

SUBJECT: ZONE TEXT AMENDMENT: DWELLING UNIT CLARIFICATION
INITIATED BY: PLANNING & DEVELOPMENT SERVICES DEPARTMENT
(John Keho, AICP, Interim Director)
(Bianca Siegl, Long Range Planning Manager)
(Rachel Dimond, AICP, Senior Planner)

STATEMENT ON THE SUBJECT:

The Planning Commission will hold a public hearing to consider a Zone Text Amendment (ZTA) to clarify the definition of and requirements for dwelling units in response to Zoning Interpretation 17-0001 (the "Interpretation"). The amendment aligns the Zoning Ordinance with the Interpretation, to clarify that dwelling units are meant for long-term use, which was determined to be one year or longer.

RECOMMENDATION:

Staff recommends the Planning Commission hold a public hearing, listen to all pertinent testimony, and adopt the following resolution:

1. RESOLUTION PC 19-1311: **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AN AMENDMENT TO TITLE 19, ZONING ORDINANCE, TO CLARIFY THE DEFINITION OF AND REQUIREMENTS FOR DWELLING UNITS IN COMPLIANCE WITH SECTION 19.03.030, PROCEDURES FOR INTERPRETATIONS, WEST HOLLYWOOD MUNICIPAL CODE.** (Exhibit A)

BACKGROUND / ANALYSIS:

Zoning Ordinance Chapter 19.03, Interpretation of Zoning Ordinance Provisions, provides rules for resolving questions about the meaning or applicability of any requirement of the Zoning Ordinance, intended to ensure consistent interpretation and application of the Zoning Ordinance and General Plan. The purpose of the proposed ZTA is to amend the Zoning Ordinance to align it with Zoning Interpretation 17-0001 (Exhibit C). The Interpretation, which was issued by the Director, appealed to and upheld by the Planning Commission, and appealed to and upheld by the City Council, addressed a specific project, 8500 Sunset Boulevard and their use of dwelling units as hotel rooms, and not on a long-term basis. The proposed ZTA would clarify that dwelling units are required to be rented on a long term basis, which would mean at least one year. This provision would apply to all dwelling units in projects that received approval of their development permit after May 1, 2001, which is the effective date of the City's current definition of dwelling unit that includes the word "long-term."

This report provides detailed background regarding the property that required the Interpretation, in order to provide context for the Planning Commission. However, the

specific issue before the Commission in this public hearing is limited to a recommendation regarding the ZTA to clarify provisions related to the Interpretation.

Project Background

In 1999, the City entered into a Development Agreement with Sunset Millennium Associates for the development of the West, Middle, and East Parcels (Sunset Specific Plan Target Sites 4-C, 4-D, and 5-C) on Sunset Boulevard (aka the “Sunset Millennium” project). The originally approved plan for all three parcels included the development of one hotel with 371 rooms and 208,000 square feet of office space, with no residential development. The West Parcel (Target Site 5-C) was completed and certified for occupancy under the conditions of the original Development Agreement.

In 2005, SMA requested and received approval for an amendment to the Development Agreement and associated entitlements to restructure the project. The 2005 development agreement allowed for the East Parcel, or Site 4-C, to include two hotels with a total of 296 rooms, approximately 13,950 square feet of retail and restaurant space, 2,250 square feet of outdoor dining, and 811 parking spaces. The Middle Parcel, or Site 4-D, was approved to include two residential buildings with a total of 190 dwelling units to be condominiums, 25,832 square feet of retail/restaurant space, off-site signage, and 268 parking spaces.

In 2011, the CIM Group purchased the subject property and received approval of minor changes to the Development Agreement, including revisions to the footprint, placement and height of the buildings, and the provision of parking for the middle parcel on the west parcel. The minor changes also clarified that the condominiums could be used as residential apartments.

In January 2017, the Middle Parcel received a Certificate of Occupancy. At some point in the spring of 2017, the CIM Group sold the residential portion of the project to the current owner, BPREP 8500 Sunset LLC. On June 28, 2017, through an article in the LA Times, the City became aware of that sale and purported operation of the dwelling units. The article described the project, now called AKA West Hollywood, as “an extended stay hotel”. In response to this article, the City Manager sent a letter on June 30, 2017 to the property owner expressing concern over the described use. The operator, Korman Communities, together with BPREP, (the “appellants”), communicated their intention to rent units in the east tower as unfurnished units with one year leases and market-rate units in the west tower as furnished units on an extended-stay basis (30+ day stays) with various amenities.

Zoning Ordinance Interpretation Issuance Process

On September 21, 2017, the Director issued a notice to AKA West Hollywood via Korman Communities of his intent to issue a Zoning Interpretation regarding the contemplated use of the market-rate units in the west tower. Specifically, such notice reflected the Director’s intent to address the interpretations of “dwelling unit” and “hotel” as related to the approved entitlement for the subject property.

On September 29, 2017, appellants sent a submission to the City in connection with the impending Zoning Interpretation that set forth appellants' intended extended-stay use of the units. This is referred to as "the Submission" in the Interpretation (provided as Attachment B of the Interpretation in Exhibit C).

Pursuant to Chapter 19.03 of the Zoning Ordinance, on November 29, 2017, the Director issued Zoning Interpretation 17-0001. Among other things, the Director made the following findings and determinations in that Interpretation:

1. WHMC section 19.90.020 defines "Dwelling Unit" as "a room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis."
2. WHMC does not expressly define "long-term basis".
3. The terms "transitional housing", "emergency shelter" and "corporate housing" provide the most significant context for the meaning of "long-term basis."
4. "Long-term basis" means one (1) year or more.
5. Based upon the Statement of Facts set forth in the Submission which purported to set forth AKA's Use, AKA's Use is not on a "long-term basis" and, therefore, not permitted within the property approvals.
6. WHMC defines "Hotel" as "a facility with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other temporary lodging, typically less than 30 days."
7. Based upon the Statement of Facts set forth in the Submission, AKA's Use: (a) is "temporary lodging;" (b) falls within the definition of "Hotel;" and (c) is therefore, not permitted within the property approvals.
8. In response to appellants' contention in the Submission that (a) there is ample precedent that the WHMC allows occupancy of one to six months within the meaning of dwelling unit," and (b) a February 6, 2017 staff report relating to the Corporate Housing ordinance stated that "several recently constructed buildings offer one-to six month leases for those who need short-term housing on an on-demand basis", the Director found that AKA's Use anticipates using (in a DA Overlay zone) an entire building (as opposed to 1 or 2 units) for prohibited purposes. Staff determined that the short-term housing use referenced in such staff report (not subject to a DA Overlay zone) is limited to one or two units in a building at any given time. The Director further noted that, subject to available resources, the City would moving forward enforce its laws in a manner consistent with the Official Interpretation.
9. The official interpretations are consistent and compliant with the West Hollywood General Plan, including goals H1-H5.

Appeal of Director's Zoning Interpretation to Planning Commission

WHMC Section 19.03.30E provides that any Director interpretation may be appealed to the Planning Commission. On December 11, 2017, appellants submitted a timely appeal of the Interpretation.

The subject dwelling units remained unoccupied until sometime in January, 2018, when AKA began operating with its extended-stay format in the west tower, in contradiction to the Director's interpretation.

On March 15, 2018, the Planning Commission continued the public hearing on these matters to April 19, 2018 to allow more time to review documents. On April 19, 2018, the Planning Commission held a public hearing, heard the appeal and adopted Resolution No. 18-1250 (Exhibit D), a resolution (a) denying an appeal and upholding the Director's Zoning Interpretation 17-0001, and (b) finding on a de novo basis that, in contravention of the Zoning Ordinance, the applicable development agreement and project entitlements, the market-rate (non-affordable) dwelling units located in the west tower of 8500 Sunset Boulevard were being used as a "hotel" and that they were not being rented on a "long-term basis" and/or and not being used as approved.

On April 30, 2018, the appellants, represented by Eric George, filed a timely appeal of the Planning Commission decision to the City Council. On July 9, 2018, the City Council continued the item to a date uncertain. On September 4, 2018, the City Council heard the appeal and adopted Resolution No. 18-5106 to deny the appeal and affirm the Planning Commission decision to uphold Zoning Interpretation 17-0001, and on a de novo basis, determine that the market-rate dwelling units located in the west tower of 8500 Sunset Boulevard, West Hollywood are: (a) being used as a "hotel;" (b) not being rented on a "long-term basis;" and/or (c) not being used as approved, in contravention of the Zoning Ordinance, the applicable development agreement and project entitlements.

Dwelling Unit and Long Term Analysis

WHMC Section 19.90.020 defines a "dwelling unit" as "a room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis." The Code does not expressly define "long-term basis." The Director determined in the Official Interpretation that AKA's Use was not on a "long-term basis", which the Official Interpretation further defined as 1 year or more.

In rendering the Official Interpretation, the Director considered the following definitions and concluded that "transitional housing", emergency shelter, and "corporate housing" provided the most significant context for interpreting the meaning of "long-term basis."

"Transitional housing" is defined as "temporary rental housing ... that calls for the ... recirculation of the dwelling unit ... which shall be no less than six months." The actual subject of the definition is wholly irrelevant. The definition provides instruction as to the meaning of "long-term basis" (i.e., more than "temporary rental housing"). And, the definition makes it clear that "temporary" means six months or more.

“Emergency shelter” is defined as “a facility that provides immediate and short-term housing ... that is limited to occupancy of six months or less ...” Again, the actual subject of the definition is wholly irrelevant. The definition provides instruction as to the meaning of “long-term basis” (i.e., more than “short-term housing”). And, the definition makes clear that “short-term housing” means up to six months.

The Corporate Housing Ordinance (Ordinance No. 17-999) was enacted on February 21, 2017. “Corporate housing” is defined as “the temporary occupancy of any dwelling unit, by any person (1) who does not intend to use it as their domicile, or who has not entered into a written rental or lease agreement to occupy the unit for at least one year; and (2) for which the dwelling unit is owned, leased, guaranteed or made available by a business entity for occupancy by the entity’s officers, employees, consultants, vendors, or contractors.”

The Corporate Housing Ordinance also found that “there is a documented shortage of housing throughout ... the County of Los Angeles. Residential developments approved in the City of West Hollywood are expected to be used as residential housing, and not used for short-term or temporary occupancy. “Corporate housing” takes away needed housing from the City’s housing stock and that is inconsistent with the City’s housing policies of requiring residential dwelling units to be used as places of domicile. This ordinance is intended to implement these housing policies.”

