

McCULLOUGH HILL LEARY, PS

May 8, 2017

VIA ELECTRONIC MAIL

City of Seattle, SDCI
Attn: Christina Ghan
P.O. Box 94788
700 Fifth Avenue, Suite 2000
Seattle, Washington 98124-7088
Christina.ghan@seattle.gov

Re: Determination of Nonsignificance
Land Use Code and Licensing Code Text Amendments Relating to Short-Term Rentals

Dear Ms. Ghan:

We are writing on behalf of 621 Apartments LLC (“621 Apartments”) to provide comments on the Determination of Nonsignificance (“DNS”) for the proposed Land Use Code and Licensing Code Text Amendments Related to Short-Term Rentals and Bed and Breakfast Uses (“Proposal”). 621 Apartments owns and operates a multifamily building at 621 12th Avenue E with units that are rented for periods both less and greater than 30 days.

A. The Proposal Description is Inadequate

Under the State Environmental Policy Act (“SEPA”), “[p]roposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions.” WAC 197-11-060(3)(iii); *see also* Department of Ecology SEPA Handbook (“SEPA Handbook”), Section 4.1. Contrary to this requirement, here the Proposal is described as specific text amendments to the Land Use Code (Seattle Municipal Code Title 23) and Licensing Code (Seattle Municipal Code Title 6, Subtitle I). *See* SEPA Environmental Checklist (“Checklist”), pp. 1, 3-4. The Proposal is not described in terms of its objectives. To the extent that objectives are discussed, there is no information demonstrating that the Proposal will accomplish the objectives and there are no alternatives identified or discussed. The City failed to describe the Proposal in a way that encourages considering and comparing alternatives, in violation of WAC 197-11-060.

B. The Proposal is Based on Inadequate or Incorrect Information

A threshold determination must be “based upon information reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335. Here, the DNS is based on inadequate or inaccurate information contained in the Checklist. These include but are not limited to the

following:

- The response to Part A, Question 9 of the Checklist states that there are no known land use applications currently pending for development projects related to the land uses addressed in this proposal. This response is based on inadequate investigation. The Proposal affects all pending land use applications that include dwelling units because it restricts the future use of these units.
- The response to Part A, Question 11 states that “the conversion of housing units from long-term rentals to nightly and weekly rentals for visitors has exacerbated the housing availability and affordability problem in the City.” There is no factual data provided to support this statement. Indeed, the testimony and expert report previously provided to the Seattle City Council demonstrates that this conclusion is erroneous. Contrary to the Checklist’s unsupported supposition, short-term rental use is not limited to “visitors” but provides needed housing for patients of Seattle’s world class medical institutions and their families; by visiting faculty and other staff at our universities; and by people working here in a wide range of professions, including technology, health care and entertainment, either on a temporary basis or relocating here. The Proposal will curtail this important housing supply.
- The response to Part B, Question 8 refers to Part D of the Checklist. See comments below on Part D.
- The response to Part B, Question 9 states that the Proposal “would not result in the elimination of any housing units.” To the contrary, the Proposal would eliminate numerous short-term housing units throughout the City. The response to Question 9 also refers to Part D. See comments below on Part D.
- The response to Part B, Question 10 does not identify any impacts to aesthetics. The response to this question reflects the City’s failure to recognize the high level to which short-term rentals are maintained. If these units are no longer rented on a short-term basis, maintenance will decline, resulting in an aesthetic impact. In addition, it demonstrates the City’s failure to consider the importance of revenue from short-term rental to property owners. Without this revenue, owners will not be able to maintain the units at the same level as they do now, resulting in an aesthetic impact.
- The response to Part B, Question 13, does not identify any impacts to historic properties. However, the ability to rent on a short-term basis allows some owners to maintain and restore historic properties that would otherwise decline and/or be demolished and replaced. The Checklist fails to recognize this impact. The response to Question 13 also refers to Part D. See comments below on Part D.
- The response to Part B, Question 14, does not identify transportation impacts. However, if the availability of short-term rentals is reduced in Seattle, then people who need this housing

type will be forced to rent in surrounding jurisdictions and commute into Seattle to conduct their activities. This will result in increased traffic. The response to Question 14 also refers to Part D. See comments below on Part D.

