SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

SAN FRANCISCO SRO HOTEL COALITION, an unincorporated association, HOTEL DES ARTS, LLC, a Delaware limited liability company, and BRENT HAAS,

Plaintiffs and Petitioners,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a public agency, acting by and through the BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO; DEPARTMENT OF BUILDING INSPECTION OF THE CITY AND COUNTY OF SAN FRANCISCO; EDWIN LEE, in his official capacity as Mayor of the City and County of San Francisco,

Defendants and Respondents.

Case No. CPF-17-515656

CEQA

ORDER RE. PETITION FOR WRIT OF MANDAMUS

Date Action Filed:	May 8, 2017
Trial Date:	May 3, 2019
Hearing Judge:	Cynthia Ming-mei Lee
Time:	9:30 a.m.
Place:	Department 503

INTRODUCTION

This matter was heard on May 3, 2019 at 9:30 a.m. in Department 503 of the San Francisco County Superior Court, the Honorable Cynthia Ming-mei Lee presiding. Bryan Wenter and Arthur Coon of the law firm Miller Starr Regalia, and Andrew Zacks of the law firm Zacks Friedman & Patterson P.C. appeared for plaintiffs and petitioners San Francisco SRO Hotel Coalition, Hotel Des Arts, LLC, and Brent Haas (collectively, "Petitioners"). Deputy City Attorneys Andrea Ruiz-Esquide, Kristen Jensen, and James Emery appeared on behalf of defendants and respondents, the City and County of San Francisco, the Board of Supervisors, the Department of Building Inspection, and the Mayor (collectively, "San Francisco").

In their First Amended Petition and Complaint ("FAP"), Petitioners assert causes of action under the California Environmental Quality Act ("CEQA"), codified under Public Resources Code sections 21000 *et seq.*), the federal and state constitutions, and the California Public Records Act ("PRA"). The Court heard argument on the CEQA claim and the PRA claim only. The federal and state constitutional claims remain pending.

I. CEQA

A. Background

In 1979, the San Francisco Board of Supervisors instituted a moratorium on the conversion of residential hotel units into tourist units in response to a severe shortage of affordable rental housing for elderly, disabled, and low-income persons. (Administrative Record ("AR") 001117, 001320; S.F. Admin. Code ("HCO") §§ 41.3(g).) Subsequently, in 1981, the City enacted the Residential Hotel Unit Conversion and Demolition Ordinance (the "HCO"), Administrative Code Chapter 41, instituting permanent controls to regulate all future residential hotel conversions. (AR 1427-45; HCO § 41.1 *et seq.*) In adopting the HCO, the Board of Supervisors included findings that "the City suffers from a severe shortage of affordable rental housing; that many elderly, disabled and low-income persons reside in residential hotel units; that the number of such units had decreased by more than 6,000 between 1975 and 1979; that loss of such units had created a low-income housing "emergency" in San Francisco, making it in the public interest to regulate and provide remedies for unlawful conversion of residential hotel units; that the City had instituted a moratorium on residential hotel conversion

effective November 21, 1979; and that because tourism is also essential to the City, the public interest also demands that some moderately priced tourist hotel rooms be available, especially during the summer tourist season." (*San Remo Hotel L.P. v. City and Cty. of San Francisco* (2002) 27 Cal.4th 643, 650 [citing the original HCO § 41.3]; see AR 1427-28.)

In the original HCO, a unit's designation as "residential" or "tourist" was determined as of September 23, 1979, by its occupancy status according to definitions contained in the HCO. (AR 1428-49 at §41.4.) The HCO required single room occupancy ("SRO") hotels in San Francisco to report all residential and tourist units in a hotel as of September 23, 1979. (AR 1433 at § 41.6.) Residential units were then placed on a registry, and a hotel owner could convert residential units into tourist units only by obtaining a conversion permit from the Department of Building Inspection ("DBI").[1] (*Id.* at §§ 41.4 [definition of Conversion]; 41.12 [Permit to Convert]; 41.16 [Unlawful Conversion; Remedies; Fines].) To obtain a conversion permit, applicants were required to construct new residential units, rehabilitate old ones, or pay an "in lieu" fee into the City's Residential Hotel Preservation Fund Account. (*Id.* at §41.10.)

The original HCO also allowed seasonal tourist rentals of residential units during the summer if the unit was vacant because a permanent resident voluntarily vacated the unit or was evicted for cause by the hotel operator. (*Id.* at § 41.16.) Further, the HCO required hotel operators to maintain records to demonstrate compliance with the ordinance and to provide these records for inspection by DBI. (*Id.* at §§ 41.6(h)-41.7.)

When the City adopted the original HCO in 1981, it determined there was no possibility the ordinance would have a significant impact on the environment. (AR 1454.) The trial court disagreed and found the requirement of one-for-one replacement of residential units "creates the very real possibility of a significant environmental impact." (*Id.*) While the trial court case was pending on appeal, the City performed an initial study on the original HCO and, on April 15, 1983, issued a preliminary negative declaration concluding that the HCO could not have a significant impact on the

[1] The Department of Building Inspection was formerly termed the Bureau of Building Inspection in the original HCO.

environment. (AR 1530-33; AR 1542.) The City then readopted the HCO and adopted a final Negative Declaration on June 23, 1983. (AR 1657-64.)

The Court of Appeal eventually issued its decision finding that "the City's failure to comply with CEQA was illegal," but "the defect was cured, however, by reenactment of the ordinance following an environment evaluation and issuance of a negative declaration." (*Terminal Plaza Corp. v. City & Cty. of San Francisco* (1986) 177 Cal.App.3d 892, 905, n.6.) Environmental review of subsequent amendments to the HCO likewise determined those amendments, addressed to the administration and enforcement of the HCO, could have no impact on the environment. (See, e.g., AR 1689-1693; AR 1727-29.)

In 1987 and 1988, the City conducted a series of meetings and workshops to discuss the operation of the HCO with City staff, community housing groups, and residential hotel owners and operators. (AR 1705.) City decision makers considered the concerns of hotel operators relating to the prohibition on renting residential units for fewer than 32 days. (AR 1706-09.) Ultimately, the City repealed and readopted the HCO in 1990, making four changes from the old law. (*San Remo Hotel v. City and County of San Francisco* (9th Cir. 1998) 145 F.3d 1095, 1099.) The 1990 amendments: (1) prohibited the summer tourist use of residential rooms; (2) increased the in lieu payment from 40 percent to 80 percent; (3) added the requirement that any hotel that rents rooms to tourists during the summer must rent the rooms at least 50 percent of the time to permanent residents during the winter; and (4) the new law did not provide for relief on the ground of economic hardship. (*Id.*)

In 2014, the City did an analysis of the HCO and found that while private hotel owners are required to file an Annual Unit Usage Report ("AUUR") with DBI, only 179 of 413 private SRO hotels thought to be in operation returned the annual usage report. (AR 3523-27.) The City acknowledged that given the low rate of response to the AUUR, it was difficult to know precisely the total number of residential units available in private and non-profit owned and operated SRO hotels, and the actual vacancy rates for these buildings. (AR 3525.) However, the City determined the following vacancies (*see* Table 2 at AR 3524):

- Of 228 privately owned SROs for which data was obtained, 864 of 7,241 units (11.9 percent) were vacant.

