

P: (626) 381-9248
F: (626) 389-5414
E: info@mitschsailaw.com



Mitchell M. Tsai
Attorney At Law

139 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA E-MAIL

February 20, 2023

Brad Johnson
Community Development Director
City of Claremont
225 Second St.
Claremont, CA 91711
Em: bjohnson@ci.claremont.ca.us

RE: Agenda Item No. 2: Proposed Amendment to the Claremont Zoning Code

Dear Mr. Johnson,

On behalf of the Southwest Mountain States Regional Council of Carpenters (“The Carpenters” or “SWMSRCC”), my Office is submitting these comments to the City of Claremont (the “City”) for the February 21, 2023 Planning Commission meeting Agenda Item No.2 regarding the proposed amendment to the Claremont Zoning Code pertaining to Hotels and Motels (the “Project”).

The Carpenters is a labor union representing 63,000 union carpenters in 10 states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

Individual members of SWMSRCC live, work, and recreate in the City and surrounding communities and would be directly affected by the Project’s environmental impacts.

The Carpenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project. Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

The Carpenters incorporates by reference all comments raising issues regarding the environmental assessment for the Project prior to approval of the Project. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project’s environmental documentation may assert any issue timely raised by other parties).

Moreover, the Carpenters requests that the City provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act, Pub. Res. Code, § 21000 *et seq.* (“**CEQA**”) and the California Planning and Zoning Law, Gov. Code, §§ 65000–65010 (“**Planning and Zoning Law**”). California Public Resources Code sections 21092.2, and 21167(f) and California Government Code section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency’s governing body.

I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY’S ECONOMIC DEVELOPMENT AND ENVIRONMENT

The City should require the Project to be built using a local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California, have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state-approved apprenticeship training program, or who are registered apprentices in a state-approved apprenticeship training program.

Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

[A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

Workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the University of California, Berkeley Center for Labor Research and Education concluded:

[L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California’s workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.¹

Furthermore, workforce policies have significant environmental benefits given that they improve an area’s jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (“GHG”) emissions. In fact, on May 7, 2021, the South Coast Air Quality Management District found that that the “[u]se of a local state-certified apprenticeship program” can result in air pollutant reductions.²

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.³

¹ California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>.

² South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10>.

³ California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* <https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf>

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (“**VMT**”). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.⁴ Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city’s First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 (“**AB2011**”). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements.

The City should consider utilizing local workforce policies and requirements to benefit the local area economically and to mitigate greenhouse gas, improve air quality, and reduce transportation impacts.

⁴ Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? *Journal of the American Planning Association* 72 (4), 475-490, 482, available at <http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf>.

II. THE CITY SHOULD IMPOSE TRAINING REQUIREMENTS FOR THE PROJECT’S CONSTRUCTION ACTIVITIES TO PREVENT COMMUNITY SPREAD OF COVID-19 AND OTHER INFECTIOUS DISEASES

Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupational Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.⁵

Southwest Mountain States Carpenters recommend that the City adopt additional requirements to mitigate public health risks from the Project’s construction activities. SWMSRCC requests that the City require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site.

In particular, based upon Southwest Mountain States Carpenters’ experience with safe construction site work practices, SWMSRCC recommends that the City require that while construction activities are being conducted at the Project Site:

Construction Site Design:

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.
- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening

⁵ Santa Clara County Public Health (June 12, 2020) COVID-19 CASES AT CONSTRUCTION SITES HIGHLIGHT NEED FOR CONTINUED VIGILANCE IN SECTORS THAT HAVE REOPENED, available at <https://www.sccgov.org/sites/covid19/Pages/press-release-06-12-2020-cases-at-construction-sites.aspx>.

area. Please reference the Apex temperature screening site map for additional details.

- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody gaining entry to the project site such as returning personnel, deliveries, and visitors.
- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the

individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.⁶

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. The City should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

Southwest Mountain States Carpenters has also developed a rigorous Infection Control Risk Assessment (“**ICRA**”) training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to protect themselves and all others during renovation and construction projects in healthcare environments.⁷

⁶ See also The Center for Construction Research and Training, North America’s Building Trades Unions (April 27 2020) NABTU and CPWR COVID-19 Standards for U.S. Construction Sites, available at https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, available at https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf.

⁷ For details concerning Southwest Carpenters’s ICRA training program, see <https://icrahealthcare.com/>.

ICRA protocols are intended to contain pathogens, control airflow, and protect patients during the construction, maintenance and renovation of healthcare facilities. ICRA protocols prevent cross contamination, minimizing the risk of secondary infections in patients at hospital facilities.

The City should require the Project to be built using a workforce trained in ICRA protocols.

III. THE PROJECT CONSTITUTES PIECEMEAELED ENVIRONMENTAL REVIEW AND APPROVAL, IN VIOLATION OF CEQA.

It is well established that projects must not be separated into smaller parts, or piecemealed, for purposes of environmental review; environmental review must include all phases of the project. (CEQA Guidelines §§ 15063, subd. (a)(1); 15378, subd. (a); *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271 [“[t]he CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish”].) Thus, CEQA prohibits evading comprehensive CEQA analysis by “chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences.” (*Bozung v. LAFCO*. (1975) 13 Cal.3d 263, 283-84; *Orinda Assn v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.)

Further, “if projects are ‘various steps which taken together obtain an objective,’ they are a single project for the purposes of CEQA.” (*Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 283.) This is also true for projects that are “integrally related.” (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 272.) Lead agencies must “construe the project broadly to capture the whole of the action and its environmental impacts.” (*Save Berkeley’s Neighborhoods v. Regents of University of California* (2020) 51 Cal.App. 5th 226, 239.)

