



October 27, 2026

City of Santa Barbara
City Council
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Re: **October 27, 2026 Regular City Council Meeting Agenda Item 4 (Short-Term Rental Ordinances [Ordinance Adoption])**

Dear Mayor Rowse and Members of the City Council:

On behalf of the Santa Barbara Short Term Rental Alliance (**SBSTRA**), a local coalition of homeowners, hosts, property managers, and community stakeholders who support flexible home rentals in Santa Barbara, we write to request that the City Council refrain from adopting and reject the revised draft short-term rental (**STR**) ordinances (hereafter sometimes **Ordinances** or **Project**), as were introduced on October 6.¹

We submit this letter to reiterate the unaddressed arguments we have raised in our previous comment letters as well as to provide additional grounds for not adopting the Ordinances, including, inter alia, that, under the Santa Barbara Municipal Code, the Ordinances must be sent back to the Planning Commission due to substantive changes made to them after Planning Commission approval.

We incorporate by reference, as though fully set forth here, the CEQA objections and supporting authority in the comment letters submitted by Angel Law and the comment letter submitted by SBSTRA to the city of Santa Barbara (**City**), together with every exhibit and expert report attached thereto.² These letters are already in the City's administrative record. We renew each objection here.

¹ SBSTRA works to educate policymakers and the public about the benefits of STRs, advocate for fair and balanced regulations, and ensure that residents have the ability to responsibly rent their homes while supporting tourism, local businesses, and the regional economy.

² This includes (1) the letter dated March 4, 2026 from SBSTRA to the City's Planning Commission (**March 4 Letter**), (2) the Angel Law letter dated April 13, 2026 to the City's Ordinance Committee regarding Agenda Item 1 for the April 14, 2026 meeting (**April 13 Letter**), (3) the Angel Law letter dated June 8, 2026 to the City's Ordinance Committee regarding Agenda Item 1 for the June 9, 2026 meeting (**June 8 Letter**), and (4) the Angel Law letter dated October 6, 2026, on behalf of SBSTRA (**October 6 Letter**), to the City Council regarding Agenda Item 13 (Short-Term Rental Program Ordinances), which

1. The City Failed to Comply With CEQA

A. *The Common Sense Exemption Does not Apply to Any Element of the STR Program*

As we articulated in our prior comment letters, the City's reliance on the exemption from environmental review contained in CEQA Guidelines section 15061, subdivision (b)(3) (**common sense exemption**) does not stand up to legal scrutiny.

The City appears to rely on the common sense exemption for the proposed Coastal Ordinance (SBMC, title 28). (Oct. 27 Agenda Packet at 101.) Staff's recommended CEQA finding, however, has sometimes cited the exemption for the STR Program as a whole. (See, e.g., June 9 Staff Report at 1.) To the extent the City relies on the common sense exemption for the Inland Ordinance (SBMC, title 30), the fee resolution, the hotel-conversion amendments, or the STR Program as a whole, our objections apply equally. Because the exemption turns on whether there is any possibility of a significant effect, our analysis addresses both the effects of the City Council's action proposed for the inland area, as well as the effects of the STR Program as a whole, including the effects of the proposed action for the Santa Barbara coastal zone. We address the City's reliance on the program environmental impact report (**PEIR**) for the Inland Ordinance separately in subpart B, *post*.

The legal standard for the common sense exemption is exacting. It applies only "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (CEQA Guidelines, § 15061, subd. (b)(3).) The agency invoking the exemption bears the burden of establishing that certainty with substantial evidence. (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116–117.) An objector's burden, by contrast, is slight: "If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt." (*Id.* at p. 117.) Where "a reasonable argument is made to suggest a possibility that a project will cause a significant environmental impact, the agency must refute that claim to a certainty before finding that the exemption applies." (*Id.* at p. 118.)

The City has failed to meet that standard. It never mustered any evidence to support a finding of "no possibility" of significant impacts. Staff attempts to justify the exemption on the ground that the ordinances do not directly approve construction, grant entitlements, or cause physical changes. (Planning Commission Staff Report, Item III.B, March 5, 2026 meeting at 10.) But that is profoundly flawed reasoning, totally ignoring the likelihood of reasonably foreseeable indirect and secondary effects of the council's decisions, including induced changes in land-use patterns and the related effects. (CEQA Guidelines, §§ 15064, subd. (d), 15358, subd. (a)(2); *City of Redlands v. County of San Bernardino* (2002) 97 Cal.App.4th 398, 409 ["Not only does CEQA apply to revisions or amendments to an agency's general plan, but CEQA reaches beyond the mere changes in the language in the agency's policy to the ultimate consequences of such changes to the physical environment"]; see *id.* at p. 412; *Davidon Homes, supra*, 54 Cal.App.4th at p. 119.) Using such an erroneous legal standard is a failure to proceed in the manner required by law. (*City of Marina v. Board of Trustees of California State University* (2006) 39

was submitted together with the Ramboll environmental analysis and the two Ceto Consulting expert reports.

Cal.4th 341, 355 [“an agency’s ‘use of an erroneous legal standard constitutes a failure to proceed in a manner required by law’”].)

Additionally, the City’s own staff reports point to a likelihood of significant impacts. Staff estimates a loss of roughly \$2.3 million to \$3 million per year in transient occupancy tax (**TOT**) revenue once the ordinance is certified in the coastal zone. (Oct. 6 Staff Report at 10.) Indeed, staff estimates that the number of coastal zone STRs paying TOT “will decline from about 265 to perhaps fewer than the 65 sites currently paying TOT and located in the proposed Coastal Zone license area.” (Oct. 6 Staff Report at 9–10.) The City cannot reasonably predict that loss and also claim with legal certainty that there is “no possibility” of a significant environmental effect. The expert report from Ramboll, submitted for the 10/06 hearing and attached again here, details the processes through which the Ordinances, by displacing would-be STR guests, could generate significant environmental impacts. Displaced guests will not disappear—by gutting the local STR stock, the City will simply push more people into hotels or out-of-town STRs. Forcing guests to drive in from neighboring jurisdictions increases vehicle miles traveled (**VMT**) and air pollutant and GHG emissions as a result, and pushing guests into hotels will likely result in both higher VMT and energy usage per guest. (Ramboll Report at 2, 5, 13.) These indirect effects are cognizable under CEQA.