- Of 32 non-profit hotels, 91 of 2,667 units (3.4 percent) were vacant.

The City further found that "a few of the buildings…indicated that they were serving populations other than the low-income, disabled, and elderly individuals whom the units are intended to serve," and that "the hotels may be providing long-term rental housing to students or to young technology sector workers, both of which would be allowed under the provisions of Chapter 41." (AR 3523). It confirmed that "at least three of the hotels are now providing long-term housing for students only, a use which is allowed under Chapter 41, but which does not accomplish the goal of providing rooms for low-income and disabled populations." (AR 3525.)

Further analysis from the City showed the following vacancies in 2015 (*see* Table 3 at AR 5432):

- Of 419 hotels citywide, 1,689 of 16,611 units (10.2 percent) were vacant.
- Of 354 privately owned hotels, 1,488 of 11,473 units (13 percent) were vacant.
- Of 29 non-profit hotels, 84 of 2,028 units (4.1 percent) were vacant.
- Of 36 master-leased hotels by the City, 117 of 3,110 units (3.8 percent) were vacant.

Again, the City acknowledged that "many SROs had disconnected numbers, did not return phone calls, or were unable to provide information, [and] as a result, it was impossible to verify whether they were still in operation, or to include vacancy information for them." (*Id.*)

On December 6, 2016, Supervisor Peskin introduced substitute Ordinance No. 38-17 ("the 2017 Amendments") to update the HCO. (AR 0001; 0098-0122.) On December 16, 2016, the City determined the Ordinance was "not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment." (*Id.*)

On February 7, 2017, the Board of Supervisors unanimously adopted the 2017 Amendments. (AR 229.) Mayor Ed Lee signed the 2017 Amendments on February 17, 2017, and the 2017 Amendments became effective on March 19, 2017. (AR 204-230.) As of the proposed amendments, the HCO regulated roughly 18,000 residential units within 500 residential hotels across San Francisco. (AR 175.)

The focus of this action is subsections 41.20(a) and (b) of the amended HCO, which reads as follows:

SEC. 41.20. UNLAWFUL CONVERSION; REMEDIES; FINES.

(a) Unlawful Actions. It shall be unlawful to:

(1) Change the use of, or to eliminate a residential hotel unit or to demolish a residential hotel unit except pursuant to a lawful abatement order, without first obtaining a permit to convert in accordance with the provisions of this Chapter;

(2) Rent any residential unit for *Tourist or Transient Use* ~~*a term of tenancy less than seven days*~~ except as permitted by Section 41.19 of this Chapter;

(3) Offer for rent for ~~*nonresidential use or*~~ *T*~~t~~ourist *or Transient* U~~u~~se a residential unit except as permitted by this Chapter.

(AR 225 [added text is shown in italics and underlined; deleted text is shown in italics and strikethrough)].) The 2017 Amendments define "Tourist or Transient Use" as "any use of a guest room for less than a 32-day term of tenancy by a party other than a Permanent Resident." (AR 209.)

i. The 2019 Amendment

On May 31, 2019, after the Court heard oral argument, the City passed further legislation amending the HCO to revise the definition of "Tourist or Transient Use" to "any use of a guest room for less than a 30-day term of tenancy by a party other than a Permanent Resident." Thereafter, on June 12, 2019, the City filed a Motion to Dismiss the First through Fifth Causes of Action in the First Amended Petition as moot. An Amended Motion to Dismiss was filed on June 18, 2019. On June 18, 2019, Petitioners filed a Motion for Leave to File Second Amended and Supplemental Petition for Writ of Mandate and Complaint.

The Court heard oral argument on the Motion to Dismiss and Motion for Leave to File Second Amended and Supplemental Petition for Writ of Mandate and Complaint on August 9, 2019. The parties stipulated to continue the Motion for Leave to File Second Amended and Supplemental Petition for Writ of Mandate and Complaint to September 27, 2019.[2] The Court denied the City's Motion to Dismiss. As the Court stated in its August 15, 2019 order:

> Plaintiffs' Constitutional and CEQA challenges are not moot because material questions remain for the Court's determination.[3] (*Eye Dog Found. v. State Bd. of Guide Dogs for Blind* (1967) 67 Cal. 2d 536, 541 ["the general rule governing mootness becomes subject to the case

[2] The Court granted Petitioner's ex parte application on September 10, 2019 to advance the hearing to September 25, 2019 in light of the statutory deadline to challenge the 2019 Amendments under Government Code section 65009(c).

[3] San Francisco acknowledges that Plaintiffs' PRA cause of action in its First Amended Petition is not moot. (Motion to Dismiss at 4, n.1.)

recognized qualification that an appeal will not be dismissed where, despite the happening of the subsequent event, there remain material questions for the court's determination"]; *Davis v. Superior Court* (1985) 169 Cal. App. 3d 1054, 1057–58 ["the enactment of subsequent legislation does not automatically render a matter moot. The superseding changes may or may not moot the original challenges…This issue may only be determined by addressing the original claims in relation to the latest enactment"].) While the 2019 HCO Amendment dropped the minimum length of SRO unit use from 32 days to 30 days, this change does not moot Plaintiffs' challenge to the 2017 HCO Amendments on grounds that the HCO "redefine[ed] prohibited 'tourist or transient' use and 'unlawful actions' so as to entirely eliminate SRO operators' preexisting year-round right to rent SRO units for minimum terms of at least seven (7) days." (First Amended and Supplemental Verified Petition at ¶ 23.)

Accordingly, the Court will address the 2017 Amendments in relation to the 2019 Amendment in this order.

B. Exhaustion of Administrative Remedies

CEQA requires issue exhaustion: "No action or proceeding may be brought pursuant to [CEQA] unless the alleged grounds for noncompliance with [CEQA] were presented to the public agency … during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." (Pub. Res. Code § 21177(a).) This exhaustion requirement is jurisdictional. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199.)

Under the exhaustion of administrative remedies doctrine, the "exact issue" must be presented to the agency, and neither "bland and general" references to environmental issues, nor "isolated and unelaborated comments" will suffice. (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535-36.) Petitioner "bears the burden of demonstrating that the issues raised in the judicial proceeding were first raised at the administrative level." (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 910.)