Here, because the Project is aimed solely at accommodating a proposed 120-room Marriott residence inn, the Project constitutes piecemealed environmental review and approval, in violation of CEQA. Specifically, rather than considering the environmental impacts and entitlement associated with the Claremont Residence Inn holistically, the City is instead chopping up the Inn project into smaller parts, thereby evading comprehensive CEQA analysis. Accordingly, rather than approving the

Project and finding it to be exempt from CEQA, the City must consider the Project congruently with the Claremont Residence Inn development to ensure that its review and approval is in compliance with CEQA.

With the newest Planning Commission meeting, the City is concluding that “it can be seen with *certainty* that the proposed Hotel/Motel Ordinance has *no* possibility of having a significant effect on the environment. In the absence of any pending application for any hotel or motel that might implicate the proposed ordinance, any specific environmental effects would be speculative. Therefore the adoption of the proposed Hotel/Motel Ordinance is not a project subject to the CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.” [Emphasis added.] Agenda Report pg. 6.

The conclusion that the ordinance change would, *with certainty*, have *no possibility* of having a significant effect on the environment is disingenuous and false. The Project proposes to amend ordinances that (1) prohibit a kitchen and its appliances in hotel and motel guest rooms (Key Decision #12) and (2) require long-term stay hotels to be located in an area with a “concentration of amenities” for guests, including restaurant retail, recreation, open space, and exercise facilities (Key Decision #14).

Agenda Report pg. 4. It is false to conclude that a lift on a ban of kitchens and kitchen appliances across all hotels and motels across the entire City of Claremont would *with certainty have no possibility* of having a significant effect on the environment. First, if the Project is approved and hotels and motels wish to introduce kitchens and kitchen appliances to their rooms, it would not only possibly, but likely increase impacts to transportation, traffic, GHG emissions, and energy use for their implementation and/or construction, and continued energy and water use once they are added to the rooms or built with new hotels and motels. These impacts are of course extrapolated depending on how many hotels, motels, or future accommodations of this type are implemented. With not even an attempt to assess the potentially significant environmental impacts the Project allows for in the proposed ordinance changes, it is again disingenuous and false to outright conclude that there is *no possibility* it would have impacts to the environment, especially for energy and water use in the long-term, notwithstanding the short-term potential environmental impacts due to construction or implementation of appliances.

In addition to this, the availability of kitchens in hotels and motels is, if anything, likely to *increase* traffic and attendance at these accommodations, thereby likely increasing

VMT traffic, air quality, and GHG emissions due to the increased use. Again, to say outright that there is *certainly no possibility* that this ordinance change could *not even possibly result in any* significant environmental impacts fails to attend to even basic considerations of the ordinance’s impact on these businesses and patrons’ behaviors in utilizing the proposed changes to these accommodations.

Beyond that, Key Decision 14 also would likely result in potentially significant impacts, or worse, despite the agenda report and proposed ordinances’ conclusions otherwise. This is because, whether stated or not, one reason for the location of these hotels or motels would be to increase attendance at them and the nearby amenities. This in itself is not necessarily an issue, but it is inappropriate to conclude that these changes would *with certainty result in no* significant environmental impact without also performing *any* analysis of potential environmental impacts due to construction or implementation of the hotels in these higher density areas. At a minimum an estimate or assessment of how many hotels or motels would be planned to be built, and their impacts to the surrounding areas, or planned hotels and motels. While few applications may be pending, it is likely that the expansion of these ordinances will encourage development in these areas, which was almost assuredly one of the intentions of the expansion and adjustments to the ordinances anyway.

Because it is unknown how many hotels or motels in Claremont will take advantage of the new ordinance’s language if adopted, or how many new hotels would be built because of the new expanded language, and because it is unknown how those actions would impact the environment, it is critical that the City conduct sufficient environmental analysis to determine the true impact of the proposed Project rather than conclusory statements about the Project’s impacts to the environment.

IV. ASSUMING ARGUENDO THAT THE PROJECT DID NOT VIOLATE CEQA, IT SHOULD NOT BE EXEMPT FROM CEQA REVIEW.

Although the Project violates CEQA for being piecemealed, as noted above, it should not be exempt from CEQA review even assuming, *arguendo*, it was proper. Notably, the Staff Report contends that the Project is exempt from CEQA review under CEQA Guidelines section 15305, which governs minor alterations in land use. However, that section provides an exemption for minor alterations “which do not result in any changes in land use or density.”

Here, as mentioned above, the Project will result in the replacement of the existing ordinance allowing for kitchens and their appliances in hotels and motels, as well as encouraging long-term stay hotels to be located in concentrated amenities areas, and to replace one of the existing 56 room Knights Inn with a new 120 room Residence Inn. Attracting more patrons and hotels will necessarily increase the functional density of the hotels, in addition to the actual increase of the Residence Inn. Thus, it is indisputable that the Project will result in changes in land density, disqualifying it from the CEQA exemption.

V. CONCLUSION

In sum, SMSWRCC requests that the City require a local workforce, that the City impose training requirements for the Project’s construction activities to prevent community spread of COVID-19 and other infectious diseases, and that the City determine that the Project is not exempt from CEQA and instead consider the environmental impacts and entitlements associated with the proposed Claremont Residence Inn development holistically rather than piecemealed. If the City has any questions, feel free to contact my office.

Sincerely,



Jason A. Cohen
Attorneys for Southwest Mountain
States Regional Council of Carpenters

Attached:

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (Exhibit A);
Air Quality and GHG Expert Paul Rosenfeld CV (Exhibit B); and
Air Quality and GHG Expert Matt Hagemann CV (Exhibit C).