Clearly, clause (2) of the definition of “corporate housing” does not bear upon the interpretation of “temporary occupancy.” “Temporary occupancy” must, therefore, be addressed in clause (1). Clause (1) defines “temporary occupancy” in terms of a person who (a) “does not intend to use such dwelling unit as their domicile” or (b) “has not entered into a written rental or lease agreement to occupy the unit for at least one year.” The definition appears to have codified the City’s then-existing position that a dwelling unit was to be used for “at least one year,” but added to it, as an alternative, anyone who intends to use it as their domicile. Contrary to appellants’ argument that the enactment of such ordinance was irrelevant and redundant, it is the addition of those two new concepts (i.e., intention to use as their domicile and clause (2)), rather than the one year requirement, that rendered the action necessary and, therefore, not irrelevant and/or redundant. Further, the findings make clear that dwelling units are intended for long-term occupancy (i.e., “not short-term or temporary occupancy”). Consequently, both the definitions and the findings support the Director’s Official Interpretation of “long-term basis” being one year or more.

The Short-Term Vacation Rentals Ordinance (Ordinance No. 15-958) was enacted on September 21, 2015. WHMC Section 19.36.331(A) provides, “No person or entity shall offer or provide a dwelling unit, or any portion thereof, for rent for 30 consecutive calendar days or less to any transient.” The appellants argued that this section “defines” short term as “30 consecutive calendar days or less,” and, therefore, that long-term must mean 31 days or more. However, the definition above makes no mention whatsoever of “short-term” or “temporary occupancy.” Moreover, appellants’ argument is inconsistent with other definitions in the Code that do in fact define “temporary” and “short-term” – namely, the definitions for “transitional housing”, “emergency shelter” and “corporate housing” (as discussed above).

In addition to the argument above, the appellants made an argument that the City amended the Zoning Ordinance to ban short-term vacation rentals of 30 days or less, and thus, permitted all rentals over 30 days. While vacation rentals of 30 days or less were explicitly banned, this does not imply the legality of stays longer than 30 days. The City was addressing a very specific problem of short term rentals when that ordinance was enacted. At the time, the proliferation of Airbnb and similar platforms made the short term rental of units a pressing issue. Neither the City nor staff anticipates every scenario when drafting very specific regulations that deal with a current issue, such as short term rental.

Zone Text Amendment

Pursuant to Subsection 19.03.030(C), West Hollywood Municipal Code, after an interpretation is issued, “any provisions of this Zoning Ordinance that are determined by the Director to need refinement or revision should be corrected by amending this Zoning Ordinance as soon as is practical.” The following Zone Text Amendment 18-0019 serves to clarify the definition and requirements for dwelling units as outlined in Zoning Interpretation 17-0001, including the following components:

- Addition of new Section 19.26.320, Residential Uses- Dwelling Units: This section requires that if dwelling units are leased to a tenant, there must be an initial lease term of at least one year, as evidenced by a written lease agreement. This provision applies to projects that received approval of a development permit on or after May 1, 2001, which is the effective date of Ordinance 01-594, which overhauled the Zoning Ordinance and included adoption of the phrase “long-term” within the definition of dwelling units. This will apply to approximately 1704 existing dwelling units on 334 properties, or 6.5% of dwelling units within the City.
- Amended definition of dwelling unit: This will clarify the definition to ensure that when leased, length of stay is an initial one year or more.
- Amended definition of “corporate housing”: This will eliminate the one year or more requirement for corporate housing since this requirement is now part of the definition of dwelling unit
- Amended the definition of hotel: This will eliminate reference to “typically rented for 30 days or more” since many hotels allow rentals beyond 30 days and length of stay does not determine what is considered a hotel
- Amended 19.48.060, Conditions of Approval: This will require all new dwelling units to have a condition of approval that includes the initial lease term of one year when rented.

Planning Commission Long Range Subcommittee

Planning Staff presented a version of the proposed ZTA to the Planning Commission Long Range Subcommittee on November 15, 2018. The ZTA presented to the Subcommittee included the applicability threshold of having vested rights by a certain

date. The Subcommittee members expressed concern that the threshold of vested rights was too complicated, and as a result, staff eliminated this threshold and changed it to approval of a development permit, a key project milestone which can be more reliably tracked and gives a small grace period for projects under construction at that time. The Subcommittee voiced further concern that delineating requirements for certain dwelling units could be complicated. However, this allows older buildings to maintain a variety of lengths of stay, and a complete list of applicable buildings will be made publicly available at a later date to ensure compliance. The Subcommittee members expressed related concern that we need to understand how many units are impacted by this proposal. At this time, there are approximately 334 properties that have received development permit approval since May 1, 2001 that include a total of 1704 dwelling units, which account for 6.5% of all dwelling units within the City. The Subcommittee members asked whether we would want to include home sharing in the Zoning Ordinance, and staff did not include this in the Zoning Ordinance as part of this ZTA because Home Sharing as a use is regulated by Code Compliance through Title 5, Business Licenses. The Subcommittee expressed concern regarding the clarification between hotel and dwelling units, and in response, staff added language to amend the definition of hotel to remove length of stay. The Subcommittee members stated that there could be room for a shorter term for dwelling units, and that 6-12 months may be adequate for long-term stay. However, the Interpretation adopted by Planning Commission and City Council already established long-term as one year, so the proposed Zone Text Amendment mirrors that interpretation. Further, 93.5% of all units, or 24,303 units, would not be subject to the new lease requirements.

West Hollywood Chamber of Commerce Government Affairs Committee

City Staff presented this item to the Government Affairs Committee of the West Hollywood Chamber of Commerce on January 8, 2019 at their regularly scheduled meeting, where members provided staff with feedback on this item.

ALTERNATIVES

While the City is tasked with developing a ZTA that aligns the Zoning Ordinance with the Interpretation, there are a number of alternatives that could be recommended to City Council in order to address the issue of long-term use of dwelling units:

1. Allow a certain percentage (such as 20% or a maximum of 5 units, whichever is less) of dwelling units within apartment buildings to be utilized on a basis of between six months and one year.
2. Change the applicability so the minimum one year lease requirement does not apply to single-family residences or other similar land uses.
3. Direct staff to establish a new land use that allows extended stay hotel and/or corporate housing uses under certain circumstances.

CONFORMANCE WITH THE WEST HOLLYWOOD GENERAL PLAN:

ZTA 2018-0019 is consistent with the Goals and Policies of the General Plan, including Goal LU-1, which states that the City should “maintain an urban form and land use pattern that enhances the quality of life and meets the community’s vision for the future. Specifically, it complies with Policy LU-1.4, which states that the City should continue to maintain regulations that “encourage preservation of existing housing and development of new housing that accommodates households that are diverse in size, type and income.” The ZTA is also consistent with General Plan Goal H-1, which calls to provide affordable rental housing and H-2, to maintain and enhance the quality of the housing stock and residential neighborhoods.

EXHIBITS:

- A. Resolution No. 19-1311
- B. Index to Zoning Code Changes
- C. Zoning Interpretation 17-0001
- D. Planning Commission Resolution 18-1250
- E. City Council Resolution 18-5106

RESOLUTION NO. 19-1311

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF WEST HOLLYWOOD,
RECOMMENDING TO THE CITY COUNCIL
APPROVAL OF AN AMENDMENT TO TITLE 19,
ZONING ORDINANCE, TO CLARIFY THE
DEFINITION OF AND REQUIREMENTS FOR
DWELLING UNITS IN COMPLIANCE WITH
SECTION 19.03.030, PROCEDURES FOR
INTERPRETATIONS, WEST HOLLYWOOD
MUNICIPAL CODE.**

THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD
DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Applications for the comprehensive development of property located at 8474, 8480 and 8490 Sunset Boulevard, and 1234 La Cienega Boulevard, West Hollywood, California (SSP Site 4C), and 8500, 8516, 8524 and 8544 Sunset Boulevard, and 1235 La Cienega Boulevard, West Hollywood, California (SSP Site 4-D), were filed on October 16, 2003 and December 12, 2004. Proposed development on Site 4-D consisted of two residential buildings with a maximum of 190 dwelling units to be condominiums, 25,832 square feet of retail/restaurant space, 2,250 square feet of outdoor dining, a tall-wall sign and two double-faced billboards, and 468 parking spaces in a below grade parking structure. On April 13, 2005, the City Council certified an Environmental Impact Report, approved a statement of overriding considerations and approved a Development Agreement and associated entitlements to permit the subject project. In September, 2012, minor changes to the Development Agreement were approved by the City Manager, including revisions to the footprint, placement and height of the buildings, elimination of a tunnel under La Cienega Boulevard and a reduction in public parking. The minor changes also clarified that the condominiums could be rented as apartments.

SECTION 2. The City became aware that the operators of the west tower of the subject property, located at 8500 Sunset Boulevard, and commonly known as 8500 Sunset or AKA West Hollywood, intended to utilize those units (a) as "hotel rooms", (b) not on a "long-term basis", and/or (c) contrary to the approved project.

SECTION 3. Section 19.03.020A of the Zoning Ordinance states that "the Director [the West Hollywood Community Development Director, or designee of the Director] has the responsibility and authority to interpret the requirements of the Zoning Ordinance." Section 19.03.010 of the Zoning Ordinance states that "this chapter provides rules for resolving questions about the meaning or applicability of any requirement of this Zoning Ordinance. The rules provided in

this chapter are intended to ensure the consistent interpretation and application of the provisions of this Zoning Ordinance and the General Plan.”

SECTION 3. Pursuant to Chapter 19.03 of the Zoning Ordinance, on November 29, 2017, the Director issued Zoning Interpretation 17-0001 (the “Interpretation”), to confirm the use of these units are not in compliance with the West Hollywood Municipal Code (WHMC), the Development Agreement, or project approvals. Among other things, the Director made the following findings and determinations in that Interpretation:

1. WHMC Section 19.90.020 defines “Dwelling Unit” as “a room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis.”
2. WHMC does not expressly define “long-term basis”.
3. The terms “transitional housing”, “emergency shelter” and “corporate housing” provide the most significant context for the meaning of “long-term basis.”
4. “Long-term basis” means one (1) year or more.
5. Based upon the Statement of Facts set forth in the appellant’s September 29, 2017 submission (the “Submission”) to the City in connection with the impending Official Interpretation, which Submission purported to set forth appellant’s intended extended-stay use of the units (“AKA’s Use”), AKA’s Use is not on a “long-term basis” and, therefore, not permitted within the property approvals.
6. WHMC defines “Hotel” as “a facility with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other temporary lodging, typically less than 30 days.” Based upon the Statement of Facts set forth in the Submission, AKA’s Use (a) is “temporary lodging”, (b) falls within the definition of “Hotel” and (c) is therefore, not permitted within the property approvals.
7. In response to appellant’s contention in the Submission that (a) “there is ample precedent that the WHMC allows occupancy of one to six months within the meaning of dwelling unit”, and (b) a February 6, 2017 staff report relating to the Corporate Housing ordinance stated that “several recently constructed buildings offer one-to six month leases for those who need short-term housing on an on-demand basis”, the Director found that AKA’s Use anticipates using (in a DA Overlay zone) an entire building (as opposed to 1 or 2 units) for prohibited purposes. Staff determined that the short-term housing use referenced in such staff report (not subject to a DA Overlay zone) is limited to one or two units in a building at any given time. The Director further noted that, subject to available resources, the City would moving forward enforce its laws in a manner consistent with the Official Interpretation.
8. The official interpretations are consistent and compliant with the West Hollywood General Plan, including goals H1-H5.

