July 25, 2018) (“July 25 Comment Letter”).

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On March 20, 2018, Torath Emeth filed an appeal of the MND associated with the CUP for the Project that the APC adopted in its March 14, 2018 determination letter. On March 23, 2018, many of the other sensitive uses in the community also filed appeals of the MND, including Jewish Learning Exchange (a synagogue located at 512 N. La Brea, directly adjacent to the Lyric), Bnos Devorah High School (461 N. La Brea), City View Villa (an assisted living facility located at 515 N. La Brea), La Brea Rehabilitation Center, LLC (505 N. La Brea), Rabbinical Council of California, and Congregation Kollel Yechiel Yehuda. In addition to this letter, we incorporate by reference our appeal of March 20, 2018 and our letters of June 15, 2018 and July 25, 2018 into comments on the proposed Cat Ex just issued by the Planning Department, ***with no prior notice to any appellant or the community***, and without compliance with CEQA or procedural due process.

The City Council simply has ***no jurisdiction over the Cat Ex*** and *cannot* consider it in acting on Torath Emeth's and others' CEQA appeals. Public Resources Code section 21151(c), the statute governing CEQA appeals to the City Council, is explicit—"[i]f a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, ***approves a*** negative declaration or ***mitigated negative declaration***, or determines that a project is not subject to this division, ***that*** certification, ***approval***, or determination may be appealed to the agency's elected decisionmaking body, if any." (Emphasis added.) The proposed Cat Ex was not before the APC and is not before this Committee and the Council. Not only was the Cat Ex never before the APC, appellants of the MND were never even notified of the proposed Cat Ex, and as a result, the Cat Ex has absolutely no place before the City Council. If the City and/or Lyric Theatre desire to rely on the Cat Ex, Lyric must make a new application for a conditional use permit and restart the process.

Setting aside that the Cat Ex was not before the APC, like the MND and the now apparently abandoned Neg Dec, this new Cat Ex prepared by the City for the Project remains totally inadequate under CEQA. It is clear that an EIR must be prepared for this Project. CEQA requires a lead agency to prepare an environmental impact report ("EIR") for a project *whenever substantial evidence in the record supports a "fair argument" that a project may have a significant effect on the environment.*³ As California Courts have consistently held, this standard sets a low threshold for the preparation of an EIR. The record contains extensive evidence, including expert reports, demonstrating that the Project would result in potentially significant environment effects. The threshold clearly has been met.

Moreover, as discussed in detail below, the Planning Department has incorrectly applied the Class 1 Category 22 Cat Ex standard to this Project. **Accordingly, we respectfully request the City Council grant the appeals, reverse the APC's adoption of the MND for the Project, and require the preparation of an EIR for the Project.**

The City Council should grant the requests on the following grounds:

1. **The City Council does not have jurisdiction over the Cat Ex.** As noted above, Public Resources Code section 21151(c) specifically provides that the Council shall hear appeals

³ *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.

of environmental clearances that have been approved by a non-elected planning commission. Under CEQA, the only question before the Council is whether the environmental clearance that was before the non-elected planning commission met the requirements of CEQA. Clearly the MND before the APC does not meet the requirements of CEQA and the Council cannot now substitute some new environmental document, whether it be the now abandoned Neg Dec or some new Cat Ex, into the process.

The MND for the Project was appealed to the City Council—the Cat Ex was not even before the APC nor was considered by the APC. And the Cat Ex is not before the Council. As is clear under the procedures implementing the CEQA appeal process established by the Planning Department (see Deputy Director of City Planning Robert H. Sutton (“Sutton Memo”) memorandum (**Exhibit A**)), the only item before the Council is the MND. The plain language of section 21151(c) is reinforced by the Sutton Memo, which states that “the **Council only has the environmental appeal in front of them**[.]” (Emphasis added.)⁴ Neither CEQA nor the City’s own procedures contemplate that the Council may review a wholly new document, never appealed and not before the prior decisionmaking body. If the City wants to rely on the Cat Ex as CEQA clearance for the Project—which would violate CEQA for the many reasons outlined in this letter—the City would need to restart the consideration of the Project back at the beginning of the application process. Indeed, both the ZA and the APC on appeal relied heavily on the MND in approving the Project’s CUP. To attempt substitute the environmental review considered by the ZA and APC with a Cat Ex would undermine the entire discretionary review and the appeal process mandated by CEQA.