This is not to mention the fact that cumulative effects from the coastal zone restrictions also independently bar the exemption as applied to the Inland Ordinance. The incremental loss of overnight capacity in the coastal zone under the proposed Coastal Ordinance compounds the inland effects, further increasing VMT and criteria pollutant and GHG emissions. (Ramboll Report at 7.) A project’s cumulative effects alone are enough to take it outside the common sense exemption. (*Davidon Homes, supra*, 54 Cal.App.4th at p. 119.) Even beyond the air pollution, energy use, and similar impacts discussed above, eviscerating inland STR supply affects coastal access, an environmental resource. (See *Lent v. California Coastal Com.* (2021) 62 Cal.App.5th 812, 834.) The title 30 restrictions alone put approximately 445 inland STRs at risk of being shut down. (April 21, 2026 Ordinance Committee Agenda Report at 7.) That loss reasonably foreseeably increases demand for, and the cost of, coastal zone accommodations, where citywide hotel occupancy already reaches approximately 80% in summer, “a level widely considered near full capacity.” (Ceto Consulting, LLC, Integrated Market Analysis of Overnight Accommodations in the City of Santa Barbara (Oct. 4, 2026) (**Ceto Market Analysis**) at 8.) Because the coastal zone in urbanized areas, as here, generally extends only about 1,000 yards inland, inland accommodations matter especially to coastal access. (*Id.* at 3.) Again, public access is a resource, and the term “environment,” for CEQA purposes, includes man-made conditions. (CEQA Guidelines, § 15360.) If some visitors forgo the trip entirely, the Ordinances will reduce coastal access for lower- and middle-income visitors, for whom STRs are a comparatively lower-cost option. (See Pub. Resources Code, § 30213; Ceto Market Analysis at 2, 9.)

B. The Housing Plan PEIR Does not Address Any Element of the STR Program

City staff earlier this month began to also cite the PEIR prepared for the City’s housing plan as a basis for exempting the Inland Ordinance from CEQA review. This is prejudicial error.

First, CEQA’s subsequent review provisions -- Public Resources Code section 21166 and CEQA Guidelines section 15162 -- do not apply here. Those provisions apply only when a project has already undergone actual environmental review in an EIR or a negative declaration. (See Pub. Resources Code, § 21166; CEQA Guidelines, § 15162; *Friends of College of San*

Mateo Gardens v. San Mateo County Community College Dist. (2016) 1 Cal.5th 937, 949–952.) Staff nonetheless relies on CEQA Guidelines section 15162 criteria. (Oct. 6 Staff Report at 12.) The Ordinances have undergone no PEIR, other EIR or initial study/negative declaration review of any sort.

The PEIR is inapplicable as an environmental review document for the Ordinances because it does not even *describe* any of them. The PEIR says only that the City will “[i]mprove short-term rental enforcement, develop a framework for short-term rental ordinance, and adopt a short-term rental ordinance.” (Final Housing Plan PEIR (Jan. 2026), Table 3-2 at p. 3-6 [Program HE-19].) It does not say what geographic reach a future ordinance would have, or whether it would ban STRs, regulate them (e.g., through caps or limits on rental frequency), or deregulate them. (*Ibid.*) For that reason, the PEIR has no informational value for this decision. (See *Friends of College of San Mateo Gardens, supra*, 1 Cal.5th at p. 952.)

For the City to be able to rely on the PEIR to avoid CEQA review for the Ordinances, the PEIR would have had to analyze the impacts of the Ordinances on the environment. Close examination of the PEIR shows it does not, and how could it when it doesn’t describe the Ordinances in the first place? The PEIR perfunctorily flags Program HE-19 as one of the “[p]rograms with no potential to create physical environmental impacts [which] are not described in more detail below.” (PEIR at pp. 3-5–3-7 & Table 3-2.) But such say-so -- “no potential to create physical environmental impacts” associated with “a framework for short-term rental ordinance” or “adopt[ing] a short-term rental ordinance” -- is just that: say-so, not substantial *evidence* that the Ordinances have no potential to create environmental impacts. For example, the PEIR transportation and air quality sections do not analyze STR regulation at all. Nor does the PEIR’s Environmental Setting section address existing STRs.³

By Public Resources Code section 21094, subdivision (c) and CEQA Guidelines section 15168, subdivision (c)(1), a later activity with effects a program EIR did not examine, requires a new initial study. Ironically, the PEIR acknowledges that very rule: “If a subsequent activity would have effects not contemplated or not within the scope of the Program EIR, the lead agency must prepare a new environmental review document such as an Initial Study.” (PEIR at p. 1-2.) Clearly, then, the City, at a minimum, was required to prepare an initial study under CEQA to determine whether to prepare an EIR or a negative declaration before adopting the Inland Ordinance. (CEQA Guidelines, § 15063, subd. (c)(1); see *id.*, subd. (b)(1) (C).) A lead agency may not rely on a program EIR for an ordinance that the program EIR did not describe or evaluate. (*Save Our Access v. City of San Diego* (2023) 92 Cal.App.5th 819, 851–853, 859.) Because the PEIR failed to describe or evaluate the impacts attributable to the Inland Ordinance (or, for that matter, any element of the City’s STR Program), the PEIR offers no evidentiary or legal basis for the City to avoid CEQA review of those impacts.