SECTION 4. WHMC Section 19.03.30E provides that “any interpretation of this Zoning Ordinance by the Director may be appealed to the Planning Commission....” On December 11, 2017, the appellant submitted a timely appeal to the Interpretation. A public hearing was duly noticed and scheduled for the March 15, 2018 Planning Commission meeting. At that meeting, the Planning Commission continued the public hearing on these matters to April 19, 2018 in order to provide commissioners more time to review the record on this item. On April 19, 2018, the Planning Commission adopted Resolution No. 18-1250, a resolution (a) denying an appeal and upholding the Director’s Interpretation, and (b) finding on a de novo basis that, in contravention of the Zoning Ordinance, the applicable Development Agreement and project entitlements, the market-rate (non-affordable) dwelling units located in the west tower of 8500 Sunset Boulevard (1) were being used as a “hotel”, (2) were not being rented on a “long-term basis” and/or (3) were not being used as approved.

SECTION 5. On April 30, 2018, the appellant filed a timely appeal of the Planning Commission decision (the “appeal”). A public hearing was duly noticed and scheduled for the July 9, 2018 City Council meeting. At that meeting, the City Council continued the item to a date uncertain. A public hearing was duly noticed and scheduled for the September 4, 2018 City Council meeting. On September 4, 2018, the City Council adopted Resolution 18-5106, a resolution (A) denying the appeal and upholding the Planning Commission decision to uphold the Director’s Zoning Interpretation 17-0001 and (B) found on a de novo basis that, in contravention of the Zoning Ordinance, the applicable Development Agreement and project entitlements, the market-rate (non-affordable) dwelling units located in the west tower of 8500 Sunset Boulevard (1) are being used as a “hotel”, (2) are not being rented on a “long-term basis” and (3) are not being used as approved, as further evidenced by the findings and determinations outlined in the subject staff memorandum dated July 9, 2018.

SECTION 6. Pursuant to Subsection 19.03.030(C), WHMC, after an interpretation is issued, “any provisions of this Zoning Ordinance that are determined by the Director to need refinement or revision should be corrected by amending this Zoning Ordinance as soon as is practical.” The following Zone Text Amendment 18-0019 serves to clarify the definition and requirements for dwelling units as outlined in the Interpretation.

SECTION 7. A public hearing for the Zone Text Amendment (ZTA) was duly noticed for the Planning Commission meeting of January 17, 2019 by publication in the Beverly Press newspaper, the West Hollywood Independent Newspaper, required state and local agencies, the City website, by announcement on City Channel 6 and via a mailed notice to affected properties, by January 3, 2019.

SECTION 8. The proposed ZTA is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the CEQA Guidelines, which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may

have a significant effect on the environment, the activity is not subject to CEQA. The proposed ZTA reaffirms and promotes the long-term tenancy of dwelling units, as those units were intended and therefore will not have a significant effect on the environment.

SECTION 9. The Planning Commission of the City of West Hollywood hereby finds that ZTA 18-0019 is consistent with the Goals and Policies of the General Plan, including Goal LU-1, which states that the City should “maintain an urban form and land use pattern that enhances the quality of life and meets the community’s vision for the future. Specifically, it complies with Policy LU-1.4, which states that the City should continue to maintain regulations that “encourage preservation of existing housing and development of new housing that accommodates households that are diverse in size, type and income.” The ZTA is also consistent with General Plan Goal H-1, which calls to provide affordable rental housing and H-2, to maintain and enhance the quality of the housing stock and residential neighborhoods.

SECTION 10. Based on the foregoing, the Planning Commission of the City of West Hollywood hereby recommends approval to the City Council of ZTA 18-0019, which is attached hereto as Attachment A, to further clarify the scope of the City’s prohibition against the use of dwelling units for purposes other than long-term residential occupancy.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of West Hollywood at a regular meeting the 17th day of January, 2019.

STACEY JONES, CHAIR

ATTEST:

BIANCA SIEGL, PLANNING MANAGER

ATTACHMENT A
PROPOSED ZONE TEXT AMENDMENT

(additions in underline; deletions in ~~strikethrough~~.)

SECTION 1. Section 19.36.275 is hereby added to Chapter 19.36 of Title 19, Zoning Ordinance, of the West Hollywood Municipal Code, as follows:

19.36.275: Residential Uses- Dwelling Units: Dwelling units shall be intended to be occupied by the owner or, if leased (as evidenced by a written rental or lease agreement), by the tenant under such agreement for an initial lease term of at least one year. This provision applies to all dwelling units in projects that received approval of a development permit on or after May 1, 2001. This provision does not apply to transitional housing, emergency shelters, congregate care facilities, or supportive housing. Home sharing in accordance with Chapter 5.66 of the West Hollywood Business License Code, may be permitted.

SECTION 2. The Title of Section 19.36.331 of Chapter 19.36 of Title 19, Zoning Ordinance, of the West Hollywood Municipal Code, is hereby amended as follows:

19.36.331 ~~Short-Term~~ Vacation Rentals.

SECTION 3. Section 19.48.060(A) of Chapter 19.48 of Title 19, Zoning Ordinance, of the West Hollywood Municipal Code, is hereby amended as follows:

19.48.060 Conditions of Approval.

A. In approving a development permit for a project containing dwelling units, the review authority shall ensure that the permit contains the following condition:

1. Dwelling units within the City ~~city~~ are intended for ~~long-term~~ occupancy by the owner, or, if leased (as evidenced by a written rental or lease agreement), by the tenant under such agreement for an initial lease term of at least one year, and as reflected by the definition of dwelling unit in Section 19.90.020. ~~As such, no part of any A dwelling unit in the project may~~ shall not be used as corporate housing or ~~short-term~~ vacation rental. ~~This condition is independent of the city's ban on short-term rentals and corporate housing, which also applies to all dwelling units in the city.~~

SECTION 4. Section 19.90.020, Definitions of Specialized Terms and Phrases, of Chapter 19.90 of Title 19, Zoning Ordinance, of the West Hollywood Municipal Code, is hereby amended with the following changes to existing definitions:

Corporate Housing. The ~~temporary~~ occupancy by any person of any dwelling unit, ~~by any person: (1) who does not intend to use it as their domicile, or who has not entered into an initial written rental or lease agreement to occupy the unit for at least one year; and (2) for which the dwelling unit is owned, leased, guaranteed or made available by a business entity for occupancy by the entity's officers, employees, consultants, vendors, or contractors.~~

Domicile. ~~As defined in California Elections Code Section 349, "That place in which his or her an individual's habitation is fixed, wherein the individual person has the intention of remaining, and to which, whenever such individual he or she is absent, the individual person has the intention of returning. At a given time, an individual person may have only one domicile."~~

Dwelling, Dwelling Unit, or Housing Unit. A room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for ~~one household on a long-term basis~~ use by the owner, or if leased, by a tenant for an initial lease term of at least one year.

Hotel. A commercial facility not approved as a dwelling unit with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other ~~temporary~~ lodging generally not intended to be the guest's domicile. typically less than 30 days. Also may include accessory guest facilities such as swimming pools, tennis courts, indoor athletic facilities, accessory retail uses, meeting facilities, etc.

Index to Zoning Code Changes

Code Section	Equivalent Section in Current Code	Description of Change
<p><i>Article 19-3 Site Planning and General Development Standards</i> <i>Chapter 19.36 Standards for Specific Land Uses</i></p>		
19.36.275 Residential Uses- Dwelling Units	N/A	Add New Section to require dwelling units that received development permit approval after May 1, 2001 to be utilized by an owner or rented for a minimum of one year as evidenced by an initial lease.
19.36.331 Vacation Rentals	19.36.331 Short-Term Rentals	Amend the Title of Section 19.36.331 to eliminate use of the term "short-term"
<p><i>Article 19-4 Land Use and Development Permit Procedures</i> <i>Chapter 19.48 Development Permits</i> <i>Section 19.48.060 Conditions of Approval</i></p>		
19.48.060(A)1	19.48.060(A)1	Amend conditions of approval required for development permits to include requirements for minimum lease of one year for dwelling units, when rented
<p><i>Article 19-6 Definitions</i> <i>Chapter 19.90 Definitions/Glossary</i></p>		
19.90.020 Definitions of Specialized Terms and Phrases.	19.90.020	Amend definitions of "Corporate Housing", "Domicile", "Dwelling, Dwelling Unit, or Housing Unit" and "Hotel"



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**COMMUNITY
DEVELOPMENT
DEPARTMENT**

City of West Hollywood
Zoning Interpretation 17-0001
Published November 29, 2017

Subject: Use of the Dwelling Units in the West Tower of 8500 Sunset Boulevard (Sunset La Cienega Project), West Hollywood, CA (the “Property”)

Pursuant to section 19.03.030 of the City of West Hollywood Municipal Code (“WHMC”), the following official interpretations and findings of fact have been made by the Director. Any appeal of this interpretation must be made in writing within 10 days of the date of interpretation publishing.

AKA’s Use:

In response to my e-mail dated September 21, 2017 (a copy of which is attached hereto), Mr. Delvac (on behalf of AKA) e-mailed a September 29, 2017 submission (the “**Submission**”) (a copy of which is attached hereto) with respect to AKA’s intended use of the Property (“**AKA’s Use**”).

A. “Long-term basis”

Code Language: The zoning for the Property is DA Overlay and its approvals are for the development of 190 dwelling units. WHMC section 19.90.020 defines “Dwelling Unit” as “a room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis.” WHMC does not expressly define “long-term basis”.

Findings: The following terms defined in WHMC provide the most significant context for the meaning of “long-term basis”.

- “Corporate Housing” is defined as “the temporary occupancy of any dwelling unit, by any person...who has not entered into a written rental or lease agreement to occupy the unit for at least one year....”
- “Emergency Shelter” is defined as “a facility that provides immediate and short term housing...that is limited to occupancy of six months or less....”
- “Transitional Housing” is defined as “temporary rental housing... which shall be no less than six months.”





Official Interpretation:

“Long-term basis” means 1 year or more. Based upon the Statement of Facts set forth in the Submission, I conclude that, under WHMC, AKA’s Use is not on a “long-term basis” and, therefore, not permitted within the Property approvals.

B. **“Hotel”**

Code Language: WHMC defines “Hotel” as “a facility with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other temporary lodging, typically less than 30 days.”

Official Interpretation: Based upon the Statement of Facts set forth in the Submission, I conclude that, pursuant to WHMC, AKA’s Use (a) is “temporary lodging”, (b) falls within the definition of “Hotel” and (c) is, therefore, not permitted within the Property approvals.