- The response to Part D states several times that “the eligible locations for short-term rental type uses would not be significantly altered by the proposal.” This is inaccurate. The Proposal would prevent short-term rental uses in more than one unit of multi-unit buildings with one owner (such as apartment buildings) because it limits the number of short-term rental units that may be registered to the operator’s primary residence and one additional unit. The Proposal would also render short-term rental in most residential zones illegal, since the Proposal defines short-term rental as a lodging use, which is not permitted in residential zones.
- The response to Part D, Question 5 fails to identify the inconsistencies with existing land use plans and regulations discussed below in Section C.

This response asserts that the Proposal includes limit to help ensure that short-term rental “does not significantly reduce the City’s supply of sufficient, diverse, and affordable housing.” There is no factual data provided to support the assertion that the Proposal will accomplish this goal. Indeed, the testimony and expert report previously provided to the Seattle City Council demonstrates that short-term rental has no impact on housing affordability. This response also fails to recognize that short-term rental generally does not occur in units that would otherwise be considered affordable. Finally, this response fails to acknowledge that the Proposal reduces the diversity of housing supply by significantly curtailing the short-term housing supply.

The response to Question 5 states that “it is important to avoid potential adverse impacts on both the availability of housing for individuals as well as the overall functionality of the citywide housing market.” However, the response fails to acknowledge that the Proposal reduces the availability of housing for individuals who need short-term housing. In addition, the Proposal adversely affects the functionality of the housing market by removing housing that is important to business, educational and medical institutions and arts organizations throughout Seattle. The response states there is “no particular potential for significant adverse housing-related operational impacts” because stays of 30 days are still allowed for temporary workers and those receiving medical treatment. However, this statement ignores the impacts on workers and patients who are here for less than 30 days.

The response to Question 5 utilizes data from one platform (Airbnb) to determine that impacts on the availability of lodging on a nightly or weekly basis will not be significant. However, there is no justification for the use of data from a single platform or any information demonstrating that this data provides an accurate assessment of short-term rental across the City.

The response to Question 5 states that the proposal is not expected to “adversely affect the

number of physical housing units present in the city.” This conclusory statement ignores the fact that the Proposal motivates developers to establish the use of their buildings as hotels (where permitted) rather than residential units to preserve their ability to rent short-term. This will result in the development of fewer housing units in the City.

- The response to Part D, Question 6 relies exclusively on data from one platform (Airbnb) to determine that traffic impacts will not be significant. Again, there is no justification for the use of data from a single platform or any information demonstrating that this data provides an accurate assessment of short-term rental across the City. The response also fails to recognize that when this use is regulated and limited in the City, demand will be met outside the City. This will result in longer commutes for individuals who need short-term housing but are conducting activities in the City. The response fails to recognize the additional traffic generated by the Proposal.
- The response to Part D, Question 7 identifies several Comprehensive Plan goals policies with which the Checklist asserts the Proposal is consistent. In fact, the opposite is true. The Proposal is inconsistent with many of these goals and policies, as follows:

- LU 2.1 Allow or prohibit uses in each zone based on the zone’s intended function as described in this Land Use Element and on the expected impacts of a use on other properties in the zone and the surrounding area.

The Proposal is inconsistent with this policy because it restricts short-term rental across all zones, including residential zones, despite the fact that short-term rental is consistent with the intended function of residential and mixed residential/commercial zones.

- LU 2.4 Limit nonresidential uses in residential zones to those necessary or highly compatible with the function of residential neighborhoods.

The Proposal is not consistent with this policy. Short-term rental is currently considered a residential use and is compatible with the function of residential neighborhoods.

- LU 2.5 Allow nonconforming uses to be maintained and enhanced, but generally not to be expanded or extended, and encourage them to become more conforming over time.

The Proposal is inconsistent with this policy. The Proposal does not allow nonconforming short-term rental use to continue, but requires that short-term rental uses conform to the Proposal within one year, with limited exceptions.

- LU 7.4 Allow detached single-family dwellings as the principal use permitted outright in single-family residential areas.

The Proposal is not consistent with this policy. Short-term rental occurs in single-family dwellings. The duration of the use does not change its residential nature.

- LU 7.6 Limit the number and types of nonresidential uses allowed in single-family residential areas and apply appropriate development standards in order to protect those areas from the negative impacts of incompatible uses.

See discussion under LU 7.4.