The City argues that neither Petitioners Brent Haas nor Hotel Des Arts raised any CEQA claim during the City's administrative review of the 2017 Amendments. (Opposition ("Opp") at 11.) Petitioners argue that the City did not give proper notice and therefore, the exhaustion doctrine does not apply. (Reply at 24.) The Court finds Petitioners' notice argument unpersuasive. The record reflects that the City noticed multiple public hearings before the Board of Supervisors, providing a description of the proposed changes to the HCO and indicating that one of the issues to be discussed

would be "affirming the Planning Department's determination under the California Environmental Quality Act." (AR 645 [January 23, 2017 Meeting Agenda], 734 [January 31, 2017 Meeting Agenda], 1065 [February 7, 2017 Meeting Agenda].) Further, any argument regarding defective notice is waived since Samantha Felix, manager of Hotel Des Arts, submitted a letter to the Board of Supervisors dated January 27, 2017 and received January 31, 2017, objecting to the minimum 32 night stay under the proposed amendments. (AR 6609-6611; *see Hines v. California Coastal Com.* (2010) 186 Cal. App. 4th 830, 855 [finding that the administrative remedy exhaustion requirement of section 21177, subdivision (a) was triggered where one appellant spoke and appellants and others submitted written arguments at two public hearings].)

Based on the evidence discussed, the Court finds that Petitioner Hotel Des Arts exhausted its administrative remedies and has standing. However, the Court finds that Mr. Haas lacks standing to pursue the CEQA claims in this case. There is no evidence in the record that Mr. Haas participated in the administrative process before the Board of Supervisors when the City enacted the 2017 Amendments.

C. Petitioners' Motion to Augment the Administrative Record and Request for Judicial Notice

The City stipulated to augmentation of the Administrative Record with Exhibits 4 and 12 through 18 to the 9/13/18 Declaration of Arthur F. Coon In Support Of Petitioners' Motion To Augment Administrative Record ("9/13/18 Coon Decl."). The City agreed to allow a redacted version of Exhibit 11, omitting an inadvertently disclosed attorney-client communication from the email chain. Accordingly, the Court orders the record augmented only as to these specific exhibits.

The Court finds that all other exhibits attached to the 9/13/18 Coon Decl. are irrelevant as Petitioners have not shown that the documents were actually considered by the Board in making its decision. Accordingly, the Court denies the balance of the Motion to Augment. The Court denies Petitioners' Request for Judicial Notice on the same grounds.

D. Whether the amended HCO is a CEQA "Project"

CEQA and CEQA Guidelines establish a three-tier process to ensure public agencies inform their decisions with environmental considerations. (*Muzzy Ranch Co. v. Solano County Airport Land*

Use Com'n (2007) 41 Cal.4th 372, 380.) The first tier is jurisdictional—that is, an agency must "conduct a preliminary review to determine whether an activity is subject to CEQA." (*Muzzy Ranch,* 41 Cal.4th at 380; CEQA Guidelines[4] § 15060(c).) If an activity is not a "project," it is not subject to CEQA. (*Id.*) At the second tier, if the agency has determined the proposed action is a CEQA "project," it must determine whether it qualifies for any exemption from CEQA review. (*Id.*) If not, the agency "must conduct an initial study to determine whether the project may have a significant effect on the environment." (*Id.*; CEQA Guidelines § 15063(a).) If there is "no substantial evidence that the project or any of its aspects may cause a significant effect on the environment,...the agency must prepare a "negative declaration" that briefly describes the reasons supporting its determination." (*Id.* at 380-81; CEQA Guidelines § 15063(b)(2).) At the third tier, "if the agency determines substantial evidence exists that an aspect of the project may cause a significant effect on the environment...the agency must ensure that a full environmental impact report is prepared on the proposed project." (*Id.* at 381; CEQA Guidelines § 15063(b)(1).) Accordingly, no environmental review under CEQA occurs if an agency determines an activity is not a project.

A "project" is "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (1) An activity directly undertaken by any public agency..." (Pub. Res. Code § 21065(a); *see also* CEQA Guidelines § 15378(a)(1) [A "project" is "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (1) An activity directly undertaken by any public agency including but not limited to . . . enactment and amendment of zoning ordinances . . ."]; see also *Muzzy Ranch, supra,* 41 Cal.4th at 381 ["whether an activity constitutes a project subject to CEQA is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact"].) CEQA "shall apply to discretionary projects proposed to be carried out or

[4] References to CEQA Guidelines refers to Cal. Code Regs., tit. 14, Ch. 3 §§15000-15387.

approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances . . . ." (Pub. Res. Code § 21080(a).)

The parties dispute: 1) whether the amended HCO is categorically a "project" because it is an ordinance akin to a zoning ordinance; and 2) whether the amended HCO is an activity that may cause a reasonably foreseeable indirect physical change in the environment. The Court addresses these issues in turn.

i. Zoning Ordinance

Petitioners assert the amended HCO is "categorically a project within CEQA's purview" because: 1) the 2017 Amendments are "akin" to a zoning ordinance; and 2) zoning ordinances are categorically CEQA "projects" under § 21080(a), which specifically lists "the enactment and amendment of zoning ordinances" as among the discretionary projects subject to CEQA, citing *Rominger v. County of Colusa* (2014) 229 Cal.App.4th at 690, 702. (Petitioners' Opening Brief ["Opening Brief"] at 9-10, 25.) As to whether zoning ordinances are categorically CEQA "projects," the California Supreme Court recently disapproved of *Rominger* in *Union of Med. Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal. 5th 1171, holding "the various activities listed in section 21080 must satisfy the requirements of section 21065 before they are found to be a project for purposes of CEQA." Thus, CEQA applies "only to activities that qualify as projects — in other words, to specific examples of the listed activities that have the potential to cause, directly or indirectly, a physical change in the environment." (*Id.* at 328, emphasis in original.)

Regardless, the Court finds that the 2017 Amendments are not "akin" to a zoning ordinance. As the court found in *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 902 regarding the original HCO:

> Zoning laws typically regulate such facets of land use as location, height, bulk, setback lines, number of stories and size of buildings, and the use to which property may be put in designated areas (Gov. Code, § 65860 et seq.; *Taschner v. City Council* (1973) 31 Cal.App.3d 48, 59 [107 Cal.Rptr. 214].)....The ordinance, however, does not regulate land use in the same manner as zoning laws. The nature of buildings or uses permitted in specified districts are not touched upon by the ordinance; nor does it seek to control the dimensions, size, placement or distribution of structures within the City. The ordinance is of general application, and merely

regulates existing uses. The regulations governing issuance of conversion permits require purely ministerial acts; the replacement provisions do not call for land use decisions.