C. **Other Projects –Discriminatory Application**

Applicant statement: The Submission states that “there is ample precedent that the WHMC allows occupancy of one to six months within the meaning of dwelling unit. In connection with the Corporate Housing ordinance, the staff report to City Council dated February 6, 2017 (‘February 6 staff report’), stated: ‘Several recently constructed buildings offer one-to six month leases for those who need short-term housing on an on-demand basis, and these uses would continue to remain acceptable for employees who need short-term accommodations; the goal is to ensure that dwelling units are being consistently occupied and fully utilized rather than remaining empty – in the context of a City with a high demand for available dwelling units.’ This is direct and compelling evidence that rentals as short as one month are nonetheless dwelling units and have been allowed for other property owners.

It is important to note that the February 6 staff report additionally states that “‘Corporate housing’ provides fully-furnished living accommodations to persons traveling for business purposes, which may involve rentals exceeding 30 days.... The intent of this proposed zone text amendment is to further clarify the City’s restrictions on the use of dwelling units to include all forms of short-term transient uses, which may disrupt the stability of residential communities, present public safety challenges, and reduce the availability of affordable and market-rate housing.”

Finding: AKA’s Use anticipates using (in a DA Overlay zone) an entire building (as opposed to 1 or 2 units) for prohibited purposes. Based upon our most recent inquiries immediately prior to the February 6 staff report, we determined that the short-term housing use referenced in such staff report (not subject to a DA Overlay zone) is limited to one or two units at any given time. It is my expectation that, subject to available resources, the City shall on a go forward basis enforce its laws in a manner consistent with the official interpretations set forth herein. .

Applicant statement: The Submission states that “In fact, the City’s website makes it entirely clear that ‘dwelling units’ can be rented on a minimum 31-day basis”.





Finding: The City’s website is not part of WHMC and, therefore, this is disregarded for purposes of these official interpretations.

Applicant statement: “Further the use and availability of dwelling units for one-month rentals is, and has always been, a fundamental part of the real estate market everywhere. To consider any limitation or prohibition on one-month rentals should be seen as anti-tenant by limiting the range of options.”

Finding: There is no fundamental part of real estate markets everywhere that provides a regulatory layer within West Hollywood. Instead, the Zoning Regulations govern the use of dwelling units in the City of West Hollywood.

D. Short-Term Vacation Rentals Ordinance and Corporate Housing Ordinance

Development Agreement Language: Section 3.1 of the Amended and Restated Development Agreement By and between City of West Hollywood And Sunset Millennium Associates, LLC dated July 11, 2005, and recorded the Los Angeles County Official Records as Instrument No. 05-2317382 (the “**Development Agreement**”) provides that “Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the Project Approvals and the Current Land Use Regulations (to the extent the latter are not in conflict with the terms of [the Development Agreement] as provided at the Development Overlay District, Section 19.14.040 of the Code). The permitted use of the Property, the density and intensity of use...shall be those set forth in the Project Approvals and on Exhibit B-1.”

Subsection 3.1.1 of the Development Agreement provides that “[e]xcept as otherwise provided in [the Development Agreement], during the Term, the City shall not, as to the Property and the Project, without the prior written consent of Owner: ... (b) apply to the Property or Project any new or amended ordinance...that is inconsistent with the Current Land Use Regulations or the Project Approvals, so as to...‘prevent or adversely affect the operation of the Project’, in accordance with the Current Land Use Regulations or the Project Approvals.... For purposes of this Section ‘prevent or adversely affect the operation of the Project’ shall mean changes which fundamentally affect the ability of a Permitted Use [i.e., those permitted and conditional permitted used [sic] set forth on Exhibits B-1 and C] to operate within the Project (e.g. prohibit a Permitted Use, change parking standards for a Permitted Use, etc.). Changes of City-wide, non-discriminatory applicability which affect internal operational requirements, etc.) shall not be considered to be changes which ‘prevent or adversely affect the operation of the Project’.”

The Development Agreement defines “Owner” as “Sunset Millennium Associates, LLC and each of its respective successors and assigns to all or any portion of the Property during such time as such portion is subject to [the Development Agreement].”

Findings:

- (1) AKA falls within the Development Agreement’s definition of Owner.
- (2) Section 3.1 and Subsection 3.1.1 apply to AKA.





Code Language: West Hollywood Ordinance No. 15-958 adopted on September 21, 2015 (the “**Short-term Vacation Rentals Ordinance**”):

- a. prohibits renting all or a portion of a dwelling unit for 30 days or less to transient visitors.
- b. prohibits advertising dwelling units for short-term rental.

Findings:

- The Short-Term Vacation Rentals Ordinance does not fundamentally affect the ability of a Permitted Use to operate within the Project.
- The Short-Term Vacation Rentals Ordinance was adopted before AKA purchased the Property.
- The Short-Term Vacation Rentals Ordinance is a City-wide non-discriminatory applicability which at most affects internal operational requirements and, therefore, does not “prevent or adversely affect the operation of the Project.”
- Therefore, the Short-Term Vacation Rentals Ordinance is not inconsistent with the current Land Use Regulations or the Project Approvals.

West Hollywood Ordinance No. 17-999 adopted on February 21, 2017 (the “Corporate Housing Ordinance”):

- found that “corporate housing takes away needed housing from the City’s housing stock and that is inconsistent with the City’s housing policies of requiring residential dwelling units to be used as places of domicile.”
- added the new land use designation of “Corporate Housing”.
- added the definition of “Corporate Housing” as “[t]he temporary occupancy of any dwelling unit, by any person (1) who does not intend to use it as their domicile, or who has entered into a written rental or lease agreement to occupy the unit for at least one year; and (2) for which the dwelling unit is owned, leased, guaranteed, or made available by a business entity for occupancy by the entity’s officers, employees, consultants, vendors, or contractors.”
- With respect to my October 6 E-mail requesting clarification as to the basis upon which AKA concluded that the “Corporate Housing” provisions do not apply to the Property, the October 12 E-mail states that “[a]s stated in [the Submission]...the corporate housing ban was enacted earlier this year, long after the approved 2005 Development Agreement which applies to AKA and bars the City from applying the provisions of the corporate housing rules to AKA’s uses at 8500 Sunset....”





Findings:

- The Corporate Housing Ordinance does not fundamentally affect the ability of a Permitted Use to operate within the Project.
- The Corporate Housing Ordinance was adopted before AKA purchased the Property.
- The Corporate Housing Ordinance is a City-wide non-discriminatory applicability which at most affects internal operational requirements and, therefore, does not “prevent or adversely affect the operation of the Project.”
- Therefore, the Corporate Housing Ordinance is not inconsistent with the current Land Use Regulations or the Project Approvals.

E. General Plan Consistency

The interpretations set forth above are consistent and in compliance with the West Hollywood General Plan, including the following goals:

H-1: Provide affordable rental housing.

H-2: Maintain and enhance the quality if the housing stock and residential neighborhoods.

H-3: Encourage a diverse housing stock to address the needs of all socioeconomic segments of the community.

H-4: Provide for adequate opportunities for new construction of housing.

H-5: Provide for a government environment that facilitates housing development and preservation.

These goals are met through the proliferation of dwelling units for long-term use. Other land uses achieve the goals of other types of shorter-term housing. In this case, the City approved a project with 190 dwelling units, and these were intended to meet a need for long-term housing in the city. The use of these units as short term hotel rooms is not consistent with their approval, which was in part based on General Plan consistency.

John Keho, AICP
Interim Director, Community Development Department





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**COMMUNITY
DEVELOPMENT
DEPARTMENT**

September 21, 2017

Larry Korman
Korman Communities
220 West Germantown Pike, Suite 250
Plymouth Meeting, PA 19462

Sent via mail and email to: LKorman@korman.com
CC: Rob Grossman// rgrossman@korman.com

RE: AKA/ 8500 Sunset Boulevard

Dear Mr. Korman,

I write in connection with your company's intended use of one or both of the towers at 8500 Sunset Boulevard as you have described it in recent meetings with City Manager Paul Arevalo and City Attorney Michael Jenkins and as it has been described in various press releases and/or articles.

After consideration of the various issues involved, Mr. Arevalo and Mr. Jenkins have determined that the appropriate procedure for determination of such issues is my issuance of an official interpretation pursuant to WHMC Section 19.03.030. Among other things, I would expect to interpret the meanings of "dwelling unit" and "hotel" as defined in the Zoning Ordinance as they relate to the approved entitlement in the context of your expressed use of the subject property.

You are welcome to submit your written thoughts through end of business on Friday, September 29, 2017. I would thereafter expect to issue my written interpretation. Do not hesitate to contact me should you have any questions.

Sincerely,

John Keho, AICP
Community Development Department
Assistant Director

cc: file



ARMBRUSTER GOLDSMITH & DELVAC LLP

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September 29, 2017

VIA EMAIL

Mr. John Keho, AICP
Assistant Director
Community Development Department
City of West Hollywood
8300 Santa Monica Blvd.
West Hollywood, CA 90068

RE: Zoning Interpretation

Dear Mr. Keho:

We are writing on behalf of BPREP 8500 Sunset LLC, and Korman Communities (which operates the brand AKA) in reply to your letter of September 21, 2017, regarding the issuance of a zoning interpretation as to the definitions of dwelling unit and hotel. We are surprised that there is any question as to hotel use unless it stems from erroneous media reports which AKA has informed the City were inaccurate.

We have attached a detailed analysis but, in short, the key points are:

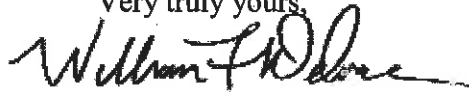
- AKA's use is not a hotel. Hotels have an average stay of three to four days as compared to the minimum 31-day leases at 8500 Sunset.
- An average hotel room is 350 sf as compared to the full residential rental apartments at 8500 Sunset which average over 1,000 sf.
- Nothing in the Zoning Code requires a rental agreement over 31 days, which is the minimum lease term at 8500 Sunset.
- A City Council staff report made clear that one-month rentals are allowed, so to impose any longer term would result in inequitable treatment of 8500 Sunset.
- The units have all the facilities required for dwelling units and are occupied by tenants that are individuals and households.
- It is clear that the use fits squarely within the Zoning Code's definition of dwelling unit.

ARMBRUSTER GOLDSMITH & DELVAC LLP

Mr. John Keho
The City of West Hollywood
September 29, 2017
Page 2

We respectfully urge you to find that AKA's use is within the meaning of dwelling units and base your Interpretation and findings on the attachments.

Very truly yours,

A handwritten signature in black ink, appearing to read "William F. Delvac", written in a cursive style.

William F. Delvac

cc: Michael Jenkins, Esq., City Attorney
Larry Korman
Rob Grossman, AKA
Damon Mamalakis, Esq.

Attachment

**DETAILED ANALYSIS FOR DWELLING UNIT INTERPRETATION AND REQUESTS:
AKA'S PROPOSED USE OF 8500 SUNSET**

September 29, 2017

OVERVIEW

BPREP 8500 Sunset LLC and Korman Communities (which operates the brand AKA) (collectively, "AKA") make this submission in reply to your letter of September 21, 2017 ("September 21 Letter") regarding an official zoning code interpretation ("Interpretation") as to the terms "dwelling use" and "hotel." AKA requests that the Interpretation find that AKA's proposed use of the 190 dwelling units located at and commonly known as 8500 Sunset ("8500") is as dwelling units. This Detailed Analysis, along with the letter to which this is attached are referred to as this Submission.