C. Uncontradicted Expert Evidence Shows Significant Effects on the Environment

We have provided substantial and uncontradicted expert evidence that the City’s STR Program for the inland area, as well as the City’s STR Program as a whole, may cause significant effects on the environment. That evidence defeats each rationale the City has offered for avoiding

³ Again, the City may not avoid environmental study of a project’s indirect or secondary effects -- here, the effects that can be expected to follow from the adoption of the Inland Ordinance, although such review need not have the same level of detail as the EIR for a specific construction project. (See Guidelines, §§ 15146, 15358, subd. (a)(2).)

CEQA review of the STR Program for the inland area, including, first and foremost, the Inland Ordinance. It precludes the common sense exemption because the City has not refuted it, let alone to a level of certainty. (Subpart A, *ante*.) It shows effects that the PEIR never examined, which requires new environmental review under Public Resources Code section 21094 and CEQA Guidelines section 15168. (Subpart B, *ante*.) And because the ordinances are a new project not examined in the PEIR, the same evidence supports a fair argument that the City must prepare an EIR. (Pub. Resources Code, § 21082.2.)

VMT modeling. The Ramboll Report modeled two displacement scenarios: a 50/50 split between out-of-City STRs and hotels, and a 70/30 split. (Ramboll Report at 5.) Under either scenario, displaced visitors would generate up to 207% (Scenario 1) or 209% (Scenario 2) of the criteria air pollutant and GHG emissions generated by the same guests staying at existing in-City STRs, or roughly double. (*Id.* at 6 & Table 1.) STRs distribute visitors throughout neighborhoods close to their destinations, and they generate fewer trips: 3.55 average weekday trips per day for recreational homes, compared with 7.99 for hotels, because STR guests can cook on site and hotels require larger commuting workforces. (*Id.* at 4–5.)

Air quality, public health and environmental injustice. Ramboll shows that increased travel to STRs outside the City may push emissions above Santa Barbara County Air Pollution Control District thresholds for criteria air pollutants. The potential consequences include exceedances of air quality standards, adverse health effects on sensitive receptors, and inconsistencies with air quality and climate plans. (Ramboll Report at 2.) The Project would concentrate traffic and emissions in census tracts near Highway 101 and the City's hotel clusters that rank among the most burdened and impoverished in the state, including majority-Hispanic tracts. (*Id.* at 8–12.) These effects arise against a baseline in which all census tracts in the City already experience elevated pollution burden. (*Id.* at 9.)

Energy. STRs use significantly less energy per person than hotels. Shifting a visitor from an STR to a hotel increases per-visitor electricity use by 274% and operational GHG emissions by 114%. (Ramboll Report at 13 & Table 2.)

The scale of capacity loss. Ceto found that the City would lose 702 active STRs, including 622 non-hosted STRs. (Ceto Consulting, LLC, Impacts of Proposed Santa Barbara STR Regulation on STR Capacity (Oct. 4, 2026) (**Ceto Capacity Analysis**) at 2.) That is about 67% of existing STR guest capacity, or overnight accommodations for up to 3,123 guests each night. (*Ibid.*) STRs make up 45% of the City's total guest capacity. (Ceto Market Analysis at 3.)

The City has not rebutted the expert evidence. The Staff Report's environmental review discussion does not mention, much less refute, the expert evidence. (Oct. 6 Staff Report at 12.) Neither the common sense exemption nor the City's reliance on the PEIR can survive that unrebutted record. (*Davidon Homes, supra*, 54 Cal.App.4th at p. 118 ["if a reasonable argument is made to suggest a possibility that a project will cause a significant environmental impact, the agency must refute that claim *to a certainty* before finding that the exemption applies."]; CEQA Guidelines, § 15168, subd. (c)(1).)

D. The City Never Established an Existing STR Conditions Baseline, So It Cannot Measure What the STR Program Changes

The City's reliance on the common sense exemption, as well as its recent fallback on the PEIR share one and the same fundamental defect: a failure by the City to provide a clear accounting of how many STRs exist in the City—the baseline condition for CEQA purposes. That failure, in turn, precludes the City from providing a clear accounting of the losses the STR lodging sector will suffer as a result of the Ordinances, and without that the City's claim that the Inland Ordinance or the whole STR Program has no potential to create physical impacts on the environment is untenable. The City Council cannot find that there is no possibility or potential of significant impacts without first having done this calculation. Without an adequate baseline description, analysis of impacts is "impossible." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953.) Nor can the City rely on the PEIR when the PEIR did not do this accounting.⁴

Combining staff's figures with our expert estimates, the City is likely to experience a massive loss of 750 STRs if the Ordinances are adopted. That total includes roughly 445 inland STRs (Ramboll Report at 4–5), a decline in TOT-paying coastal STRs from about 265 to fewer than 65 (Oct. 6 Staff Report at 10), and some portion of approximately 200 non-TOT-paying coastal STRs (Ramboll Report at 1; Ceto Capacity Analysis at 4). That aggregate combines separate estimates for distinct categories of STRs; Ceto's independent listing-based analysis, which measures currently active listings, likewise projects a loss of 702 active STRs citywide. (Ceto Capacity Analysis at 2.) The April 13 Letter asked staff to estimate how many non-TOT-paying coastal STRs lie outside the license area.

The Ordinance Committee added a blanket ban on STRs and homeshares in all High Fire Hazard Areas (Oct. 6 Staff Report at 4), yet the Staff Report discloses no data on the additional STRs this new ban eliminates, and the 445-unit inland estimate does not include STRs in those areas. (Ramboll Report at 4–5.) Furthermore, the Ordinances make ADUs and their associated primary units ineligible as STRs (Oct. 6 Staff Report at 4) and require homeshares to be located in the host's primary residence. (*Id.* at 5).