In other words, the land is already zoned for commercial use and remains unchanged. The HCO merely regulates how owners operate commercial use buildings once they've been built.

The cases cited by Petitioner involve ordinances that regulate initial uses of the land rather than existing uses and are therefore distinguishable. (*see e.g.*, *Morehart v. County of Santa Barbara* (1994) Cal.4th 725, 750 [purpose of the challenged ordinance was "to regulate the minimum size of a lot on which a residence may be built"]; *People v. Optimal Global Healing, Inc.* (2015) 241 Cal.App.4th Supp. 1, 7-8 [involving ordinance that makes it a misdemeanor to own, establish, operate, use, or permit the establishment or operation of a medical marijuana business]; *DeVita v. Cty. of Napa* (1995) 9 Cal. 4th 763, 773 [involving amendment to general plan that guided future local land use].)

ii. Reasonably Foreseeable Indirect Physical Change in the Environment

The next issue is whether the amended HCO is an activity that may cause a reasonably foreseeable indirect physical change in the environment. Identifying a physical change involves "comparing *existing* physical conditions with the physical conditions that are predicted to exist at a later point in time, after the proposed activity has been implemented. The difference between these two sets of physical conditions is the relevant physical change." (*Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal. App.4th 273, 289 (disapproved on other grounds in *Hernandez v. City of Hanford* (2007) 41 Cal.4th 279) (emphasis in original, citation & footnote omitted).) Under CEQA Guidelines, "an indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable." (§ 1504(d)(3).)

A comparison of the HCO before and after the 2017 Amendments indicates that prior to 2017, section 41.20(a) made it unlawful to "rent any residential unit for a term of tenancy less than seven days except as permitted by Section 41.19 of this Chapter" and "offer for rent for nonresidential use or

tourist use a residential unit except as permitted by this Chapter." (AR 225.) Hence, a hotel owner could rent a residential unit for as few as seven days as long as it was for residential use. A hotel owner could not rent a residential unit for tourist use unless certain conditions applied. Following the 2017 Amendments, section 41.20(a) makes it unlawful "to rent any residential unit for Tourist or Transient Use except as permitted by Section 41.19 of this Chapter" and "offer for rent for Tourist or Transient Use a residential unit except as permitted by this Chapter." (*Id.*)

Under the 2017 Amendments, "Tourist or Transient Use" was defined as "any use of a guest room for less than a 32-day term of tenancy by a party other a Permanent Resident.[5]" (AR 209.) As such, a guest who occupied a residential unit of an initial term of 32 continuous days became subject to the provisions of San Francisco's rent ordinance. (S. F. Admin. Code § 37.2(r) [definition of a rental unit].) In effect, the 2017 Amendments no longer permitted rentals to non-permanent residents for short term tenancies lasting from seven days to thirty-one days. Under the recent 2019 Amendment, "Tourist or Transient Use" is defined as "any use of a guest room for less than a 30-day term of tenancy by a party other than a Permanent Resident." (HCO § 41.20(a).) The significance of the minimum 30-day rule is that guests who stay the minimum 30-day tenancy cannot be evicted unless an unlawful detainer proceeding is brought. (see Civil Code § 1940.1)

The Court finds that tenant displacement is a reasonably foreseeable impact of the amended HCO. The HCO's purpose is to provide and preserve affordable housing for elderly, disabled, and low-income persons; its premise in extensively regulating the terms of occupancy for SRO units is that they are a limited resource and critical housing stock that must remain available to serve a vulnerable and economically-disadvantaged target population. (HCO § 41.3.) While the 2019 Amendment reduced the 32-day minimum tenancy to 30 days, it still restricts hotel owners from renting rooms to guests for tenancies as short as seven days, as was previously allowed prior to the 2017 Amendments.

---

[5] Permanent Resident is defined as "A person who occupies a guest room for at least 32 consecutive days." (HCO § 41.4.)

A change in regulation that increases the minimum term of occupancy for the finite number of available SRO units from weekly hotel rentals to monthly apartment rentals foreseeably restricts the availability of the limited stock of these units to the target population, with the reasonably foreseeable effect of displacing that population elsewhere.

The Court rejects the City's argument that the HCO will not result in displacement of short-term tenants because it does not require private SRO hotel owners to charge first and last months' rent and security deposits. While the 2017 Amendments does not require a specific payment structure, it is reasonably foreseeable that hotel owners could begin requiring security and monthly deposits if forced to rent for longer minimum rental terms that eliminate weekly rentals. It is also reasonably foreseeable that renters who are unable to afford monthly deposits would be displaced as a result. (*San Remo Hotel,* 27 Cal.4th at 674 ["residential hotel units serve many who cannot afford security and rent deposits for an apartment"].) Such reasonably foreseeable actions by hotel owners resulting in displacement is sufficient for purposes of the first tier of CEQA analysis. (Pub. Res. Code § 21065(a) ["'Project' means an activity which *may* cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment"] (emphasis added).)

The Court of Appeal's opinion[6] reversing this Court's denial of Petitioners' motion for a preliminary injunction based on their constitutional due process and takings claims is also instructive in this regard. In its unpublished October 15, 2018 opinion, the court held that the pre-amendment version of HCO "precluded rentals of less than seven days, regardless of a showing of the renter's purpose, and it is the seven-day period which demarcates residential from tourist rentals." (10/15/18

[6] The Court of Appeal's relevant findings and holdings are considered the law of the case and govern the disposition of subsequent issues in this litigation. (*Santa Clarita Org. for Planning the Env't v. Cty. of Los Angeles* (2007) 157 Cal. App. 4th 149, 156 [holding "where an appellate court states in its opinion a principle or rule of law necessary to its decision, that principle or rule becomes the law of the case"].) After reversal of the order denying the preliminary injunction and upon remand, this Court re-set Petitioners' preliminary injunction motion for hearing to balance the parties' relative hardships. Upon the parties' stipulation, this Court entered an injunction on against operation or enforcement of the HCO's minimum rental term by anyone and for any purpose pending resolution of this litigation or further order of this Court. (11/30/18 Injunction Order.)

Opinion at 8.) The court further held "the 2017 Amendments effected a substantial change by making the minimum term 32 days unless the person was already a permanent resident." (*Id.*) Noting that the 2017 HCO Amendments do not provide for compensation or a reasonable amortization period, the court held, "they do, on their face, require owners of SROs to forego more classically styled hotel rentals in favor of more traditional tenancies. This changes the fundamental nature of their business, by making them landlords rather than hotel operators." (*Id.* at 10.) As such, even a 30-day minimum term, which, as discussed, would make the hotel owner subject to landlord-tenant laws under state law, could foreseeably cause SRO hoteliers forced to become apartment landlords to begin requiring the security and rent deposits customary to that fundamentally changed business model. This is assuming they wish to rent their SRO units at all.