- LU 8.6 Establish multifamily residential use as the predominant use in multifamily areas and limit the number and type of nonresidential uses to preserve the residential character of these areas, protect these areas from negative impacts of incompatible uses, and maintain development opportunities for residential use.

The Proposal is not consistent with this policy. Short-term rental occurs in multifamily dwellings. The duration of the use does not change its residential nature.

- LU 9.5 Support a wide range of uses in commercial areas, taking into account the intended pedestrian, automobile, or residential orientation of the area, the area's role in the urban village strategy, and the impacts that the uses could have on surrounding areas.

The Proposal is not consistent with this policy. Instead, it limits the range of uses in commercial (and other) areas.

- LU 9.22 Accommodate the broadest range of commercial activities in general commercial areas, including retail uses of all sizes, small office buildings, warehouses, and light and general manufacturing facilities.

This policy is inapplicable, as it addresses retail, office, warehouse and manufacturing uses.

- ST-G3 Strive to reinforce Downtown as a center of cultural and entertainment activities to foster the arts in the city, attract people to the area, create livable neighborhoods, and make Downtown an enjoyable place to be shared by all. Encourage facilities for artists to live and work in Downtown.

The Proposal is inconsistent with this goal as it restricts a housing type (short-term rental) that supports cultural, entertainment and art activities downtown.

- DT-G7 Encourage a mix of housing, employment, and related support activities in a crescent bounding the office and retail cores. Within this crescent, foster areas that are predominantly residential in character, including Chinatown/International

District and Belltown. Encourage housing as the primary use in these areas and limit the type and scale of nonresidential uses allowed to ensure that such development is compatible with a residential neighborhood.

The Proposal is inconsistent with this goal as it restricts one housing type (short-term rental) in the specified areas (as well as other areas).

- COM-G1 Maintain the Commercial Core as a major employment center, tourist and convention attraction, shopping magnet, residential neighborhood, and regional hub of cultural and entertainment activities.

The Proposal is inconsistent with this goal as it restricts a housing type (short-term rental) that supports employment, tourist, convention, cultural and entertainment uses.

- ED 1.1 Enhance the Downtown core as the economic center of the city and the region, and strengthen its appeal as home to many of Seattle's vital professional service firms, high technology companies, and regional retailers, as well as cultural, historic, entertainment, convention, and tourist facilities.

See discussion under COM-G1.

- ED G3 Encourage a business climate that supports new investment, job creation, and resilience and that values cultural diversity and inclusion.

The Proposal is inconsistent with this goal as it restricts a housing type (short-term rental) that supports business in Seattle and employs Seattle residents.

- ED 3.2 Strive to make the business climate more competitive through use of transparent and predictable regulations, efficient approval processes, and reasonable taxes, fees, and utility rates.

See discussion under ED G3.

- ED 3.8 Recognize and maintain a high-quality of life for all residents as one of Seattle's competitive advantages.

The Proposal is inconsistent with this policy because it removes a needed source of income for many Seattle residents.

- ED G5 Strengthen the entrepreneurial environment for start-ups and small businesses.

The Proposal is inconsistent with this goal because it weakens the entrepreneurial environment for small businesses that own, manage and maintain short-term rentals.

- ED 5.6 Promote the growth of local small businesses.

See discussion under ED G5.

- H 2.5 Monitor the supply of housing and encourage the replacement of housing that is demolished or converted to nonresidential or higher-cost residential use.

This policy is not applicable. The Proposal does not address replacement of housing. The Proposal does not address housing demolition. Short-term rental is a residential use. The Checklist does not provide any data demonstrating that short-term rental impacts housing affordability across the City.

- H 4.1 Provide programs, regulations, and enforcement to help ensure that all housing is healthy and safe and meets basic housing-maintenance requirements.

This policy is not applicable. The Checklist does not provide any data indicating that short-term rental housing is not already healthy, safe and well maintained. To the contrary, short-term rentals are typically maintained at a high level of quality. The Proposal will remove needed income for property maintenance.

- H 4.6 Promote access to public decision-making about housing for all Seattleites.

This policy is inapplicable. The Proposal does not address the public decision making process.

- H 5.4 Monitor regularly the supply, diversity, and affordability of housing for households by income level, and use this information to help evaluate whether changes to housing strategies and policies are needed to encourage more affordable housing or to advance racial and social equity.