2. **Inaccurate Project Description.** Like the project description in the MND, the project description in the Cat Ex inaccurately describes the proposed use as allowing “the sale and dispensing of a full line of alcoholic beverages for on-site consumption and patron dancing in conjunction with a 3,516 square-foot theater with live entertainment with 128 seats, with hours of operation from 10:00 a.m. to 2:00 a.m. daily.”

The project description fails to mention that this is essentially a concert venue and nightclub and as shown on the project plans in the case file the operational configuration with the dance floor shows that there would be no seating in the area in front of stage. There is no mention regarding how often the Lyric would operate in this concert venue and nightclub configuration – standing room with no seating. No restrictions are imposed requiring seating. And it was clearly stated at the APC hearing that the facility will be primarily used as a concert venue. As a result, the Lyric can operate in this configuration up to 365 days per year. The project description in the Cat Ex fails to mention that in the concert venue and nightclub configuration the occupancy of the Lyric could be up to 318 persons, not 128 persons. The Lyric speakers at the APC confirmed this capacity for events with no seating in the stage area. A venue that sells and serves alcohol for on-site consumption from 10:00 a.m. to 2:00 a.m. nightly in

⁴ Exhibit A (Sutton Memo) at #5. The Sutton Memo also states that “[t]he filing of an appeal stays proceedings in the matter until the City Council has made a decision.” Because the Council has not made a decision on the MND, no further action from the Planning Department is permissible. *Id.* at #3.

combination with patron dancing for up to 318 patrons is a concert venue and nightclub, not a theater. The full extent of this concert venue and nightclub must be analyzed under CEQA.

As discussed further in our previous letters, the use of this facility as a concert venue and nightclub will have significant impacts on the sensitive uses in the area and the community. As a result of the inaccurate and incomplete project description, the Cat Ex fails to accurately disclose the potential range of impacts and assess the significant impacts that will occur as a result of the project operating as a concert venue and nightclub.

3. **Categorical Exemption Is Improper.** The evidence in the record more than sufficiently demonstrates that there is a fair argument that the Project will result in potentially significant impacts. Further, the Project is not covered by a Class 1 Category 22 Cat Ex. That category covers the “[g]ranting or renewal of a variance or conditional use for a nonsignificant change of use in an existing facility.”⁵ The Lyric Theatre’s current certificate of occupancy is for a school.⁶ The Project, as permitted by the CUP, would allow the property to be used as a nightclub with alcohol service and dancing and concerts that would persist until 2:00 a.m. daily. The Project would invite hundreds of patrons into the neighborhood, on a daily basis, causing traffic, noise, and safety issues. As described above, detailed in the record, and indicated by the response of many nearby sensitive uses and over one hundred members of the community, the change in character of the existing facility would be anything but “nonsignificant.” It would be farcical for the City to now claim that the change to the property is entirely “nonsignificant” given the previous MND and more importantly, the extensive evidence of significant impacts. Thus, a Class 1 Category 22 Cat Ex is inapplicable to the Project.

4. **Unusual Circumstances Bar the Application of a Categorical Exemption.** Even if one tried to argue that a categorical exemption were to apply, unusual circumstances bar its application to the Project. “A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”⁷ “[A] party may establish an unusual circumstance with evidence that the project will have a significant environmental effect.”⁸ Further, a “party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. . . . [T]he party need only show a reasonable possibility of a significant effect due to that unusual circumstance.”⁹ The record

⁵ See, e.g., Notice of Exemption.