To the extent Petitioners argue that this displacement also leads to increased homelessness and urban blight, the Court acknowledges *San Remo*, which found that "while a single room without a private bath and kitchen may not be an ideal form of housing, [SRO] units accommodate many whose only other options might be sleeping in public spaces or in a City shelter." (27 Cal.4th at 674.) However, the Court finds that Petitioners fail to provide evidence in the record that links tenant displacement due to the amended HCO with homelessness and/or urban blight. (*see e.g.*, AR 3534 [internal e-mail between HSA/DSS employees discussing "public health risk" and "individual human suffering that results from homelessness" in the context of a building a mandatory shelter]; 3539 [HSH-HAS draft policy document noting homelessness as the City's "#1 problem" and "public health crisis" that "poses risks to the general public due to the presence of excrement, used needles, vermin, etc. that are often byproducts of persons living on the streets or in our parks," and proposing that the City "provide a nightly shelter bed to ALL individuals who are living on the streets or in our parks a night; 1375-1389 [San Francisco Leasing Strategies Report Draft discussing generally strategies for encouraging landlords to rent to individuals who are, were, or are at risk of being homeless].) The

Court also rejects Petitioners' further assertion that resort to record evidence is unnecessary to resolve the threshold issue raised here as a categorical matter. (*Muzzy Ranch.*, 41 Cal.4th at 382 [holding "whether an activity is a project is an issue of law that can be decided on undisputed data in the record on appeal"].)

Regardless, the Court need not reach this issue, since a finding of tenant displacement is within the purview of CEQA. In *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 451, the project at issue included demolition of housing units in a redevelopment plan. The court held that CEQA "is made relevant here by the Ellis Act's explicit exceptions for a public entity's power to regulate, among other things, "planning," "subdivision map approvals," the "demolition and redevelopment of residential property," *and the mitigation of adverse impacts on persons displaced by reason of the withdrawal of rental accommodations*. Such items are the common focus and byproducts of the CEQA process, as they were in the case here." (emphasis added.)

The record further reflects that short-term renter displacement as a result of change in the minimum term of tenancy was foreseen and documented by the City. (AR 1706 [1988 Report on Residential Hotels Policy and Legislative Issues noting, "The 32 day rental requirement often works against the rental of vacant residential hotel units as operators have to refuse occupancy to weekly tenants, even though some residential units may have been vacant for long periods"] see also AR 1341, 1345 [City memo suggesting section 41.20 be revised to a 32 day minimum rental, also suggesting that "low income, elderly, and disabled persons should be allowed to pay in seven (7) day increments so they, as the target population to be served, have access to this housing"].) The City also foresaw, in connection with its consideration of prior HCO amendments, that hoteliers not wanting to risk permanently committing to undesirable tenants not vetted through weekly rentals, might hold SRO units off the rental market. (AR 1707 [1988 City Planning report: "Weekly rentals are used by

operators to screen potential trouble making tenants. Without this option, operators are leaving units vacant rather than risk renting to potentially troublesome tenants on a monthly basis."].)

In summary, it is reasonably foreseeable that the 2017 HCO Amendments may lead to indirect physical changes in the environment in the form of tenant displacement, and tenant displacement is the general sort of activity with which CEQA is concerned. Accordingly, the Court finds that the amended HCO is "project" and the City failed to proceed in the manner required by law in summarily dispensing with CEQA review. The Court therefore grants the CEQA writ petition and orders the issuance of a writ of mandate setting aside the City's adoption of the 2017 HCO Amendments pending its compliance with CEQA.

II. The Public Records Act Requests

A. Background

Petitioners filed their verified FAP on August 23, 2017, adding the Sixth Cause of Action for PRA violations and seeking a writ of mandate under Code of Civil Procedure Section 1085. They thus "bear the burden of pleading and proving the facts on which the claim for relief is based." (*Cal. Correctional Peace Officers Ass'n v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1153 (internal citations omitted).)

Petitioners allege and argue that they were required to sue the City to obtain relevant public records which they had requested and to which they are entitled under the PRA because the City had: (1) refused to search for relevant and responsive records in all City departments possessing them; (2) intentionally narrowly interpreted the scope of Petitioners' facially broad requests; (3) improperly stopped producing responsive documents for over two months before Petitioners filed their FAP alleging the PRA claim; and (4) ultimately and belatedly provided a large number of previously withheld responsive documents (many of which became part of the certified Administrative Record on the CEQA claim) after the PRA claim was filed. (Coon PRA decl. at ¶¶ 18-25, 36-37.) Petitioners

also allege the City improperly failed to produce required affidavits from certain City officials and employees verifying that adequate searches for responsive public records on their personal electronic devices were made (*Id.* at ¶¶ 5, 8, 13, 17, 37.) On this issue, the Court directed the City to provide executed declarations from the specified individuals at the May 3, 2019 hearing. Thereafter, on May 24, 2019, the City produced the declarations except for the custodian of records for the Department of Building Inspection who supervised the collection of documents including materials from Rosemary Bosque (now retired). The City indicated that the custodian was away from the office until May 29, 2019, but that they would the would forward her declaration after her return.

As to document production, Petitioners acknowledge the City has produced all responsive documents. However, they assert they have prevailed on their PRA claim under the catalyst theory. Under the catalyst theory, "the question whether the plaintiff prevailed, in the absence of a final judgment in his or her favor, is really a question of causation—the litigation must have resulted in the release of records that would not otherwise have been released." (*Sukumar v. City of San Diego* (2017) 14 Cal. App. 5th 451, 464.) In determining whether a PRA lawsuit caused an agency to release requested public records, "it is necessary to examine the parties' communications, the timing of the public record productions, and the nature of the records produced." (*Id.* at 454.) Petitioners must show "more than a mere temporal connection between the filing of litigation to compel production of records under the PRA and the production of those records." (*Id.* at 464.) As the court in *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 901-902 similarly held:

> A party is considered the prevailing party if his lawsuit motivated defendants to provide the primary relief sought or activated them to modify their behavior or if the litigation substantially contributed to or was demonstrably influential in setting in motion the process which eventually achieved the desired result. The appropriate benchmarks in determining which party prevailed are (a) the situation immediately prior to the commencement of suit, and (b) the situation today, and the role, if any, played by the litigation in effecting any changes between the two.

(internal citations omitted.) Based on the evidence in the record, the Court finds the City acted reasonably in responding to Petitioners' PRA requests, and Petitioners' PRA cause of action was not "the motivating factor" for the City's document production.