It is unquestionably clear that AKA's residential use of 8500 meets the definition of "dwelling units" as set forth in WHMC Section 19.90.020. Set forth below is a statement of facts ("Statement of Facts") that provides information for the record. We ask that you consider these facts and this Submission when issuing your Interpretation. In the September 21 Letter, you state that the Interpretation is prompted in part by how 8500 has been described in "various press releases and/or articles." We think it is entirely inappropriate to base any of the Interpretation on media accounts. AKA has informed City representatives in discussions and in writing that such reports are inaccurate.

In our view, and as a matter of proper administrative procedure, the Interpretation should be strictly based on the WHMC and the materials and facts presented in this Submission. We believe that our Submission is the accurate basis for analysis of the residential use of 8500 as dwelling units.

I. QUESTION PRESENTED

The question presented is whether AKA's proposed residential use of 8500 is as "dwelling units" or as a "hotel" use under the WHMC. At the core of the Interpretation is whether the occupancy of the units at 8500 is on a "long-term basis."

This Submission fully demonstrates that the WHMC definition of dwelling units is satisfied and AKA's use is allowed. Further, the use of 8500 is not hotel use.

II. STATEMENT OF FACTS

These are the facts that AKA submits as relevant to the Interpretation:

1. The City of West Hollywood ("City") granted various approvals in connection with what was known as the Sunset Millennium Project ("Project") for, among other

things, open space, retail, restaurant, hotel, office, parking garage and residential development. These approvals included:

- a. Development Agreement approved by the City of West Hollywood City Council ("City Council") on December 20, 1999, pursuant to Ordinance No. 99-557.
- b. Amended and Restated Development Agreement 003-004 approved by the City Council on April 13, 2005 as Ordinance No. 05-708;
- c. Amendment to the Zoning Map of the City, approved by the City Council on April 13, 2005 as Ordinance No. 05-708;
- d. Development Permit 003-022 allowing, among other things, two residential towers approved by the City Council on April 13, 2005 by Resolution No. 05-3209;
- e. Conditions, Covenants & Restrictions (Instrument No. 17-20170631755 recorded in official records maintained by the Los Angeles County Clerk's office on June 8, 2017);
- f. Various building permits issued by the City for 8500;
- g. Certificate of Occupancy issued by the City on January 4, 2017.

These approvals are for the development of 190 dwelling units, ground floor retail, and associated parking on the 8500 site, which was referred to in the approvals as the Middle Parcel. The various approvals referenced above are incorporated herein for the record by this reference ("8500 Approvals").

2. AKA is a brand of Korman Communities which is a fully integrated real estate company with a portfolio comprised of more than 7,000 apartments and furnished suites in buildings, ranging from suburban garden-style and mid-rise communities to urban high-rise buildings, operating under innovative residential multi-family brands AKA and AVE. The AKA brand has a diverse portfolio of multi-family properties in various jurisdictions ranging from typical annual leases to monthly leases and, in some places, weekly leases.
3. AKA anticipates that the stabilized occupancy rate will be above 90% and, hence, the units will be regularly occupied.
4. 8500 Features:
 - a. A signed lease for a minimum term of 31 days is required with an individual or household as tenant.
 - b. Every unit, including the affordable dwelling units, contains a washer and dryer;
 - c. Every unit contains complete kitchen facilities (as opposed to an efficiency kitchen) with ovens, microwaves, dishwashers, standard size refrigerators, garbage disposals, hot water, and ample cabinet storage for dishware and cooking utensils;
 - d. Walk-in closets in the one and two bedroom units;
 - e. Fitness center in each Tower;
 - f. Lounge/amenity room in each Tower; and
 - g. Full time leasing staff and on-site management.

5. The 8500 complex has one pool that is shared by both Towers subject to the same set of rules and regulations.
6. No Hotel Services Provided at 8500:
 - a. No traditional hotel-style front desk;
 - b. No concierge;
 - c. No restaurant or room service;
 - d. No laundry service (each unit has apartment amenity of washer and dryer);
 - e. No bell hop service; and
 - f. No daily housekeeping service.
7. Size, Mix and Type of Units:
 - a. The overall average size of the units is over 1,000 sf;
 - b. 60% of the units are 1 bed/1 bath;
 - c. Almost 30% of the units are 2 bed/2 or 2.5 bath;
 - d. Less than 10% of the units are studios; and
 - e. Every unit has sleeping, cooking, eating, and sanitation facilities within the meaning of the WHMC definition of a dwelling unit.
8. Comparison of Hotels with 8500:
 - a. The typical hotel stay is three to four days and at 8500 the minimum term is 31 days.
 - b. Not only are the unit sizes larger than a traditional hotel room, units at 8500 are furnished with amenities typically found in residential units, such as full kitchens, separate bedroom, bathroom and living quarters, and a washer and dryer in every unit (and not hotel rooms).
9. Summary of Lease Terms:

The leases will be based on the leases AKA has used at other properties. The anticipated terms and conditions of the leases will include, but are not limited to, the following:

 - a. Term. The term of the leases shall be a minimum of 31 days.
 - b. Late Payment Penalty. If the resident fails to pay the full rent due within five (5) days of the first (1st) day of any month, the landlord may charge a late of 5% of the current month's rent and a late payment charge of \$250.
 - c. Right of Quiet Enjoyment. The landlord covenants that the resident shall have the right to peacefully and quietly have, hold, and enjoy the premises for the agreed term.
 - d. Use of Premises. The premises are for use and occupancy solely by the resident as a residence and may not be used by any other person, organization or business.

- e. Number of Occupants. The lease specifies the number of occupants.
- f. Assignment and Subletting. The premises are to be used solely as a private dwelling, and the resident shall not assign the lease without the consent of the landlord.
- g. Maintenance and Repair. The resident will, at his/her sole expense, keep and maintain the premises in good and sanitary condition.
- h. Holdover by Resident.
 - i. If the resident desires to remain in possession after the expiration of the term, the resident must make a written request to extend the term 15 days prior to the expiration of the term.
 - ii. The landlord may grant or deny the resident's request to extend the term in the landlord's sole discretion.
 - iii. If the landlord consents to the resident's request, the term of the lease shall be automatically extended for a period of thirty (30) days.
 - iv. Should the resident remain without the prior written consent of the landlord, such holdover shall constitute an immediate default by the resident.
- i. Surrender of Premises.
 - i. At the end of the lease, the resident will return the premises to the landlord in as good a state and condition as the premises were in at the commencement of the lease, reasonable use and wear thereof and damages by the elements excepted.
 - ii. The resident shall be liable for any and all necessary repairs and alterations. The resident shall promptly notify the landlord of any and all damages to the premises and to any of the property and appliances therein, including malfunctions.
- j. Disclosures Required by Law for Real Estate Transactions.
 - i. Megan's Law Notice. The lease includes the notice required under California law for every lease for residential real property regarding sex offenders.
 - ii. Prop 65. The lease provides the required chemicals disclosure.
 - iii. Radon Gas. The lease includes the required Radon Gas Disclosure.
 - iv. Mold. The lease includes the mold disclosure and provides that the resident has a responsibility to maintain the premises in order to inhibit mold growth and that resident's agreement to do so is material consideration for the lease.

10. The terms and conditions of the lease make clear that the lease is a conveyance of an interest in real property binding and enforceable under California law.

III. ANALYSIS OF DWELLING UNIT

Interpretation of Dwelling Unit.

Based on the Statement of Facts and the documents included with this Submission and incorporated herein by this reference, the proposed use of the units is within the meaning of the WHMC term “dwelling unit” and is allowed by the 8500 Approvals.

WHMC Section 19.90.020 defines dwelling unit as follows:

Dwelling, Dwelling Unit, or Housing Unit. A room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis.

It appears that the only term that may be subject to any interpretation is the meaning of what constitutes “long-term basis.” For purposes of this analysis, the definition of dwelling unit has the following components:

- A. A room or group of internally connected rooms that have;
- B. sleeping, cooking, eating, and sanitation facilities;
- C. but not more than one kitchen;
- D. which constitute an independent housekeeping unit;
- E. occupied by or intended for one household;
- F. on a long-term basis.

Of these components, the Zoning Code only defines “cooking facilities,” “kitchen” and a related term, “occupancy.” Key terms including “independent housekeeping unit,” “household” and “long-term basis” are not defined in the WHMC, although there is a definition of household outside the Zoning Code that may be indirectly related as discussed below. The meaning of some of the terms, such as sleeping and eating is plain. For terms not defined in Chapter 19.90 of the Zoning Code or other provisions of the WHMC, “the most common dictionary definition is presumed to be correct.” WHMC Section 19.90.010.

The units at 8500 include a group of internally connected rooms that have sleeping, cooking, eating and sanitation facilities. While we do not anticipate that satisfaction of components A, B, or C above is in doubt, it is instructive to demonstrate the total conformance of 8500 to such components.¹

- A. Room or Group of Internally Connected Rooms. The units in 8500 include studios, one-bedroom and two-bedroom units. Hence each unit is a room or group of internally connected rooms.² Therefore, this component is satisfied.

¹ See 8500 Approvals.

² See 8500 Approvals.

B. Sleeping, Cooking, Eating and Sanitation Facilities.

Sleeping. Although the term sleeping facilities is not defined in the WHMC, the meaning of this term is plainly satisfied by the fact that there are bedrooms (or sleeping areas in the studios) so the sleeping requirement is satisfied.³

Cooking. Regarding cooking, the Zoning Code provides the following definition:

Cooking Facilities. An interior arrangement that provides, but is not limited to, the following features for the cooking of food: oven, stove, counter top burners, hot plate, electrical frying pan, toaster oven, or microwave.

Each unit in 8500 has cooking facilities within the meaning of dwelling unit.⁴

Eating. Eating facilities is not a defined term in the WHMC. However, the units provide eating facilities as demonstrated by the design.⁵ Sanitation. Sanitation facilities is not a defined term in the WHMC. However, this must refer to bathrooms, which are provided in every unit in 8500, including toilets, baths/showers and sinks.⁶

8500 satisfies each of the terms in component B.

C. But Not More than One Kitchen.

The Zoning Code provides the following definition of:

Kitchen. A room or space within a building intended to be used for the cooking or preparation of food.

No unit in 8500 has more than one kitchen room or space.⁷ Therefore, 8500 satisfies this component of dwelling unit.

D. Independent Housekeeping Unit.

The term housekeeping unit is not defined in the WHMC.⁸ The dictionary definition is not particularly helpful⁹.

³ See 8500 Approvals.

⁴ See 8500 Approvals.

⁵ See 8500 Approvals.

⁶ See 8500 Approvals.

⁷ See 8500 Approvals.

⁸ There is a definition of good housekeeping in Section 15.56.040 of the WHMC, but it is not relevant to this context.