⁴ An agency invoking the common sense exemption "obviously cannot declare 'with certainty that there is no possibility that the activity in question may have a significant effect on the environment' if it has not considered the facts of the matter," and where legitimate questions are raised, the agency has "the burden to elucidate the facts" that justify the exemption. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386–387.) That inquiry must be measured against "the actually existing physical conditions," and the agency "is required to measure the 'existing conditions baseline.'" (*Russian Riverkeeper v. County of Sonoma* (2026) 122 Cal.App.5th 382, 415.) Nor may an agency rely on a program EIR by "defining away significant impacts by narrowly characterizing 'build out' . . . while excluding other reasonably foreseeable effects . . ." (*Save Our Access v. City of San Diego* (2025) 115 Cal.App.5th 388, 404.) Yet the staff report repeats that error and rests its recommended PEIR finding on the absence of "any changes to the development build-out assumptions used in the EIR analysis" (Oct. 6 Staff Report at 12), brushing away any impacts specific to the STR action it recommends the City Council take on October 27.

The staff report has not adequately quantified the existing STR stock or the capacity its ordinances eliminate, despite repeated requests, and has offered no evidentiary support for its bald assumption that the Inland Ordinance -- or the STR Program as a whole -- has no potential to create physical impacts on the environment. In short, the City cannot possibly find "with certainty" that no significant effect is possible or that the Ordinances' effects were disclosed in the PEIR.

In summary: While the City's staff reports over the past several months have produced scattered data that can be pieced together to arrive at some incomplete sense of the net loss of STRs, they fail to account for STR losses due to the ban on STRs in High Fire Hazard Areas and due to other, eligibility restrictions like those that make ADUs and their associated primary units ineligible as STRs and those that require homeshares to be located in the host's primary residence. All these restrictions will further reduce STR stock, adding to the effects Ramboll identified. This is not to mention that the true effects of the Ordinances will be exacerbated by private restrictions, like covenants that ban STRs, which although out of the City's control, nevertheless remain an unexamined factor. The City has twice been asked for a complete accounting of aggregate losses across the inland, coastal zone, and fire-zone restrictions. Having provided no such calculation, the City Council cannot find no possibility or potential of significant impacts following approval of the Inland Ordinance, much less following approval of both Ordinances.

2. The Ordinances Violate Property Owners' Vested Rights to Maintain a Legal Nonconforming STR Use

Reflecting long-established state law, the SBMC, in no uncertain terms, codifies the protection of nonconforming uses:

"Nonconforming structures, site development, *or uses* may be continued, repaired and maintained provided there is no increase in the intensity of any nonconforming use, except as allowed pursuant to Section 30.165.070A, Change of Use. The right to continue a nonconforming use or structure shall attach to the land and shall not be affected by a change in ownership, tenancy, or management. The right to continue a nonconformity shall terminate once it has been abandoned."

(SBMC § 30.165.030(A), italics added.) A nonconforming use is "[a] use of a building, structure, or site, or portion thereof, or a building, structure or facility itself, which was lawfully established and maintained but, because of the application of this Title to it, does not conform to the present standards of the zone in which it is located." (SBMC, § 30.300.140.)

Prior to March 3, 2020, STRs in a residential dwelling must be considered to have been allowed residential uses. Indeed, binding precedent holds that where, as here prior to 2020, a residential zoning code "contain[s] no long-term/short-term distinction," "[i]f long-term rentals are legal, so too are short-term rentals," and "[u]se of the word 'residence' does not imply some minimum length of occupancy." (*Keen v. City of Manhattan Beach* (2022) 77 Cal.App.5th 142, 148–149.)⁵ After March 3, 2020, existing STRs thus became nonconforming uses that may be continued provided there is no increase in the intensity of the STR use.

The Ordinances recognize as nonconforming uses only STRs that were "legally permitted to operate as a hotel or similar use prior to the effective date" of the Ordinance. (Proposed SBMC §§ 28.91.180(A), 30.185.395(R)(1).) The Ordinances prohibit, 180 days after their effective date, any other existing STRs in residential zones, including those that existed lawfully prior to March 3, 2020, and were thus lawful nonconforming STRs uses prior to the Ordinances. (*Id.*, §§

⁵ To the extent the trial court ruled differently in *Santa Barbara Inland & Coastal Property Owners Assn*, Santa Barbara Superior Court Case No. 18CV03136 (2021), that decision has no value as a precedent under the California Rules of Court. More importantly, the 2021 trial court ruling is in conflict with the Court of Appeal's decision in *Keen*. It is superseded by *Keen*.

28.91.180(B), 30.185.395(R)(2).) This is in direct contradiction to a property owner's vested right to maintain the nonconforming use, provided there is no increase in the intensity of the use, until the STR use is abandoned. (See SBMC § 30.165.030(A).) The Ordinances flatly violate the SBMC's own protections for nonconforming uses and they terminate previously lawful uses without amortization or compensation, which California courts have held is of "doubtful constitutionality." (*Livingston Rock & Gravel Co. v. Los Angeles County* (1954) 43 Cal.2d 121, 127; see also *City of Los Angeles v. Gage* (1954) 127 Cal.App.2d 442, 454, 460.)

The narrow nonconforming use provisions of the Ordinances rest on the false premise that STRs have always been prohibited in the City's residential zones, and that the Ordinances merely create a licensing path out of that long-standing prohibition. The City's regulatory record shows otherwise. Before March 3, 2020, no provision of the City's zoning code mentioned STRs. The City registered, licensed, and taxed them for years. And when the City's own definition was tested in court, the City responded not by litigating its meaning but by rewriting it while conveniently labeling the rewrite "declaratory of existing law." The City's "declaratory" amendments were not declaratory of the then existing zoning regulations. No silent ban on STRs existed before March 3, 2020.