B. Evidence in the Record

On February 7, 2017, the Board of Supervisors enacted the 2017 Amendments. On the same day, counsel for Petitioners sent a letter to the Board commenting on the pending legislation, and requesting "relevant documents to include records that comprise, constitute or relate to:"

- The person, persons, organizations, or entities that suggested the Proposed Amendments or that in any way initiated the Proposed Amendments or caused the Proposed Amendments to be initiated.
- The rationale or justification for the Proposed Amendments.
- CEQA review or studies for any aspect of the Proposed Amendments or potential environmental effect of the Proposed Amendments, including but not limited to displacement of tenants.
- The City's record retention policies

(Dec. of Arthur Coon in Supp. of Writ ["Coon Decl."] at Ex. 1.) In response to this request, the custodian of records for the Board of Supervisors provided documents in installments between February 7 and March 6, 2017. (*Id.* at Ex. 2.)

Petitioners' Counsel sent a second document request on March 24, 2017. (*Id.*, at Ex. 3.) This time, the request was addressed to both the Board of Supervisors and the Department of Building Inspection, and requested documents relating to:

- Any communication pertaining to the HCO prepared, owned, used, retained, created, received or exchanged by any member of the Board of Supervisors, Planning Commission, Building Inspection Commission, and Single Room Occupancy Task Force.
- Any communication pertaining to the HCO prepared, owned, used, retained, created, received or exchanged by any member of the Land Use and Transportation Committee, Rules Committee, and Budget and Finance Committee.
- Any communication pertaining to the HCO prepared, owned, used, retained, created, received or exchanged by any City representative [including ten specifically named City employees and departments].
- Any record pertaining to any potential environmental effect (including but not limited to displacement of SRO tenants) of the HCO prepared, owned, used, retained, created, received, or exchanged by the City of any of the individuals or entities referenced in this Public Records Act request.

(*Id.* at Ex. 3.) The request also stated "Please note, we are only seeking records prepared, owner, used, retained, created, received, or exchanged by the City since January 1, 2016. In the case of Supervisor Peskin, however, we are seeking records dating from December 8, 2015." (*Id.*)

In response, the custodian of records from DBI contacted counsel asking for clarification regarding the scope of the request and, on April 4, 2017, provided a first production to the requestor, followed by a second and final production on June 6, 2017. (*Id.* at Exs. 4 and 5.) The custodian indicated on June 6, 2017 that parts of the record had been redacted where they were "legally required to do so to protect the privacy interests of individuals" under California Constitution, Article I, section 1 and California Government Code sections 6254(k) and 6254(c), and that attorney-client privileged records had been withheld. (*Id.* at Ex. 5.) The custodian further stated "We have finished conducting our search and found no other documents responsive to your request. Therefore, we consider your request closed." (*Id.*)

On July 12, 2017, counsel for Petitioners submitted a third records request to the records managers for the Board of Supervisors and Department of Building Inspections, asserting that the City's productions to date were inadequate, and objected to duplications and the redactions by DBI. (*Id.* at Ex. 6.) The request exponentially increased the chronological scope by requesting documents over a 36-year period, cast a wider net to non-specified City agencies, and added categories of requested information including homelessness. It was somewhat ambiguous in terminology and lacked distinct parameters. Among the new requests, Petitioners sought the following:

- All writings that address or relate to displacement of persons from SRO hotels since the adoption of the HCO in 1981
- All documents reflecting laws, programs, procedures, policies, and efforts developed by the City to assist tenants or potential tenants who are displaced from housing options
- All documents prepared, owned, used, retained, created, received, or exchanged by the City, and/or any of its departments, agents, consultants, volunteers, or employee between January 1, 2008 and [2017] that survey, study, analyze, catalogue, count, estimate, quantify, or reflect (a) The number of homeless persons within the City and/or (b) the environmental impacts caused by homeless persons living or sleeping in public

places not meant for human habitation in the City (e.g., urination or defecation, waste, tent encampment, discarded hypodermic needles, panhandling, loitering, crime, etc."

- Added the Tenderloin Housing Clinic and Randy Shaw to the list of city agencies referenced in the second PRA request.

(*Id.* at Ex. 6.) Petitioners' counsel explained the July PRA request was "made to facilitate our preparation of the administrative record in [this action], and we believe such documents should be included in the administrative record." (*Id.*) The third request was only served on the records manager for the Board and custodian of records for DBI. (*Id.*) No other City agencies, commissions, or individuals were served. The request caused the records manager for the Board of Supervisors to contact Petitioner to affirm that the Board of Supervisors did not have any additional records responsive to the new request and suggested Petitioner contact the Department of Building Inspections directly for other documents. (*Id.* at Ex. 9).

On August 2, 2017, the Custodian of Records for the Department of Building Inspections responded to Petitioners, acknowledging its production of responsive documents related to Petitioners' March 24, 2017 request, and stated "it seems you now have three new requests for DBI." (*Id.* at Ex. 10). The custodian requested clarifications on the "new" requests as follows: (1) for the new request for additional documents relating to the HCO, "provide the keywords/topics of interest along with the timeframe;" (2) provide a definition of "displacement of persons," in addition to identifying the subject matter of interest in light of the burden of responding, to allow narrowing the search and getting Petitioner the documents sought; (3) noted the request for all HCO documents since its adoption in 1981 and expressed a desire to work with Petitioner to identify the particular HCO sub-topic and narrow the time frame if possible; and (4) directed contact with the Department of Homelessness and Supportive Housing or SF Human Services Agency for the information sought. (*Id.*)

Petitioners responded in a letter on August 4, 2017, in which they rejected the requests for definition of "displacement," clarified the scope of the request to "records that address or relate to displacement of persons, whether low income, elderly, disabled, or otherwise from SRO hotels since the adoption of the HCO in 1981, and (sic) regardless of the reason for the displacement," and reiterated that "records" included "electronic records in all forms wherever located, including

privately-owned computers, tablets, phones and electronic devices, including privately-owned and maintained accounts or servers," citing *City of San Jose v. Superior Court (Smith)* (2017) 2 Cal.5th 608. (*Id.* at Ex. 11.) Petitioners noted that thus far, no documents had been produced regarding "the environmental impacts caused by homeless persons in the City" and rejected the City's implied response of lack of documents regarding the number of homeless persons within the City, citing two of City's websites containing data. Petitioners further requested affidavits with sufficient facts to show whether the requested records were personal or public. (*Id.*)

On August 7, 2017, the records manager for the Board of Supervisors responded that all relevant documents had been provided, referred Petitioner to the Legislative Research Center for other legislative files and indicated that follow up inquires for records should be made to DBI. (*Id.* at Ex. 12.) For litigation matters, Petitioners were told to contact Deputy City Attorney Robb Kapla. (*Id.*)

On August 8, Petitioners responded to the Records and Project Manager for the Board of Supervisors and Custodian for the Department of building Inspections, excoriating both individuals for the responses to the three Public Records Acts requests and reminding them of the obligation to provide the documents or an affidavit from all relevant individuals to show whether any information withheld is public or private. (*Id.* at 13.)