⁶ The Lyric’s Building Permit No. 16016-10000-00733 permitting a change of use from private school to theater with lounge expired on July 3, 2018. (See **Exhibit B**.) No other Certificate of Occupancy has been issued which would allow the use of the property for anything other than a school. As a result, use of the property as a theater or lounge at this time is in violation of the Los Angeles Building Code. Further, the City may not issue a determination of public convenience or necessity for a school which cannot serve alcohol. (See related Council File No. 18-0166-S2.)

⁷ CEQA Guidelines, § 15300.2, subd. (c).

⁸ *Berkeley Hillside Pres. v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105.

⁹ *Ibid.*

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contains detailed evidence of the significant impacts likely to result from the Project. Beyond that evidence, the proposed nightclub and concert venue is to be located in close proximity to at least 13 sensitive uses, in an Orthodox Jewish community with hundreds of residents objecting to the proposed use. A school serving young children is located just 40 feet from the Project site, a synagogue, a retirement home and other uses are in the same block. The community response demonstrates a reasonable possibility that, in this case the grant of a conditional use permit represents an unusual circumstance. As a result, a categorical exemption is inapplicable.

5. **Insufficient Notice of Cat Ex to Appellants.** Torath Emeth and all other appellants, through their CEQA appeals, requested written notice of any further developments regarding the Project's CEQA compliance. It would be absurd if the appellants of an MND were not considered to have requested notice of an Cat Ex being substituted for the MND on the very same project, using the same case number (ENV-2016-2549) and Council file number (CF 18-0166-S1). Thus, the City has provided entirely insufficient notice to parties who have requested notice.

6. **Violation of Brown Act.** The Brown Act requires that the City post a *descriptive* agenda of regular meetings.¹⁰ That description may be brief, but must not be misleading or ambiguous.¹¹ The Committee's agenda states it will consider the appeal of an MND, but also the adoption of an Neg Dec or a Cat Ex. This is utterly confusing to any member of the public. The agenda is both misleading and ambiguous and denies the public the opportunity to understand what exactly the Committee plans to consider. Thus, the current agenda violates the Brown Act.

In sum, it is clear that substantial evidence in the record supports a fair argument that the Project may have a significant effect on the environment and that it would be improper to approve a Neg Dec or a Cat Ex. Accordingly, an EIR must be prepared before the City can take any action to approve the Project.

In addition, the City Council has no jurisdiction over the Cat Ex and cannot consider it on an appeal of the APC's adoption of the MND.

Should you have any questions, please feel free to contact me at (213) 891-8983 or winston.stromberg@lw.com, or my partner George Mihlsten at (213) 891-8196 or george.mihlsten@lw.com.

Very truly yours,



Winston P. Stromberg
of LATHAM & WATKINS LLP

¹⁰ See Gov. Code, § 54954.2, subd. (a)(1).

¹¹ *Moreno v. City of King* (2005) 127 Cal.App.4th 17, 25.

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Attachments

cc: Councilmember Paul Koretz, Council District 5, Attn: Jeff Ebenstein & Aviv Kleinman
George J. Muhlsten, Latham & Watkins LLP
David F. Thompson, Latham & Watkins LLP
Rabbi Goldenberg, Yeshiva Rav Isacsohn Torath Emeth Academy

EXHIBIT A

MEMORANDUM

Date: December 30, 2005

To: All Planners
Barbara Greaves, City Clerk's Office

From: Robert H. Sutton, Deputy Director

Re: TEMPORARY PROCEDURES - Filing an Environmental Appeal Under CA
Public Resources Code Section 21151 (c) (CEQA)

The California Environmental Quality Act (CEQA), Section 21151 (c), permits appeal of certain decisions by a non-elected decision-making body of a local lead agency, as follows:

1) certification of an environmental impact report, 2) approval of a negative declaration or mitigated negative declaration, or 3) determination that a project exempt from CEQA. These decisions may be appealed to the agency's elected decision-making body, if any.