A. Before 2015, the City Treated STRs as Residential Uses

For decades, the City's zoning code defined "hotel" without any reference to STRs. As codified in title 28, a hotel is "[a] building, group of buildings or a portion of a building which is designed for or occupied as the temporary abiding place of individuals for less than thirty (30) consecutive days including, but not limited to establishments held out to the public as auto courts, bed and breakfast inns, hostels, inns, motels, motor lodges, time share projects, tourist courts, and other similar uses." (SBMC, § 28.04.395 (rev. Dec. 31, 2014), at 475.) The City states that this definition has been in place "[s]ince at least 1983." (Ord. No. 5947, § 1(B); March 3, 2020 Council Agenda Report, Agenda Item No. 16 at 2.) The codified history of SBMC section 28.04.395 confirms that the definition was last amended in 1983 and traces to the original 1957 zoning ordinance. (SBMC, § 28.04.395 [citing Ord. 4199 (1983); Ord. 3710 (1974); Ord. 2585 (1957)].)

By contrast, title 28 defines a "residential unit" as "[a] building or portion thereof designed or occupied for residential purposes, containing not more than one (1) kitchen per residential unit, but not including hotels or boarding houses," with *no reference to the length of occupancy*. (SBMC, § 28.04.590, subd. A (rev. Dec. 31, 2014).) Again, where a residential zoning code "contain[s] no long-term/short-term distinction," "[i]f long-term rentals are legal, so too are short-term rentals," and "[u]se of the word 'residence' does not imply some minimum length of occupancy." (*Keen, supra*, 77 Cal.App.5th at pp. 148–149.) A hotel definition aimed at commercial lodging establishments does not reach the short-term rental of a single-family home, which "conventionally ha[s] kitchens." (*Id.* at p. 150.) Nor may a long-term occupancy requirement be inferred from a separate definition limited to stays of 30 days or less: "Courts are reluctant to accept that legislatures enact important or fundamental changes by silent indirection." (*People v. Venice Suites, LLC* (2021) 71 Cal.App.5th 715, 733.)

The City's conduct was consistent with the SBMC's silence on the topic of STRs. As the Court of Appeal found in *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089, "[p]rior to 2015, the City of Santa Barbara (City) encouraged the operation of short-term vacation rentals (STVRs) along its coast by *treating them as permissible residential uses*." (*Id.* at p. 1092, italics

added.) The City “only required the homeowner to register the STVR, to obtain a business license and to pay the 12 percent daily transient occupancy tax,” and its enforcement efforts “focused on nuisance complaints about a particular STVR.” (*Id.* at p. 1093.) In 2010 and 2014, the City offered “amnesty” to owners who had failed to pay transient occupancy tax (**TOT**), a program “not intended to curb the number of STVRs but rather to increase the City’s tax revenue.” (*Ibid.*) Registered STRs grew from 52 in 2010 to 349 by 2015, including 114 in the Coastal Zone, and the City collected \$1.2 million in STR occupancy taxes in that fiscal year alone. (*Ibid.*) The City acknowledges that it has accepted TOT from STR operators since 2001. (Oct. 6 Staff Report at 9.) This indicates that even if one were to erroneously maintain that STRs were prohibited after a 2015 enforcement change (discussed below), one could not in good faith argue that they were prohibited before 2015.

B. The City Changed Its Code Enforcement Practices, But Not Its Code, in 2015

The City’s enforcement practices changed in June 2015, when City staff first advised the City Council that “[a]ll vacation rentals or home shares that are not zoned and permitted as hotels, motels, or bed and breakfasts are in violation of the Municipal Code,” and the Council directed proactive enforcement. (*Kracke, supra*, 63 Cal.App.5th at p. 1093.) The City adopted no ordinance to legalize this practice; the City Council simply directed staff to “proactively enforce” existing zoning regulations, which were now claimed to be prohibited hotel uses in residential zones. (*Id.* at p. 1094.) By August 2018, the 114 coastal STRs had dwindled to six. (*Ibid.*)

However, the City still had no STR ban on the books. In fact, in 2017, the City considered, and rejected, a 30-day minimum for residential use. When the City rewrote its inland zoning code through the New Zoning Ordinance (NZO) in 2017, staff proposed new definitions of “Residential Use” and “Nonresidential Use.” The proposed definition of “Residential Use” “included a 30 day minimum in order to be deemed a residential use.” (July 11, 2017 Council Agenda Report, Attachment 8, Summary of Major Topics Reviewed by the Planning Commission, at 19.) “Members of the public objected to the inclusion of the 30 day minimum, as they viewed it as a change intended to make it more difficult to create short-term residential rentals.” (*Ibid.*) After hearings on March 2, March 9, and April 13, 2017, the Planning Commission “ultimately recommended the deletion of the definitions of, ‘Residential Use,’ and ‘Nonresidential Use,’ with a 5-2 vote.” (*Ibid.*) As a result, “the NZO provisions were changed in a number of areas.” (*Ibid.*) The NZO’s definition of “Hotels and Similar Uses” in section 30.295.040.P made no mention of short-term rentals, and it expressly excluded “rooming houses, boarding houses, or private residential clubs.” (See March 3, 2020 Council Agenda Report, Agenda Item No. 16 at 2–3 [showing deletion of exclusion]; May 19, 2020 Council Agenda Report, Agenda Item No. 10 at 1 [2020 amendment was needed “to specifically add” short-term rentals].)