On August 15, 2017, the records manager for the Board again stated there were no additional responsive records and advised Petitioners to "contact DBI if you have follow up inquiries that address or pertain to any of records that they may have, or contact the respective City Department(s) if you are extending your search to all City Departments, and lateraled all follow-up to Deputy City Attorney Robb Kapla. (*Id.* at Ex. 14). The City Attorney's office had not been served with any of the three records requests. There is no evidence that the City Attorney was actively involved with responses to the multiple requests. Rather, the evidence indicates that each agency responded individually to requests within their purview.

Petitioners responded with an email to the custodians of records for the Board of Supervisors, DBI, and Deputy City Attorney Kapla on August 16, stating "we are still being told to figure out ourselves which other city departments might have responsive documents and to make separate requests to those departments (each of our requests has always been intended to include all City

departments)," and further, "if the City Attorney is responsible for coordinating with all City departments, we obviously request for that to occur." (*Id.* at Ex. 15.) This e-mail stated what was already apparent—a lack of notice to individual City agencies despite Petitioners' requests for documents encompassing over 160 City departments, commissions, task forces, and numerous named individuals. Rather, the three records requests had only been served on the Board of Supervisors and DBI, the only two agencies named in the requests. Petitioners inexplicably assumed one of the two agencies would somehow be responsible for the coordination of records collection for all the other independent City agencies, each with a unique custodian of records.

As of mid-August 2017, the City had produced a total of 2,500 pages of responsive documents and efforts continued to fulfill the requests in a "rolling production" process. Subsequently, on August 23, 2017, Petitioners filed their "First Amended and Supplemental Verified Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief For Takings, Denial of Due Process, and Denial of Equal Protection," which added a Sixth Cause of Action seeking a writ of mandamus for violations of the California Public Records Act – Government Code sections 6258 and 6259, and Code of Civil Procedure section 1085. (FAP at 20.)

On August 28, Petitioners wrote to the two City Attorneys assigned to the CEQA litigation referencing the history of requests to the custodians of the Board of Supervisors and DBI. (*Id.* at Ex. 17.) Petitioners disclaimed that the requests were limited to the Board of Supervisors or DBI, and asserted that their requests had "always included and been intended to include all City departments," which "should be broadly construed to include any council, board, commission, department, committee, official, officer, council member, commissioner, employee, agent, or representative of the City." (*Id.*) In a separate letter also on August 28, Petitioners further wrote to the City with regard to the delay in certification of the administrative record. (*Id.* at Ex. 16.)

On September 6, 2017, the Deputy City Attorney Ruiz-Esquide wrote to Petitioner indicating readiness to certify the administrative record, explaining previous hesitancy to do so because of the "broad and evolving document requests to city agencies, explicitly stating that Petitioners seek additional documents for inclusion in the administrative record." (*Id.* at Ex. 18.) Two days later, on September 8, 2017, DCA Ruiz-Esquide responded to the records issues and stated "as you know, the

documents you requested are voluminous. Different City departments are diligently searching their records. We will be producing them to you on a rolling basis, as we receive them from the different departments," and enclosed a disc with records from the Human Services Agency and Department of Homelessness and Supportive Housing. (*Id.* at Ex. 19). In another letter three days later, on September 11, 2017, Petitioners denied knowing or having any reason to know the records were voluminous, given the response by the Board and DBI. (*Id.* at Ex. 20.) This was despite Petitioners' insistence that the request was intended to include all city departments and city agencies, and to be broadly construed.

At the Case Management Conference on September 29, 2017, the parties brought the Public Records Act production issues to the Court's attention. (See parties' Case Management Conf. Statements, filed Aug. 30, 2017). Of concern to the parties was the increased scope of the request, volume of documents and dispute about what was properly part of the Administrative Record. A central question emerged regarding whether all documents generated by City employees or agencies properly part of the Administrative Record, even if the decision-makers (Board of Supervisors) did not consider the documents in the CEQA decision.

At the September 29, 2017 Case Management Conference, and at subsequent conferences on November 17, 2017 and January 11, 2018, the Court supervised further negotiations between the parties. City department searches for the documents with the terminology in the requests identified "truckloads" of material of questionable relevance. The Court and the parties discussed appropriate ways for the Petitioners to fine-tune the search through more specific search terms and how to narrow the search to the relevant City departments. In addition, the Court imposed production deadlines for the City and reviewed the progress of production by each City department selected. The City conducted a review for privilege and redaction of personal identifying information.

At the November 17, 2017 conference, the Court directed the City to collect and produce documents "to be located through the use of search terms as discussed" and refine search terms including "environmental impact of homelessness" and "environmental impact caused by homelessness." (Petitioners' CMC Statement, filed Dec. 27, 2017.) Other search terms were discussed at length. The search term "homeless" produced documents from the Department of Public

Health which were not relevant to the issues, while a broad search involving documents from the Mayor's Office of Housing and Community Development yielded individual applications for housing which would require redaction of personal identifying information. Petitioners requested more specific terms be utilized, (eg. urination, defecation, human waste, tent encampment, needles) to reflect the environmental impacts of homelessness.

As for document production, the City Attorney represented that documents aggregated by their office were being processed and redacted as needed. Production of documents from the Department of Public Works, Department of Public Health, Planning Department, Planning Commission, Budget/Legislative Analyst Office, Single Room Occupancy Task Force among others were in progress. Other agencies, such as the Department of Human Services completed production. The search with some terms ("environmental impact of homelessness") continued for all city departmental files. By the end of December, almost 4,000 additional documents were produced.

At the January 11, 2018 conference, Petitioners' counsel "further narrowed" their requests. (See Petitioners' CMC Statement, filed March 27, 2018.) An additional 9,600 pages from various city departments had been produced. The City represented that all documents that had been produced using the new search parameters were being processed.

On February 14, 2018, San Francisco completed its production in response to Petitioners' revised and narrowed Public Records Act Requests. San Francisco's rolling production totaled nearly 40,000 pages from twelve City agencies, commissions or departments. (See Petitioners' CMC Statement, filed March 27, 2018; Coon Decl., Exs. 27, 33.) Throughout this process, it became apparent that the ambiguous and overbroad terminology of the third request produced too many documents, some of which Petitioners acknowledged were not relevant to the litigation.