⁹ As further discussed below, Merriam-Webster's Dictionary does define "household" as those "who dwell under the same roof and compose a family; also a social unit composed of those living together in the same dwelling."

Hence, while the meaning of independent housekeeping unit is not clear, it appears to be a term used--and litigated--in a zoning context. From various court cases, it would appear that this is an older term in zoning codes directed at restricting or limiting the grouping of persons who could reside together as a unit.

Beyond the case law that instructs that a municipality cannot improperly restrict who may be defined as a household or be included as a family member,¹⁰ we would assume that a city as diverse and inclusive as West Hollywood would not apply this term restrictively. The leases will include a provision that specifies the resident and the number of adults and children who can reside in the unit and that no other person may occupy the unit without AKA's consent. This not a case where any number of persons can come and go from time to time. Under case law guidance and our presumption that the City would not apply the term in a manner to improperly restrict the grouping of people who could lawfully reside together in a dwelling unit, the lease provision which requires a tenant and specifies the number of adults and children living with such resident satisfies the independent housekeeping unit component of the definition of dwelling unit.

E. Occupied by or Intended for One Household.

While the term "occupied" is not defined, the Zoning Code does define "occupancy" as follows:

Occupancy. All or a portion of a structure occupied by one tenant.

Therefore, in this case, it appears that the term occupied means the unit has a tenant. The provisions of the lease require that there will be one tenant or one household only in every unit.

The term "intended" is not defined in the WHMC. However, in Merriam-Webster's Dictionary "intended" is defined as "expected to be such in the future." As for one "household," the Zoning Code does not define household. However, Merriam-Webster's Dictionary defines household as "those who dwell under the same roof and compose a family; *also*: a social unit of those living in the same dwelling."

Similar to the case law regarding "housekeeping unit," the understanding of what constitutes a family or social unit has evolved to be more expansive. The dictionary definition reflects this. And again, we can only assume that the City would be inclusive of the understanding of family or social unit. In this case, the lease provisions establish that there is a specified social unit consisting of the resident and the enumerated occupants.

¹⁰ *Santa Barbara v. Adamson*, 27 Cal. 3d 123 (1980)

F. On a Long-Term Basis.

Given the clarity of the fit of the proposed use of 8500 with each of the above components of the definition of dwelling unit, and from what we have heard in discussions with the City, we assume the City's focus is on the meaning of the final component "on a long-term basis." AKA is quite surprised that there has been any doubt on this issue, in light of the nature of AKA's operation, the overall regulatory scheme of the Zoning Code, and, indeed, direct precedent of how the City has interpreted this component of the definition.

The WHMC does not define long-term basis. However, in Merriam-Webster's Dictionary "long-term" is defined as "occurring over or involving a relatively long period of time."

To understand whether the tenants at 8500 occupy the units over a "relatively long period of time," it is highly instructive to examine the continuum of periods of time used in various Zoning Code provisions relating to dwelling units. This temporal continuum ranges from the City's Short-Term Vacation Rental¹¹ ("Short-Term Rental") prohibition to the Corporate Housing¹² prohibition and in the middle, are the definitions of "room rental" and SRO Housing.

Before proceeding, however, it is important to note that the Short-Term Rental and the Corporate Housing prohibitions do not apply to 8500. Rather, the analysis herein is simply to demonstrate where 8500 fits within the temporal continuum established by the overall regulations of the Zoning Code. WHMC Section 19.36.331 prohibits the rental of a dwelling unit for 30 consecutive calendar days or less to any transient.¹³ The tenants at 8500 are not transients as no units will be leased for less than 31 days. The Corporate Housing ban adopted earlier this year also does not apply to 8500. 8500 leases require an individual or household to be the tenant. In any event, we note that these two prohibitions were enacted after the 2005 Development Agreement which applies to AKA's proposed use at 8500.¹⁴

Short-Term Rentals - 30 Days or Less.

One end of the temporal continuum of dwelling units is occupancies of 30 days or fewer as prohibited in the Short-Term Rental ordinance, codified at WHMC Section 19.36.331. Short-term rental is not defined in the Zoning Code. Rather, it is regulated directly under WHMC Section 19.36.331 which provides:

¹¹ Ord. 15-958 § 4, 2015

¹² See WHMC Section 19.90.020.

¹³ WHMC Section 19.90.020 defines transient as any person who exercises occupancy or is entitled to occupancy of a dwelling unit for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days.

¹⁴ See WHMC Section 19.66.090.

A. *Rental Prohibited.* No person or entity shall offer or provide a dwelling unit, or any portion thereof, for rent for 30 consecutive calendar days or less to any transient.

B. *Advertisement.* No person or entity shall maintain any advertisement of a rental prohibited by this section.

Subsection A expressly applies to dwelling units. Notably, the enacting ordinance did not amend the definition of dwelling unit. It simply prohibits a dwelling unit to be rented for 30 days or less to a transient.

Corporate Housing – One Year Lease Safe Harbor.

On the other end of the temporal continuum is the exemption from the Corporate Housing ban for one-year leases. On September 21, 2015, the City Council directed the City Attorney to prepare an ordinance to prohibit the use of residential dwelling units for corporate housing and other similar uses involving the unaccompanied overnight lodging of individuals other than the owner (in the case of a condo) or lessee (in case of an apartment).

The resulting ordinance amended WHMC Section 19.90.020 to define Corporate Housing as follows:

The temporary occupancy of any dwelling unit, by any person:
(1) who does not intend to use it as their domicile, or who has not entered into a written rental or lease agreement to occupy the unit for at least one year; and (2) for which the dwelling unit is owned, leased, guaranteed or made available by a business entity for occupancy by the entity's officers, employees, consultants, vendors, or contractors.

It is important to carefully parse this definition for purposes of evaluating the temporal continuum of occupancy. First, on its face, it applies to dwelling units. A key issue is that the one-year lease provision is not a requirement or component of dwelling units. Rather, the one-year lease is an exemption or "safe-harbor" that excludes those with one-year leases from the Corporate Housing prohibition, even if a person is not using the dwelling unit as a domicile, and even if the dwelling unit is part of a business entity's involvement in the dwelling unit. This makes it clear that a one-year lease is not a necessary measurement for occupancy on a long-term basis. If it were, the City could and would have amended the definition of dwelling unit itself.

There is ample precedent that the WHMC allows occupancy of one to six months within the meaning of dwelling unit. In connection with the Corporate Housing ordinance, the staff report to City Council dated February 6, 2017 ("February 6 Staff Report"), stated:

Several recently constructed buildings offer one-to six month leases for those who need short-term housing on an on-demand basis, and these uses would continue to remain acceptable for

employees who need short-term accommodations; the goal is to ensure that dwelling units are being consistently occupied and fully utilized rather than remaining empty – in the context of a City with a high demand for available dwelling units.

This is direct and compelling evidence that rentals as short as one month are nonetheless dwelling units and have been allowed for other property owners. Further, it is clear that housing for those working in and around the City is allowed as dwelling units. For the City to now interpret the Zoning Code to prohibit AKA's use of 8500 with leases of 31 days and longer would unjustly single out 8500 for unequal treatment and deprive it of a substantial property right enjoyed by others. Further, the February 6 Staff Report underscores the policy concerns of the City in how it treats dwelling units in stating that the goal is to ensure occupancy rather than having dwelling units empty which can occur when not used by corporations and businesses for their employees. The evidence here is that the units in either Tower will not sit empty. The anticipated stabilized occupancy rate will be above 90%.

Monthly Rentals.

The Zoning Code has two other provisions that are at least indirectly relevant and demonstrate that rentals of one month are allowed. Both room rentals¹⁵ and SRO¹⁶ are allowed monthly. The definition of room rental may not be dispositive, it does make clear that providing housing on a monthly basis is allowed under the Zoning Code. While the Zoning Code is not explicit that SRO uses are dwelling units per se, the standards for SRO housing require the same type of facilities as dwelling units. Therefore, we assume that the SRO units are dwelling units.

Both of these provisions are consistent with and supportive of the General Plan's goal of serving a diverse population and provide flexible housing arrangements. That is also the case with 8500 with Leases that are for 31 days or longer.

Dwelling Unit Summary

Each of the various elements of the type of facilities (sleeping, cooking, eating and sanitation) that must be provided in a dwelling unit are provided in the units at 8500. Further, the occupants of 8500 constitute housekeeping units and households. The core issue for the Interpretation is the term long-term basis. There is nothing in the Zoning Code that requires one-year leases. It is quite telling that in adopting the Corporate Housing prohibition, the City was explicit that one- to six-month rentals are allowed as dwelling units and that some property owners enjoy the right of classification as dwelling units. Finally, several other provisions of the Zoning Code demonstrate that one-month rentals are allowed. At 8500, occupancy is at least 31 days. 8500 falls well within the

¹⁵ **Room Rental.** The monthly or annual renting of individual bedrooms within a dwelling to no more than two non-family members, whether or not meals are provided. WHMC Section 19.90.020.

¹⁶ **Single Room Occupancy Housing (SRO).** A residential facility providing individual secure room(s) for one or two person households, which may have individual or shared kitchen and/or bathroom facilities. SRO units are rented on a monthly basis or longer. WHMC Section 19.90.020.

established parameters of long-term basis. Therefore, there can be no other legal conclusion than AKA's proposed use at 8500 constitutes use as dwelling units. As a matter of law under the Zoning Code and as applied to other properties, 31 days is per se allowed for dwelling units.

IV. ANALYSIS OF HOTEL

We are uncertain why the Interpretation should need to address the meaning of the term "hotel" except perhaps for the erroneous media reports referenced in the September 21 Letter which AKA has refuted from the very first discussion with City representatives and in writing. That said, we are just as confident that the proposed use of 8500 is not a hotel use, as we are that the proposed use fits squarely within the meaning of dwelling units.

Section 19.90.020 of the WHMC defines "hotel" as

A facility with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other temporary lodging, typically less than 30 days. Also may include accessory guest facilities such as swimming pools, tennis courts, indoor athletic facilities, accessory retail uses, meeting facilities, etc.

Many of the components of this definition overlap with the definition of dwelling unit. Yet, the units at 8500 are not within the common understanding of guest rooms or suites. Not only are the unit sizes larger than a traditional hotel room, units at 8500 are furnished with amenities typically found in apartments such as full kitchens, separate bedroom, bathroom and living quarters and a washer and dryer in every unit. In this case the distinction between dwelling unit and hotel is clear.