In 2018, a group of property owners challenged the City’s enforcement position. (*Santa Barbara Inland & Coastal Property Rights Assn. v. City of Santa Barbara* (Super. Ct. Santa Barbara County, No. 18CV03136).) The City moved for summary adjudication that all STRs are “hotels” under SBMC titles 28 and 30. On November 26, 2019, the court denied the motion. Applying the rule that items in a list are construed by reference to one another, the court concluded that “the definition is far from clear.” (Minute Order, Nov. 26, 2019, at 6.) The court observed that the listed establishments share “elements common to bed and breakfast inns, motels, and the other items on the list that may or may not be in common with the rental of a single family home for a period of less than 30 days.” (*Ibid.*)

C. In 2020, the City Rewrote the Inland Hotel Definition, Mischaracterizing the Amendment as “Declaratory” of Existing City law

Shortly after the November 2019 trial decision in *Santa Barbara Inland & Coastal Property Rights Assn.*, the City Attorney asked the City Council to change the law. The City Attorney’s report stated that “a trial court has denied the City summary adjudication on the issue,” stated “[w]e believe this ruling to be erroneous,” and warned that “litigating the issue at trial will result in significant and unnecessary expense and uncertainty.” (March 3, 2020 Council Agenda Report, Agenda Item No. 16 at 1.) The report described the intended “effect” of the amendment as “to ‘moot,’ or silence,” the claim that the City had been misreading its own code. (*Id.* at 3.)

On March 3, 2020, the City Council adopted an interim urgency ordinance under Government Code section 65858, effective immediately. (Interim Urgency Ord. (Mar. 3, 2020), § 4; see May 19, 2020 Council Agenda Report, Agenda Item No. 10 at 1.) The ordinance made two substantive changes to section 30.295.040.P. It added “short term rental or similar use of single or multi-unit residential dwellings” to the list of hotel uses, and it deleted the exclusion for “rooming houses, boarding houses, or private residential clubs.” (*Id.*, § 2.) It nonetheless declared these changes “declaratory of existing law” and “enacted to prevent needless litigation.” (*Id.*, § 1(F), 3.) On April 14, 2020, the council moved to extend the interim ordinance. (May 19, 2020 Council Agenda Report, Agenda Item No. 10 at 1.)

In June 2020, the City Council adopted Ordinance No. 5947, the permanent version of the urgency ordinance. (Ord. No. 5947, § 2.) Its findings freely acknowledge that “the City collected Transient Occupancy Tax from short-term vacation rental operators,” adding that doing so “created potential confusion among short-term vacation rental operators.” (*Id.*, § 1(F).) The ordinance again declared itself “declaratory of existing law” and claimed it “merely clarifies existing law and administrative practice.” (*Id.*, §§ 3, 5.)⁶

⁶ As the court of appeal stated in *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599:

“ ‘[T]here is little logic and some incongruity in the notion that one Legislature may speak authoritatively on the intent of an earlier Legislature’s enactment when a gulf of decades separates the two bodies.’ [Citation.] There is even less logic in the notion that the city attorney in 2001, apparently unaided by any legislative history, may speak authoritatively on the intent of the Council in 1962. We find greater logic and less incongruity in giving effect to the plain terms of the 1962 ordinance.”

(*Id.* at p. 604.) Likewise, a planner’s testimony regarding a prior interpretation of municipal code provisions is nonbinding on courts. (*McPherson v. City of Manhattan Beach* (2000) 78 Cal.App.4th 1252, 1266, fn. 6 [“even if we were to consider [the city planner’s] testimony, we are still not bound by it.”].) And, again, a later legislative declaration of an earlier enactment’s meaning “is neither binding nor conclusive,” and a legislative body “has no legislative authority simply to say what it did mean.” (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 473.)

A court simply “cannot accept the Legislative statement that an unmistakable change in the statute is nothing more than a clarification.” (*Ibid.*, quoting *California Emp. etc. Com. v. Payne* (1947) 31 Cal.2d 210, 214.) Moreover, when there are many years between the two enacting bodies, courts are even less likely to allow the subsequent body to declare the meaning of an earlier action. (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244.)

Despite the City's assertion that the 2020 ordinance merely clarified existing law, make no mistake—this was a material change to the law rather than an elucidation of a preexisting regime.⁷ A material change in statutory language ordinarily signals a change in meaning. The question is whether the former text could properly have been read to cover the use at issue. (See *Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 922–924.) It could not. The 2020 amendments added STRs to the hotel definition for the first time and deleted an exclusion for rooming and boarding houses. The City Attorney openly described the amendment's purpose as serving to affect the outcome of the litigation in *Santa Barbara Inland & Coastal Property Rights Assn.* Our case is not like *Carter*, where the former text supported a clarified reading. Here, the amendments rewrote a definition that the City had applied for two decades in a manner consistent with STRs being lawful residential uses.

The *Santa Barbara Inland & Coastal Property Rights Assn.* case proceeded to trial in December 2020. The court held that STRs are hotels under title 28 by applying the rule of *ejusdem generis*, and under title 30 by the “plain meaning” of section 30.295.040(P) *as amended in 2020* to “expressly include[]” STRs. (Decision at 19.) The court's title 30 holding thus rested on the amended text, not the pre-2020 definition. (*Ibid.*)

To the extent the Ordinances rest on the premise that STRs were prohibited in the City's residential zones before March 3, 2020, or that the 2020 amendments to section 30.295.040(P) were “declaratory of existing law,” that premise is legally untenable, and those amendments may not be applied to STRs lawfully established before they took effect. To the extent the City relies on its “declaratory-of-existing-law” sleight of hand as “evidence” of former City Councils' intent, its attempted retroactive application of the 2020 amendments is constitutionally barred.