Petitioners argue that the filing of the lawsuit resulted in production of documents withheld. The evidence indicates that with the filing of the PRA claim, the City Attorney's Office became the point-persons to direct the search, aggregate response, assert privilege where appropriate, and coordinate and communicate with the appropriate city agencies, since many agencies performed duties unrelated to the issues in this litigation. However, Petitioners have not shown that there is "more than a mere temporal connection between the filing of litigation to compel production of records under the

PRA and the production of those records" or that the litigation was "the motivating factor for the production of documents." (*Sukumar*, 14 Cal.App.5th at 464; *Belth*, 232 Cal.App.3d at 901-902.) Petitioners ignore the crucial fact that service of each request upon the Board of Supervisors and DBI only resulted in responses by each department. The communication between Petitioner and the City was limited to the custodians of each of these two departments, who had no control or ability to produce documents from other departments. The response by the two city departments served with the records request and by only those departments should have signified to Petitioners that their assumption that one of those departments would act as the "aggregator" for the other city agencies was faulty.

Under the current City infrastructure, each city department is responsible to respond to PRA claims, each having a separate custodian of records. The delay in production and response by departments not served with the three requests was not prompted by the litigation nor lack of willingness to comply with the request. Rather, it was that each city department not served with the requests had no knowledge or opportunity to respond. One cannot respond to that which one does not have knowledge of. Petitioners were on notice as to the city infrastructure and their need to serve individual City departments, but did not do so. Unlike respondent in *Belth,* who initially refused plaintiff's request for documents she claimed were confidential, but obtained consent to disclose the documents after plaintiff filed a writ petition, there is little if any evidence that the BOS or DBI refused to provide or withheld requested documents in the first request. (232 Cal.App.3d at 902.) There is evidence that other city departments were never served with any request.

Moreover, the alleged delay in production of documents is not persuasive given that the PRA claim was filed on August 23, and by August 31, contact had been made with the Human Services Agency. (Coon Decl. at Ex. 22.) Delay in production was caused by the ever-widening and increased time frame to include a 36-year period from 1981-2017, and uncertainty over the scope of the request. Petitioner alleges that an August 31, 2017 email from Matt Braun of the Human Services Agency demonstrates frustration of the PRA request. (*Id.*) While the email acknowledges the "first phase of this search" to identify official city documents using a "rather narrow definition of 'documents,'" it then states "you may receive a subsequent request or requests for such documents," and that the plan is

that "the City Attorney will produce documents responsive to this request on a rolling basis" with the intent that the materials be collected before his last day of September 8, reflecting prioritization of the materials to be produced. (*Id.*)

The facts here are distinguishable from *Sukumar*, in which the City "unequivocally claimed it had produced every responsive nonexempt document." (14 Cal.App.5th at 464.) The City's lawyer even told the court in that case that it had produced "everything." (*Id.*) Upon depositions of the city's PMK, however, further documents were discovered. (*Id.*) The holding of the *Sukumar* court relies upon the City's facile representations to the court in the face of failure to perform a complete search. There is no evidence here that the City failed to perform a complete search for responsive documents in compliance with the requests, upon direction from the City Attorney's office. Since having taken over the responses to the three requests, it was incumbent upon the City Attorney to communicate with all City departments to determine which departments had materials relevant to the each of the three requests, using search terms from the requests and as modified from ambiguous and overbroad terms of the third request. As the aggregator of the materials, and coordinator of the document productions across over all city departments, commissions, task forces, councils, boards, employees, representatives and officials, the City Attorney was obligated to conduct privilege review and redactions when necessary (eg. HIPPA, personal identifying information). The evidence indicates the City Attorney's Office commenced coordination and communication with multiple City departments, appropriately reviewing all documents for privileged information and redacting as necessary to protect third party privacy.

The sole change effected by adding the PRA claim to the existing CEQA litigation was to compel the City Attorney to take responsibility and control of the responses to the PRA requests, which was required by its ethical duty of representation. At the time of filing the claim, production of responsive documents had already begun by the departments served with requests.

Accordingly, the Court finds the City acted reasonably in responding to Petitioners' PRA requests. Petitioner has failed to meet the burden of proof for the Sixth Cause of Action.

CONCLUSION

With respect to Petitioners' First Cause of Action for CEQA violations, the Court GRANTS the petition. The Court orders issuance of a writ of mandate setting aside and voiding the City's adoption of the 2017 HCO Amendments, and thereby the 2019 HCO Amendment, ordering the City to comply with CEQA before proceeding with any HCO legislation increasing the 7-day minimum rental period for SRO units. The City shall file a return demonstrating compliance with this court's writ within 60 days of this order. The Court shall retain continuing jurisdiction to enforce and ensure compliance with the writ and CEQA under Public Resources Code § 21168.9(b). (*Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 479-480.)

With respect to Petitioners' Sixth Cause of Action for PRA violations, the Court DENIES the petition and finds in favor of Respondent.

In light of this Court's Order setting aside the challenged 2017 HCO Amendments on CEQA grounds, Petitioners' Second through Fifth Causes of Action seeking to invalidate the Ordinance on constitutional due process, equal protection and takings grounds are now moot. The Court need not reach and decide those claims, which are hereby ordered dismissed without prejudice.

The Court's preliminary injunction against the City's enforcement of the HCO's minimum rental period is hereby modified to be a permanent injunction pending City's compliance with CEQA, and is modified to allow City's enforcement of the HCO's 7-day minimum rental period, which is the law validly in effect due to the Court's invalidation of the 2017 and 2019 HCO Amendments.

Having disposed of all causes of action framed by the pleadings between all the parties, this Order shall constitute the Court's final Judgment in this action. Any claims for prevailing party attorneys' fees and costs shall be made by timely post-judgment motion(s) and cost bill(s) pursuant to all applicable law.

IT IS SO ORDERED.

Dated: 9/24/19

Hon. Cynthia Ming-mei Lee
JUDGE OF THE SUPERIOR COURT

CPF-17-515656 SAN FRANCISCO SRO HOTEL COALITION, AN ET AL VS. CITY AND COUNTY OF SAN FRANCISCO A PUBLIC AGENCY ET AL (CEQA Case)

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on September 24, 2019 I served the foregoing CEQA - Order RE: Petition for Writ of Mandamus on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: September 24, 2019

By: S. LE

ANDREA RUIZ-ESQUIDE
DEPUTY CITY ATTORNEYS
CITY HALL, RM 234
1 DR. CARLTON GOODLETT PLACE
SAN FRANCISCO, CA 94102

ANDREW M. ZACKS
ZACKS, FREEDMAN & PATTERSON, P.C.
235 MONTGOMERY STREET
SUITE 400
SAN FRANCISCO, CA 94104

ARTHUR F. COON
MILLER STARR REGALIA
1331 N.CALIFORNIA BLVD.,
FIFTH FLOOR
WALNUT CREEK, CALIFORNIA 94596