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NANCY J. NADEL
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TO: CITY COUNCIL
FROM: NANCY NADEL, CITY COUNCIL DISTRICT 3
SUBJECT: RESOLUTION AUTHORIZING THE CITY ATTORNEY, ON BEHALF OF THE CITY OF OAKLAND, TO JOIN IN OR SUBMIT A SEPARATE AMICUS CURAIE (FRIEND OF THE COURT) LETTER IN SUPPORT OF A PETITION FOR REVIEW TO THE CALIFORNIA SUPREME COURT ON BEHALF OF THE CITY OF SANTA MONICA CALIFORNIA IN THE CASE OF EMBASSY LLC V. CITY OF SANTA MONICA (CALIFORNIA COURT OF APPEAL, 2ND DISTRICT, NO. B217622, JUNE 14, 2010) HOLDING THAT LANDLORDS CANNOT WAIVE ELLIS ACT (GOV. CODE § 7060) RIGHTS
DATE: JUNE 20, 2010

Summary of Action Requested

The City of Santa Monica through Councilmember Nancy Nadel requests the City of Oakland to submit a letter of support or to join in a letter of support for Santa Monica's petition to have California Supreme Court take on review the matter of Embassy LLC v. City of Santa Monica (California Court of Appeal, 2nd District, No. B217622, June 14, 2010). In that decision the Court of Appeal held that waivers of Ellis Act (Gov. Code § 7060) rights were prohibited absent a direct financial contribution from the city. The Ellis Act provides that cities cannot take actions to compel landlords to retain housing units as rental and permits cities to adopt specified procedures under which landlords may evict tenants to remove rental units from the market.

Background

The Embassy Appellate Decision. Embassy owned a property comprised of hotel and residential units. Embassy wanted to use the entire building as hotel units, but the property was not zoned for hotel use. Eight years ago Embassy sued Santa Monica to use the units as hotel units. In settlement of the lawsuit, Santa Monica agreed to let Embassy use one half of the units as hotel units with the other half being retained as rental units. To ensure that half the units be retained as residential, Embassy agreed to

waive its rights to remove the units from residential use under the Ellis Act. The Ellis Act prohibits a city from compelling a landlord to remain in the rental business. More recently, Embassy filed papers under the Ellis Act to withdraw the units retained as rental with a presumed intent to convert them to hotel units. The Santa Monica Rent Board refused to accept the filing based on the agreement that Embassy had waived its Ellis Act rights. Embassy sued to invalidate the agreement on the basis that the Ellis Act did not permit waivers. The trial court held on demurrer that the Ellis Act did not preclude waivers and Embassy agreed to waive its Ellis Act rights.

Although the Ellis Act does not contain an explicit provision providing that a landlord may not waive Ellis Act rights, the Court of Appeal held that a landlord cannot agree to waive the landlord's Ellis Act right to take units off the rental market except in the circumstance in which the landlord received a direct financial contribution. The Court interpreted the Ellis Act such that the financial contribution was the only exception under which a landlord could waive rights. On that basis, the Court invalidated the Ellis Act waiver in the settlement agreement.

Santa Monica is seeking further review of the Court of Appeal decision from the California Supreme Court.

The Embassy decision potentially impacts cities, developers, and landlords in making decisions concerning, land use, subdivisions, development agreements, California Environmental Quality Act mitigations. Without being able to negotiate waivers of Ellis Act rights, cities may not be able to assure that rental housing remains as rental housing. It might allow rental property owners to withdraw their units as rental housing even if they agreed not to and demolish, change the units to commercial use, or change the use to condominium or tenants-in-common. Cities may be reluctant to enter into certain types of development agreements or permit certain developments where preservation or creation of rental housing is involved if the city cannot be assured that the units will remain as rental housing.

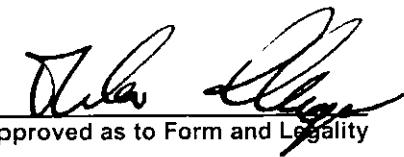
Recommendation

I recommend that the City Council authorize the City Attorney to submit or join in a letter of support for Santa Monica's petition for review of the Embassy Court of Appeal decision.

Respectfully submitted,



Nancy Nadel


Approved as to Form and Legality

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Oakland City Council

2010 JUL 15 PM 6:06

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ATTORNEY, ON BEHALF OF THE CITY OF OAKLAND, TO JOIN IN OR SUBMIT A SEPARATE AMICUS CURIAE (FRIEND OF THE COURT) LETTER IN SUPPORT OF A PETITION FOR REVIEW TO THE CALIFORNIA SUPREME COURT ON BEHALF OF THE CITY OF SANTA MONICA CALIFORNIA IN THE CASE OF EMBASSY LLC V. CITY OF SANTA MONICA (CALIFORNIA COURT OF APPEAL, 2ND DISTRICT, NO. B217622, JUNE 14, 2010) HOLDING THAT LANDLORDS CANNOT WAIVE ELLIS ACT (GOV. CODE § 7060) RIGHTS

WHEREAS, the California Court of Appeal, 2nd District held in the case of Embassy LLC v. City of Santa Monica (California Court of Appeal, Second District, No. B217622, June 14, 2010) that a city cannot require a landlord to waive Ellis Act rights absent a direct financial contribution from the city; the Ellis Act permits landlords to remove residential rental units from the rental market;

WHEREAS, the Embassy decision can affect cities, developers, and landlords ability to make land-use, subdivision, development, and other agreements that might require the retention or development of residential rental housing and may also impact California Environmental Quality Act mitigations; and

WHEREAS, Santa Monica intends to file a petition to the California Supreme Court to have that court review and reverse the Embassy decision and has requested that other California cities submit letters of support for Santa Monica's petition for review; and

WHEREAS, the City of Oakland desires to join in the filing or submit its own letter in support of the Santa Monica's petition for review; now therefore be it

RESOLVED: that the City Council authorizes the City Attorney join or submit its own amicus ("friend of the court") letter of support for the City of Santa Monica's petition for review to reverse the Embassy decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

- AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER
- NOES -
- ABSENT -
- ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California