D. All STRs Operating Prior to 2020 Must Be Treated as Legal Nonconforming Uses

As the regulatory history laid out above demonstrates, the City had no prohibition on the books for STRs prior to 2020. This means that prior to the 2020 ordinances, STRs were allowed wherever long-term renting was allowed, regardless of whether they acquired a hotel conversion permit or the like. The new regulations now before the City Council, by purporting to restrict nonconforming use rights to only those STRs that took part in the later-imposed STR permitting system, thus improperly exclude the class of STR hosts who, by virtue of operating before the

Clearly, neither the City Council or City planners testifying in 2020 can purport to “clarify” what councils that legislated acted in 1957, 1974, and 1983 meant.

The City's interpretation also is not entitled to deference because it registered, licensed, and taxed STRs for years, then reversed course in 2015 without adopting any ordinance. “A vacillating position ... is entitled to no deference,” and an agency deserves none from a court where its “historical position ... has been unclear and inconsistent.” (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 13.) At any rate, the City's change in enforcement *policy* is not a change in the *law*.

⁷ Note that the 2020 amendments did not touch title 28. In 2021, the Court of Appeal held that the City's 2015 enforcement policy was a “development” requiring a coastal development permit or a certified Local Coastal Program amendment, and affirmed a writ requiring the City to allow STRs in the Coastal Zone on the same basis as before June 23, 2015. (*Kracke, supra*, 63 Cal.App.5th at pp. 1092, 1094.) The City acknowledges that, under *Kracke*, it “could not enforce against STRs in the Coastal Zone because it does not have STR regulations approved through either zoning (title 28) or the Coastal Land Use Plan.” (Oct. 6 Staff Report at 2, fn. 1.) Therefore the baseline for the title 28 Ordinance and LCP amendment is that STRs are permitted, not prohibited.

2020 ordinances, acquired nonconforming use rights that must be recognized and protected as a matter of law.

3. The Ordinances Run Afoul of Multiple Constitutional Safeguards, Including But not Limited to the Fourth Amendment of the United States Constitution.

Our prior comments already raised objections based on the Due Process and Equal Protection, and Takings Clauses of the United States and California Constitutions, and the right to freedom of assembly under article I, section 3, of the California Constitution. Here, we focus on the Ordinances' inspection, records, and data-sharing provisions and show that these violate the Fourth Amendment of the United States Constitution. The Fourth Amendment, in pertinent part, plainly states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ."

Administrative searches of private property generally require an opportunity for pre-compliance review by a neutral decisionmaker. (*City of Los Angeles v. Patel* (2015) 576 U.S. 409, 421.) Moreover, under the unconstitutional conditions doctrine, government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests." (*Sheetz v. County of El Dorado* (2024) 601 U.S. 267, 276.) Courts applying these rules to STR ordinances have found constitutionally suspect rules that require hosts to submit to inspection of their property or business records without first being able to challenge the search. In *Weisenberg v. Town Board of Shelter Island*, 404 F.Supp.3d 720, 735 (E.D.N.Y. 2019), thus, the court held that an ordinance requiring inspection of STR guest registries on pain of "automatic fines and potential revocation of [STR] licenses" may violate the Fourth Amendment, because hosts had no adequate opportunity to challenge the reasonableness of the search "before automatic fines are issued." Other courts agree. (See, e.g., *Calvey v. Town Bd. of N. Elba* (N.D.N.Y. Mar. 25, 2021, No. 8:20-CV-711 (TJM/CFH)) 2021 U.S.Dist.LEXIS 56686, at *26-27.) The Ordinances set up the kind of compelled-inspection scheme those cases condemn.

First, the Ordinances improperly allow for vaguely outlined, open-ended inspections during the license term itself, saying: "City staff may conduct inspections during the license term, upon reasonable notice, to verify compliance with this Chapter and all applicable codes and regulations." (Title 28 Ord., § 28.91.140(B); Title 30 Ord., § 30.185.395(N)(2).) The Ordinances fail to define "reasonable notice." They require no showing of probable cause or even a complaint, and they limit neither how often inspections occur, when they may occur, or what they may cover. They require no warrant or other pre-compliance review. In other words, City code enforcement police have unbridled discretion under color of this City law to enter homes, in direct violation of the rule of *Patel*. (576 U.S. at p. 421.)

The inspection provisions apply to non-hosted STRs and homeshare without distinction.⁸ Depending on how the City interprets "reasonable notice," the City may search a person or a family's home, while guests and the household of the owner are present, potentially when people are sleeping, when children are present, or in other situations where unannounced entry by City officials will seriously intrude upon fundamental privacy and property rights.

⁸ Homeshares must be the owner or host's principal residence, and the owner or host must be "physically present" overnight while the unit is rented. (Title 28 Ord., §§ 28.91.020.A, 28.91.090.H.1; Title 30 Ord., § 30.185.395.I.8.a.)

The inspection provisions also improperly require prospective STR hosts to surrender their privacy rights to get licensure. Before a license is first issued, and again before each annual renewal, the Building Official “will conduct an inspection” of the unit to determine the number of bedrooms and compliance with “all applicable building and zoning codes and regulations.” (Title 28 Ord., § 28.91.140(A); Title 30 Ord., § 30.185.395(N)(1).) If any violation is found, the license “will not be issued or renewed” until violations are corrected “to the satisfaction of the Building Official.” (*Ibid.*) Licenses last no more than one year, so every host must consent to a full search of the home at least once a year to keep operating. (Title 28 Ord., § 28.91.080(F); Title 30 Ord., § 30.185.395(H)(6).) This scheme is a pure unconstitutional condition: hosts must give up their Fourth Amendment rights to get a government benefit. (*Sheetz, supra*, 601 U.S. at p. 276.)