The second sentence regarding accessory guest facilities is permissive and a number of these facilities are found both in hotels and in contemporary apartment complexes of the caliber of 8500. There is a pool and a fitness center. While the definition of dwelling unit does include a similar sentence as to accessory apartment uses, the City routinely allows such facilities in buildings and complexes that contain dwelling units. Furthermore, as set forth in the Statement of Facts, facilities and services typical of a hotel are not provided at 8500. Specifically, 8500 will have no traditional hotel-style front desk, no concierge, no restaurant or room service, no laundry service (each unit has apartment amenity of washer and dryer), no bell hop service, and no daily housekeeping. Given the overlap among these components between dwelling units and hotels, it appears that the most important, perhaps only real, distinction between dwelling unit and hotel is the length and nature of the occupancy. A hotel is "rented to the general public for overnight or other temporary lodging, typically less than 30 days." As discussed above, the Zoning Code, in effect, provides a continuum of occupancy in dwelling units from one month to a safe-harbor exemption for a one-year lease in the case of the prohibition on Corporate Housing. Overnight stay is well outside the dwelling unit temporal continuum.

We note that it appears that the "typically less than 30 days" component is less about characterizing the use per se and more about avoiding a prohibition on hotel stays over 30 days. This is amplified by the City's taxation scheme for the transient occupancy tax which applies to

transients in hotels.¹⁷ Once a hotel guest exceeds a 30-day stay, such person is no longer considered a transient.

The units at 8500 will never be for overnight. Further, they should not be considered temporary for the reasons set forth in this Submission. Moreover, “typically less than 30 days” in no way describes AKA’s use. The average stay at a hotel is 3-4 days while the occupancy at 8500 will be 31 days and longer. This timeframe is well within the established range of occupancy for dwelling units, and far in excess of the overnight component of the definition of hotel. On the continuum of the length of stay for hotel guests and occupants of dwelling units, it is plain that the use of 8500 is dwelling unit use.

There is another term in this component that distinguishes 8500 from hotel use. The definition of hotel uses the term “rented to the general public.” As anyone who has travelled knows, one can walk into a hotel without any advance arrangements, ask for a room and, if available, become a guest by showing identification and securing a method of payment. That is not how persons become tenants of dwelling units and is not how 8500 will be leased up. To become a resident at 8500, one must sign a lease in advance of occupancy and such lease may must be 31 days or longer. A lease creates a direct contractual relationship between the landlord and the tenant. In that sense, a tenant is not a member of the general public. Rather at that point, the tenant has acquired an interest in real estate. This relationship and interest in real estate is thoroughly documented in the legally binding leases for 8500.

A final word about the specific facts of this case. Initially, concern was expressed by City representatives about the use of web-based online services for potential tenants to determine availability and to request a lease. The concern may have been due to the erroneous media reports about AKA’s proposed use of 8500. AKA will use one website for units at 8500. Of course, hotels use websites, but in 2017, so do apartment buildings. But a key difference is, at an apartment complex such as 8500, the tenant must enter into a lease in advance of occupancy. We do not believe that the use of a website is relevant to the Interpretation.

Summary of Hotel

8500 was not built as a hotel and AKA’s proposed use is not hotel use. Hotels do not require leases. Leases at 8500 require a minimum 31-day occupancy and longer. Hotels are for guest overnight or temporary use. 8500 will not include overnight use. By definition, hotels are “typically less than 30 day stays,” but the actual market experience is that the average stay is three to four days. At 8500 the leases will be for 31 days and longer. Hotels are rented to the general public. The units at 8500 will be leased to tenants.

By the very definition of hotel, an overnight stay must be allowed. A lease of a minimum of 31 days is not a hotel per se.

¹⁷“Transient” shall mean any person who exercises occupancy or is entitled to occupancy or any natural person who actually exercises occupancy or is entitled to occupancy for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days. Any such person shall be deemed to be a transient until the period of thirty days has expired . . . WHMC Section 3.32.020.

Simply stated, 8500 is an apartment complex and not a hotel.

V. CONCLUSION

AKA's proposed use of 8500 is as dwelling units. As demonstrated in the 8500 Approvals and the evidence in the record, the units are full apartments with rooms or groups of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities. Further, none of the units have more than one kitchen. The occupants constitute independent housekeeping units and households. One of the key issues is the meaning of "long-term basis;" it is clear that dwelling units in the City are allowed on a monthly or longer basis. Here, the leases must be a minimum of 31 days or longer. There is no requirement for one-year leases to demonstrate or satisfy the long-term basis requirement. In fact, the City has specifically stated in the February 6 Staff report that housing on a one-month to six-month basis qualifies as allowable dwelling units. As a matter of law and practice, a lease of 31 days is allowed per se as a dwelling unit.

As for the meaning of hotel use as applied to this case, 8500 is not a hotel. The occupants of 8500 are tenants and not transients within the meaning of the WHMC. Hotel occupants are transient guests. 8500 does not have any of the typical hotel features such as, a hotel concierge, room service or a restaurant, bell hop services, or daily housekeeping. Units average over 1,000 sf compared to typical hotel rooms which average 350 sf. This is less than half the size of the smallest unit at 8500. Most importantly 8500 is not for overnight use and the occupancy is at least 31 days and longer. In this case, 8500 is nothing like a hotel where guests stay typically less than 30 days. The average stay in a hotel is three to four days. Compare this to 31 days and longer at 8500.

The proposed use of 8500 squarely fits the definition of dwelling units and it is in no way a hotel use. A hotel in West Hollywood must allow overnight stays.

VI. REQUESTS

For all the reasons in this Submission and in the record, we respectfully request that:

1. The Interpretation determine that the AKA's proposed use of 8500 properly constitutes use as dwelling units and not as hotel use.
2. The Statement of Facts and the other matters herein form the basis of the findings.
3. The proposed finding documenting the consistency of the Interpretation with the General Plan be adopted in connection with the Interpretation.

ATTACHMENT: Proposed Finding Documenting the Consistency of the Interpretation with the General Plan

**PROPOSED FINDING DOCUMENTING
CONSISTENCY OF INTERPRETATION WITH GENERAL PLAN**

The Procedures for Interpretations set forth in WHMC Section 19.03.030.B require a finding documenting the consistency of the interpretation with the General Plan. AKA's proposed use will be consistent with the goals, objectives and policies of the General Plan and the Sunset Specific Plan.

The subject site (Middle Parcel) is designated Sunset Specific Plan (SSP). AKA's proposed use of the two buildings with 190 residential dwelling units is permitted by the Sunset Specific Plan and by Article 19-2 of the Zoning Code. Furthermore, AKA's proposed use is consistent with the development standards of the Zoning Code and the Sunset Specific Plan, including, but not limited to, standards for building height, floor area ratio, and provision of required parking.

The residential dwelling unit use as proposed by AKA meets several goals, objectives, and policies of the General Plan, including, but not limited to the following:

Land Use and Urban Forum Chapter

LU-1.1: Maintain a balanced land use pattern and buildings to support a broad range of housing choices, retail businesses, employment opportunities, cultural institutions, entertainment venues, educational institutions, and other supportive urban uses within the City.

LU-2.3: Allow residential mixed-use development in commercial corridors, including as described in adopted specific plans, except in the Commercial Neighborhood 2 land use designation and in the parcels on and near Santa Monica Boulevard shown in Figure 3-5.

LU-15.2: Allow residential uses on Sunset Boulevard in mixed-use buildings pursuant to the Sunset Specific Plan.

The dwelling units as approved in the 8500 Approvals and the use as proposed by AKA is consistent with LU-1.1 as it promotes a broad range of housing choices. Moreover, AKA's intended use is supportive of employment opportunities by providing needed housing options for those moving to or on assignment in West Hollywood. 8500 is part of a residential mixed use on Sunset Boulevard within the Specific Plan. As such it is consistent with LU-2.3 and LU-15.2.

Housing Chapter

Goal H-1: Provide affordable rental housing.

Goal H-3: Encourage a diverse housing stock to address the needs of all socioeconomic segments of the community.

H-3.1: Facilitate the development of a diverse range of housing options including, but not limited to, single-family homes, second/accessory units, multi-family rental housing, condominiums and townhomes, live/work units, housing in mixed use developments, and other flexible housing types.

The recently completed units at 8500 were acquired by AKA and are ready for use to provide the affordable housing required for the project. As such, 8500 carries out Goal H-1. AKA's proposed use promotes and is consistent with Goal H-3 as 8500 Sunset will provide housing for people who need accommodations starting at a minimum of 31 days. AKA's proposed use is directly in line with H-3.1 as it facilitates a diverse range of housing options and it provides dwelling units that carry out a flexible housing type.

Sunset Specific Plan

The Middle Parcel is identified as a Target Site under the Specific Plan and the residential use, coupled with the ground floor commercial uses, achieves the Specific Plan goal for the "intensification of key 'targeted' sites" and the provision of residential uses is consistent with the Use Mix Recommendations identified for Site 4-D, which encourages residential development within a mixed-use development. Because the mixed-use development satisfies the Sunset Specific Plan's goals for the Middle Parcel, the proposed use is also consistent with the objectives, policies, general land uses and programs of the West Hollywood General Plan.

RESOLUTION NO. PC 18-1250

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD, (A) DENYING AN APPEAL AND UPHOLDING THE DIRECTOR'S ZONING INTERPRETATION (AZI17-0001), AND (B) FINDING ON A DE NOVO BASIS THAT, IN CONTRAVENTION OF THE ZONING ORDINANCE, THE APPLICABLE DEVELOPMENT AGREEMENT AND PROJECT ENTITLEMENTS, THE MARKET-RATE (NON-AFFORDABLE) DWELLING UNITS LOCATED IN THE WEST TOWER OF 8500 SUNSET BOULEVARD, WEST HOLLYWOOD, CALIFORNIA (1) ARE BEING USED AS A "HOTEL", (2) ARE NOT BEING RENTED ON A "LONG-TERM BASIS" AND/OR (3) ARE NOT BEING USED AS APPROVED.

The Planning Commission of the City of West Hollywood does hereby resolve as follows:

SECTION 1. Applications for the comprehensive development of property located at 8474, 8480 and 8490 Sunset Boulevard, and 1234 La Cienega Boulevard, West Hollywood, California (SSP Site 4C), and 8500, 8516, 8524 and 8544 Sunset Boulevard, and 1235 La Cienega Boulevard, West Hollywood, California (SSP Site 4-D), were filed on October 16, 2003 and December 12, 2004. Proposed development on Site 4-D consisted of two residential buildings with a maximum of 190 dwelling units to be condominiums, 25,832 square feet of retail/restaurant space, 2,250 square feet of outdoor dining, a tall-wall sign and two double-faced billboards, and 468 parking spaces in a below grade parking structure.

SECTION 2. On April 13, 2005, the City Council certified an EIR, approved a statement of overriding considerations and approved a development agreement and associated entitlements to permit the subject project.

SECTION 3. In 2011, the CIM Group ("CIM") purchased the property from SMA. CIM requested minor changes to the Development Agreement in April 2012 which were approved by the City Manager in September 2012. The minor changes included revisions to the footprint, placement and height of the buildings, elimination of a tunnel under La Cienega Boulevard and a reduction in public parking. The minor changes also clarified that the condominiums could be rented as apartments.