In consultation with the City Attorney's Office the following temporary procedures have been set up:

1. An aggrieved party can file a 21151 (c) appeal within the next five meeting days of the City Council during which the City Council has convened in regular session, after the mailing of the non-elected decision-making body's decision. Any appeal not filed within the specified time will not be considered.
2. The appeal shall be filed at one of the Department of City Planning's Public Counters on a form provided by the Department. The appeal needs to set forth the points on how the Environmental Document fails to comply with CEQA.
3. The filing of an appeal stays proceedings in the matter until the City Council has made a decision
4. The City Clerk will notify the applicant 15, but **not** less than 10 days prior to the PLUM hearing on the Section 21151 (c) appeal.
5. As the Council only has the environmental appeal in front of them, if the Council finds that the Environmental Document failed to comply with CEQA the related case will need to be remanded back.
6. The intent is for Council to act with 30 days from the expiration of the appeal period.

The above temporary procedure for implementing CEQA Section 21151 (c) appeals is only utilized when the city's final decision, including all appeals, on a discretionary project is made by a non-elected official or body. For the Planning Department this occurs when the appeal process ends with the City Planning Commission or the Area Planning Commission.

As this process evolves we will keep you informed.

EXHIBIT B

Los Angeles Department of Building and Safety

Certificate Information: 520 N LA BREA AVE 90036

Application / Permit	16016-10000-00733
Plan Check / Job No.	B16LA00429
Group	Building
Type	Bldg-Alter/Repair
Sub-Type	Commercial
Primary Use	(21) Theater
Work Description	T.I. & CHANGE OF USE FROM PRIVATE SCHOOL TO THEATER WITH LOUNGE . ALSO , IMPROVE INTERIOR & EXTERIOR ACCESSIBILITY RAMPS . NO ON-SITE PARKING .
Permit Issued	Issued on 6/1/2016
Issuing Office	West Los Angeles
Current Status	Permit Expired on 7/3/2018
Certificate of Occupancy	Pending

Permit Application Status History

Submitted	1/13/2016	APPLICANT
Assigned to Plan Check Engineer	2/11/2016	GEORGE BANNING
Corrections Issued	2/22/2016	GEORGE BANNING
Reviewed by Supervisor	2/24/2016	LAWRENCE QUIRANTE
Building Plans Picked Up	2/24/2016	APPLICANT
Disabled Access Plans Picked Up	2/24/2016	APPLICANT
Green Plans Picked Up	2/25/2016	APPLICANT
Applicant returned to address corrections	4/28/2016	GEORGE BANNING
Plan Check Approved	5/16/2016	GEORGE BANNING
Issued	6/1/2016	LADBS
Permit Expired	7/3/2018	APPLICANT

Permit Application Clearance Information

Address approval	Cleared	4/28/2016	SEVAK ISAKHAYAN
Green Code	Cleared	5/3/2016	DONALD CRICHLow
DAS Clearance	Cleared	5/5/2016	WAI LAU
Eng Process Fee Ord 176,300	Cleared	5/13/2016	RAVIL MANAPOV
Hydrant and Access approval	Cleared	5/13/2016	ROBERT DUFF
Motion picture studio	Cleared	5/13/2016	PEJMAN NOORI
Sewer availability	Cleared	5/13/2016	RAVIL MANAPOV

Contact Information

Architect	Erlandson, Todd A; Lic. No.: C26154	3008 LINCOLN BLVD SANTA MONICA, CA 90405
Contractor	Curtom - Dunsmuir A Joint Venture; Lic. No.: 782018-B	1128 NORTH LA BREA AVENUE INGLEWOOD, CA 90302

Inspector Information

DAVID BURKHEAD, (213) 202-9874	Office Hours: 7:00-8:00 AM MON-FRI
JEFFREY FULTON, (213) 202-9874	Office Hours: 7:00-8:00 AM MON-FRI

Pending Inspections

No Data Available.

Inspection Request History

No Data Available.