And the penalties baked into the Ordinances make refusal impossible. Each violation, and each day it continues, is a separate offense, punishable by fines of up to \$1,500, \$3,000, and \$5,000 for successive violations. (Title 28 Ord., §§ 28.91.150(B), 28.91.160(B); Title 30 Ord., § 30.185.395(O)(2), (P)(2).) More than three “verified violations” in a 12-month term bars renewal, as determined by the Director, and revocation or non-renewal triggers a 24-month bar on reapplying. (Title 28 Ord., § 28.91.080(H)(4), (I); Title 30 Ord., § 30.185.395(H)(8)(d), (e).) Licensing decisions by the Director “are final and not subject to appeal.” (Title 28 Ord., § 28.91.080(D)(2); Title 30 Ord., § 30.185.395(H)(4)(b).) A host who refuses an inspection or records request therefore faces denial or non-renewal with no review at all. That is the automatic-penalty structure *Weisenberg* found constitutionally suspect. (404 F.Supp.3d at p. 735.) Revoking a license for refusing an inspection, without notice or cause, is constitutionally infirm.

4. The Ordinances Must be Referred Back to the Planning Commission

Finally, there are changes made to the Ordinances after it passed the Planning Commission that are substantial enough that they require the Ordinances to be sent back to the Planning Commission. The SBMC requires that, “[i]f the Council proposes any substantial revisions not previously considered by the Planning Commission during its hearing(s), the proposed revision shall first be referred back to the Planning Commission for a report and recommendation.” (SBMC § 30.235.090(B).) The City missed this important procedural step and the City Council cannot move forward with the Ordinances until it complies with the procedural requirements of its own code.

The Planning Commission reviewed the draft Ordinances on March 5, 2026, and thereafter “encouraged staff to consider a different permitting system that would allow some STRs in single family neighborhoods in the Coastal Zone through a cap-based or lottery system to partially address comments from Coastal Commission staff. The Planning Commission voted (4–2) in favor of forwarding the package, unchanged, to the Ordinance Committee with specific feedback that outlined their concerns and comments.” (Oct. 6 Staff Report at 3.)

The October 6 Staff Report states: “On June 9, 2026, the Ordinance Committee reviewed the revised draft ordinances, requested a few minor revisions, and directed staff to bring the drafts to City Council for review with topics highlighted for further discussion. The Ordinance Committee also incorporated a prohibition on STRs and homeshares in all High Fire Hazard Areas and added a requirement for a minimum two-night stay.” (*Id.* at 3–4.) While the October 6 Staff Report might have attempted to characterize the latter revisions as “few” or “minor,” those

revisions are substantial. They change the substance of the Ordinances.⁹ They result in the exclusion of STRs and homeshares from all High Fire Hazard Areas in the City, and add a minimum two-night stay requirement. These are “substantial revisions” that should have been considered by the Planning Commission under SBMC section 30.235.090(B).

Still, the City Council considered the Ordinances on October 6, 2026, including the revisions proposed by the Ordinance Committee to prohibit STRs and homeshares in all High Fire Hazard Areas and a requirement for a two-night minimum stay.

Evidently, the Ordinance Committee and City Council’s revisions substantially increase the scope of the Ordinances compared to what the Planning Commission considered. (*Cf. Bailey v. County of Los Angeles* (1956) 46 Cal.2d 132, 139 [held that a similar state law requirement does not require referral to the planning commission when the legislative body is adopting an ordinance that is “merely a part of the whole, or an ordinance of lesser scope than that which they might have enacted”; *Millbrae Asso. for Residential Survival v. Millbrae* (1968) 262 Cal.App.2d 222 [accord].) In contrast to *Bailey*, here the revised Ordinances proposes prohibitions that were not part of the prohibitions considered by the Planning Commission considered and are outside the scope of the original draft ordinances.

Regarding the High Fire Hazard Areas prohibition, the City’s estimate of 445 STRs in the Inland Area of Santa Barbara that are at risk of being shut down does not explicitly include STRs located in High Fire Hazard areas that will be prohibited under the Ordinance Committee’s and City Council’s revisions. (See Ramboll Report at 4-5.) The number of STRs that will be impacted by the Ordinance will therefore be higher than the City estimated. (*Ibid.*)

Similarly, the City has not analyzed the impacts of increasing the minimum STR stay from one night (as considered by the Planning Commission) to two nights, a significant change in and of itself in terms of eliminating opportunities for weekend visits to the City.

Finally, the exorbitant licensure and license renewal fees were only made public *after* the Ordinances had passed the Planning Commission, raising the inference that these were not among the provisions approved by the Planning Commission in March.¹⁰

These changes to the Ordinances and the corresponding impacts must be sent back to the Planning Commission, which must be given the opportunity to consider and weigh in on the High Fire Hazard Area prohibition and the two-night minimum stay before the City Council can move forward with the Ordinances.

⁹ Cf. *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 83 (Even the word “significant” as used in CEQA, “ ‘covers a spectrum ranging from “not trivial” through “appreciable” to “important” and even “momentous.” ’ ”.)

¹⁰ Additionally, we object to the extremely high price of the fees themselves. Under the California Constitution and state law, fees may not exceed the reasonable cost of service. (Cal. Gov. Code § 66014; Cal. Const. art. XIII C, § 1(e).) Although the City provides some explanation of the derivation of the fees in the Oct. 6 Staff Report, and cites cost recovery as a driving factor in the calculation of those fees, it fails to carry its burden to show that these fees do not *exceed* the reasonable cost of service. The calculations behind the STR Application Fee (\$789 for a new license) and STR Compliance Fee (\$1,985 for a new license) are unclear. (Oct. 6 Staff Report at 10, 11.)

For all of foregoing reasons, SBSTRA urges the City Council to refrain from adopting the Ordinances as introduced and to order all actions as will be necessary to cure the constitutional and legal defects that will vitiate the approval action at this time, including but not limited to all actions necessary for the City to proceed in the manner required by CEQA and the CEQA Guidelines.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank P. Angel". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Frank P. Angel

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