The Proposal does not further this policy. The Checklist does not provide any data demonstrating that short-term rental impacts housing affordability across the City or that the Proposal encourages more affordable housing.

- H 5.10 Encourage rental-housing owners to preserve, rehabilitate, or redevelop their properties in ways that limit housing displacement, maintain affordable, healthy, and safe living conditions for current residents, and consider cultural and economic needs of the surrounding neighborhood.

The Proposal is inconsistent with this goal because it reduces income that property owners use to preserve, rehabilitate and maintain their properties.

- H 5.13 Seek to reduce cost burdens among Seattle households, especially lower-income households and households of color.

The Proposal is not consistent with this policy. The Proposal does not reduce cost burdens. To the contrary, it eliminates a source of income for Seattle property owners.

- H 5.15 Encourage a shared responsibility between the private and public sectors for addressing affordable housing needs.

The Proposal is not consistent with this Policy. The Checklist does not provide any data demonstrating that short-term rental impacts housing affordability across the City or that the Proposal will increase housing affordability.

- H 5.20 Implement strategies and programs to help ensure a range of housing opportunities affordable for Seattle's workforce.

The Proposal is inconsistent with this policy because it reduces housing needed by Seattle's temporary workforce and employees relocating to the area.

- H 5.23 Support programs that enable Seattle's lower-income homeowners to remain safely and affordably housed.

The Proposal is not consistent with this Policy. The Checklist does not provide any data demonstrating that short-term rental impacts housing affordability across the City or that the Proposal will increase housing affordability.

- SA P2 In the Land Use Code, identify appropriate shoreline uses and related standards, and provide site-development standards and other appropriate criteria indicating minimal acceptable standards to be achieved.

This policy is not applicable because the Proposal does not focus on shoreline use and development standards but is generally applicable throughout the City.

C. The Proposal Will Result in Significant Adverse Impacts

The City may issue a DNS only when the proposal under consideration will not have significant adverse environmental impacts. WAC 197-11-340(1); SMC 25.05.340.A. In contrast, if a proposal will have a significant adverse impact on the environment, the City must issue a Determination of Significance ("DS") and prepare an Environmental Impact Statement ("EIS"). WAC 197-11-360(1); SMC 25.05.360.A.

Under SEPA, the “built environment” is an element of the environment. WAC 197-11-740; WAC 197-11-444. The “built environment” includes “land and shoreline use,” which in turn includes “relationship to existing land use plans,” “housing” and “aesthetics.” The built environment also includes “transportation.” WAC 197-11-444. During the threshold determination process, an agency must ask, “Is the project consistent with the . . . local development regulations, and the comprehensive plan?” Department of Ecology SEPA Handbook, Section 2.6. “Review of a nonproject proposal should include a consideration of other existing regulations and plans, and any under development.” *Id.* at Section 4.1.

In addition, courts have repeatedly held that physical impacts that result from economic effects are environmental impacts that must be considered under SEPA. *West 514, Inc. v. County of Spokane*, 53 Wn. App. 838, 847-848, 779 P.2d 1065 (1989); *Indian Trail Property Association v. City of Spokane*, 76 Wn. App. 430, 444, 886 P.2d 209 (1994).

1. Built Environment, Land Use, Housing, Aesthetics and Transportation

Here, contrary to the conclusion of the DNS, the Proposal will have significant adverse environmental impacts. The Proposal will result in probable significant adverse physical impacts to the built environment, land use, housing, aesthetics and transportation. Property owners who rent their properties on a short-term basis (defined by the Proposal as 30 days or less) must maintain these properties in excellent condition in order to be competitive in the market. Thus, properties that are rented on a short-term basis are often better maintained than those rented on a longer term basis. In addition, Property owners use the income from short-term rental to maintain their properties. The Proposal severely limits short-term rental. As a result, property maintenance will decline and blight will occur, causing significant adverse land use and aesthetic impacts.

In addition, property owners who currently rent multiple residences short-term will be forced to eliminate short-term rental in any units beyond their primary residence and one additional residence.¹ This will reduce the availability of short-term rental housing, an important housing type. In addition, this may cause these owners to redevelop their properties or convert them to owner-occupied units. The result will be a reduction in rental housing availability overall. These are significant adverse impacts to the availability of rental housing.

Moreover, the proposal forecloses the option recommended by the Housing Affordability and Livability Agenda (“HALA”) Report, which was to tax short-term rental to benefit affordable housing rather than limit this use. As a result of the decision to limit short-term rental rather than pursue a tax or fee, the City will not obtain revenue for affordable housing and fewer affordable housing units will be created. These are significant adverse housing impacts.

Further, many short-term rentals are located in residential areas outside of downtown. Individuals renting short-term housing do so because, among other things, the location is convenient to their

¹ There is a very limited exception for existing short-term rentals meeting certain standards in the Downtown, South Lake Union and Uptown Urban Centers.

destination in Seattle. If short-term rentals are reduced in these areas, then these individuals will be forced to stay in hotels, many of which are concentrated downtown. This will result in additional vehicle trips from hotels to the individuals' destinations. These additional trips will result in a significant adverse traffic impact.

2. Relationship to Existing Land Use Plans

The Proposal will also result in significant adverse impacts in relationship to existing land use plans. Specifically, the Proposal creates a number of inconsistencies with existing plans and regulations:

- Unintended consequences. Short-term rentals are not just for vacationers. Short-term rentals are used by patients of Seattle's world class medical institutions and their families; by visiting faculty and other staff at our universities; and by people working here in a wide range of professions, including technology, health care and entertainment, either on a temporary basis or relocating here. The Proposal limits the availability of housing serving these important institutions and industries, contrary to City Comprehensive Plan goals and policies supporting these institutions and industries and economic development generally.
- Nonconforming uses. The Land Use Code allows nonconforming uses to continue, consistent with legal requirements established by common law. The Proposal requires most short-term rental uses to comply with the Proposal's requirements within one year, in conflict with these Land Use Code provisions.
- Lodging Use. Short-term rentals are currently regulated as residential uses under the Land Use Code. The Proposal redefines them as lodging uses. Proposed SMC 23.84A.024 – "L." This causes numerous inconsistencies within the Land Use Code.

First, Washington case law recognizes that short-term rental uses are residential in nature. In particular, short-term rentals qualify as residential uses under the Seattle Land Use Code. The Proposal purports to reclassify these uses without amending the definition of residential use.

Second, under the Land Use Code, lodging uses are not allowed in most residential zones. Accordingly, while the Proposal purports to allow short-term rental of the operator's primary residence, and up to 90 cumulative days of short-term rental of properties that are not the operator's primary residence, the plain language of the Proposal renders short-term rental an illegal use in most zones in which it occurs.

Third, in zones in which lodging uses are allowed, they are subject to different development standards than residential uses. Under the Proposal, the use of a rental property may change from residential to lodging simply due to the rental term. Yet, the property may not comply with development standards applicable to lodging use. For example, in the downtown area, residential uses are exempt from the limits on floor area ratio ("FAR"), but lodging uses are not exempt. Converting residential uses to lodging uses may cause a building to exceed FAR

limits. Differences in other development standards also occur.

Finally, under the Land Use Code, a Master Use Permit ("MUP") is required for a change of use from residential to lodging (and vice versa). In conflict with this requirement, under the Proposal, the use of a property may change based only on the duration of its rental, without a MUP.

D. Public Process

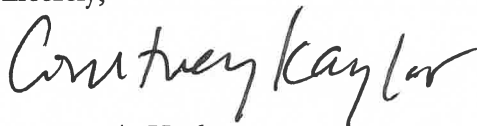
The purpose of SEPA is to inform the public and decision makers. The Proposal has numerous significant adverse impacts and unintended consequences that are not addressed in the Checklist. The Checklist fails to take into account information provided by short-term rental owners, small businesses supporting short-term rental, and short-term rental tenants. 621 Apartments requests that the Seattle Department of Construction and Land Use ("SDCI") extend the public comment period on the DNS to allow additional time for affected stakeholders to comment.

E. Conclusion

The Environmental Checklist lacks crucial information. The Proposal will result in significant adverse environmental impacts. The City must withdraw the DNS and either (1) issue a DS and prepare further environmental analysis, which may include an EIS, addressing these impacts; or (2) make modifications to the Proposal or adopt mitigation measures to eliminate these significant adverse environmental impacts.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Courtney Kaylor". The signature is written in a cursive, flowing style.

Courtney A. Kaylor

cc: Client