SECTION 4. WHMC Section 19.03.010 states that “this chapter provides rules for resolving questions about the meaning or applicability of any requirement of this Zoning Ordinance. The rules provided in this chapter are intended to ensure the consistent interpretation and application of the provisions of this Zoning Ordinance and the General Plan.” WHMC Section 19.03.020A states that “the Director [the West Hollywood Community Development Director, or designee of the Director] has the responsibility and authority to interpret the requirements of the Zoning Ordinance.”

SECTION 5. Pursuant to Chapter 19.03 of the Zoning Ordinance, on November 29, 2017, the Director issued Zoning Interpretation 17-0001. Among other things, the Director made the following findings and determinations in that Interpretation:

1. The zoning for the Property is DA Overlay and its approvals are for the development of 190 dwelling units.
2. WHMC section 19.90.020 defines “Dwelling Unit” as “a room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis.”
3. WHMC does not expressly define “long-term basis”.
4. Based upon the WHMC definitions of “Transitional Housing”, “Emergency Shelter” and “Corporate Housing”, “long-term basis” means 1 year or more.
5. Based upon the Statement of Facts set forth in the appellants’ September 29, 2017 submission (the “Submission”) to the City in connection with the impending Official Interpretation, which Submission purported to set forth appellants’ intended use of the units (“AKA’s Use”), AKA’s Use was not on a “long-term basis” and, therefore, not permitted within the property approvals.
6. WHMC defines “Hotel” as “a facility with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other temporary lodging, typically less than 30 days.”
7. Based upon the Statement of Facts set forth in the Submission, AKA’s Use (a) was “temporary lodging”, (b) fell within the definition of “Hotel” and (c) was, therefore, not permitted within the Property approvals.

8. In response to appellants contention that (a) “there is ample precedent that the WHMC allows occupancy of one to six months within the meaning of dwelling unit”, and (b) the February 6, 2017 staff report relating to the Corporate Housing ordinance stated that “several recently constructed buildings offer one-to six month leases for those who need short-term housing on an on-demand basis”, the Director found that AKA’s Use anticipates using (in a DA Overlay zone) an entire building (as opposed to 1 or 2 units) for prohibited purposes. Staff determined that the short-term housing use referenced in such staff report (not subject to a DA Overlay zone) is limited to one or two units in a building at any given time. The Director further noted that, subject to available resources, the City would moving forward enforce its laws in a manner consistent with the Official Interpretation.

9. The interpretations are consistent and compliant with the West Hollywood General Plan, including goals H1-H5.

SECTION 6. WHMC Section 19.03.30E provides that “any interpretation of this Zoning Ordinance by the Director may be appealed to the Planning Commission....” On December 11, 2017, appellants submitted a timely appeal to the Zoning Interpretation (the “appeal statement”).

SECTION 7. In January, 2018, appellants began operating with its extended-stay format in the non-affordable/ market rate dwelling units located in the West Tower of 8500 Sunset Boulevard.

SECTION 8. On March 15, 2018, the Planning Commission continued the public hearing of these matters to April 19, 2018.

SECTION 9. For the reasons set forth in the Staff Report, appellants’ arguments as set forth in the appeal statement are flawed inasmuch as (among other things) they are unsupported, inaccurate and, in any event, not dispositive.

SECTION 10. The West Hollywood General Plan goals at the time of the 2005 project approval were, and at this time continue to be, met through the increasing the housing supply of dwelling units for long-term use. Other land uses achieve the goals of other types of shorter-term housing. In this case, the City approved a project with 190 dwelling units to be condominiums, and these were intended to meet a need for long-term housing stock in the City. Appellants’ use of these units is inconsistent with the project approvals (in part based on General Plan consistency).

SECTION 11. The City of West Hollywood approved a Development Agreement and associated entitlements for a project that included 190 dwelling units to be condominiums. The appellants are now utilizing and/or attempting to utilize approximately 100 of those units (a) as hotel rooms, (b) not on a “long-term basis”, and/or (c) contrary to the approved project. As a result, the City issued the Official Interpretation to confirm the use of these units are not in compliance with the West Hollywood Municipal Code, the Development Agreement, or project approvals (including the certified EIR).

SECTION 12. The Planning Commission hereby (A) upholds the Director’s Zoning Ordinance Interpretation 17-0001 and denies the subject appeal and (B) finds on a de novo basis that, in contravention of the Zoning Ordinance, the applicable Development Agreement and project entitlements, the non-affordable/ market-rate Dwelling Units (1) are being used as a “hotel”, (2) are not being rented on a “long-term basis” and (3) are not being used as approved, as further evidenced by the findings and determinations outlined in the subject staff memorandum dated April 19, 2018.

SECTION 13. The Zoning Interpretation is consistent and in compliance with the West Hollywood General Plan, including the following goals:

- H-1: Provide affordable rental housing.
- H-2: Maintain and enhance the quality of the housing stock and residential neighborhoods


PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of West Hollywood at a regular meeting held this 19th day of April, 2018 by the following vote:

AYES: Commissioner: Aghaei, Altschul, Bass, Carnevalheiro, Hoopingarner, Vice-Chair Jones, Chair Buckner.

NOES: Commissioner: None.

ABSENT: Commissioner: None.

ABSTAIN: Commissioner: None.



SUE BUCKNER, CHAIRPERSON

ATTEST:



DAVID J. DEGRAZIA, PLANNING MANAGER
CURRENT & HISTORIC PRESERVATION PLANNING

Decisions of the Planning Commission are subject to appeal in accordance with the procedures set forth in West Hollywood Municipal Code Chapter 19.76. Any action to challenge the final decision of the City of West Hollywood made as a result of the public hearing on this application must be filed within the time limits set forth in Code of Civil Procedure Section §1094.6.

RESOLUTION NO. 18-5106

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD, (A) DENYING AN APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DECISION TO UPHOLD THE DIRECTOR'S ZONING INTERPRETATION 17-0001, AND (B) FINDING ON A DE NOVO BASIS THAT, IN CONTRAVENTION OF THE ZONING ORDINANCE, THE APPLICABLE DEVELOPMENT AGREEMENT AND PROJECT ENTITLEMENTS, THE MARKET-RATE (NON-AFFORDABLE) DWELLING UNITS LOCATED IN THE WEST TOWER OF 8500 SUNSET BOULEVARD (1) ARE BEING USED AS A "HOTEL", (2) ARE NOT BEING RENTED ON A "LONG-TERM BASIS" AND/OR (3) ARE NOT BEING USED AS APPROVED.

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Applications for the comprehensive development of property located at 8474, 8480 and 8490 Sunset Boulevard, and 1234 La Cienega Boulevard, West Hollywood, California (SSP Site 4C), and 8500, 8516, 8524 and 8544 Sunset Boulevard, and 1235 La Cienega Boulevard, West Hollywood, California (SSP Site 4-D), were filed on October 16, 2003 and December 12, 2004. Proposed development on Site 4-D consisted of two residential buildings with a maximum of 190 dwelling units to be condominiums, 25,832 square feet of retail/restaurant space, 2,250 square feet of outdoor dining, a tall-wall sign and two double-faced billboards, and 468 parking spaces in a below grade parking structure.

SECTION 2. On April 13, 2005, the City Council certified an EIR, approved a statement of overriding considerations and approved a development agreement and associated entitlements to permit the subject project.

SECTION 3. In 2011, the CIM Group ("CIM") purchased the property from SMA. CIM requested minor changes to the Development Agreement in April 2012 which were approved by the City Manager in September 2012. The minor changes included revisions to the footprint, placement and height of the buildings, elimination of a tunnel under La Cienega Boulevard and a reduction in public parking. The minor changes also clarified that the condominiums could be rented as apartments.

SECTION 4. WHMC Section 19.03.010 states that "this chapter provides rules for resolving questions about the meaning or applicability of any

requirement of this Zoning Ordinance. The rules provided in this chapter are intended to ensure the consistent interpretation and application of the provisions of this Zoning Ordinance and the General Plan.” WHMC Section 19.03.020A states that “the Director [the West Hollywood Community Development Director, or designee of the Director] has the responsibility and authority to interpret the requirements of the Zoning Ordinance.”

SECTION 5. Pursuant to Chapter 19.03 of the Zoning Ordinance, on November 29, 2017, the Director issued Zoning Interpretation 17-0001. Among other things, the Director made the following findings and determinations in that Interpretation:

1. The zoning for the property is DA Overlay and its approvals are for the development of 190 dwelling units.
2. WHMC section 19.90.020 defines “Dwelling Unit” as “a room or group of internally connected rooms that have sleeping, cooking, eating, and sanitation facilities, but not more than one kitchen, which constitute an independent housekeeping unit, occupied by or intended for one household on a long-term basis.”
3. WHMC does not expressly define “long-term basis”.
4. The terms “transitional housing”, “emergency shelter” and “corporate housing” provide the most significant context for the meaning of “long-term basis.”
5. “Long-term basis” means one (1) year or more.
6. Based upon the Statement of Facts set forth in the appellant’s September 29, 2017 submission (the “Submission”) to the City in connection with the impending Official Interpretation, which Submission purported to set forth appellant’s intended extended-stay use of the units (“AKA’s Use”), AKA’s Use is not on a “long-term basis” and, therefore, not permitted within the property approvals.
7. WHMC defines “Hotel” as “a facility with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other temporary lodging, typically less than 30 days.”
8. Based upon the Statement of Facts set forth in the Submission, AKA’s Use (a) is “temporary lodging”, (b) falls within the definition of “Hotel” and (c) is therefore, not permitted within the property approvals.
9. In response to appellant’s contention in the Submission that (a) “there is ample precedent that the WHMC allows occupancy of one to six months within the meaning of dwelling unit”, and (b) a February 6, 2017 staff report relating to the Corporate Housing ordinance stated that “several recently constructed buildings offer one-to six month leases for those who need short-term housing on an on-demand basis”, the Director found that AKA’s Use anticipates using (in a DA Overlay zone) an entire building (as opposed to 1 or 2 units) for prohibited purposes. Staff determined that the short-term housing use referenced in such staff report (not subject to a DA Overlay zone) is limited to one or two units in a building at any given time.

The Director further noted that, subject to available resources, the City would moving forward enforce its laws in a manner consistent with the Official Interpretation.

10. In response to the appellant's contention in the Submission that "in fact, the City's website makes it entirely clear that 'dwelling units' can be rented on a minimum 31-day basis," the Director found that the City's website is not part of the WHMC and, therefore, disregarded for purposes of the Official Interpretation.
11. The official interpretations are consistent and compliant with the West Hollywood General Plan, including goals H1-H5.

SECTION 6. WHMC Section 19.03.30E provides that "any interpretation of this Zoning Ordinance by the Director may be appealed to the Planning Commission..." On December 11, 2017, the appellant submitted a timely appeal to the Zoning Interpretation.

SECTION 7. In January, 2018, the appellant began operating with its extended-stay format in the non-affordable/ market rate dwelling units located in the West Tower of 8500 Sunset Boulevard.

SECTION 8. A public hearing was duly noticed and scheduled for the March 15, 2018 Planning Commission meeting. At that meeting, the Planning Commission continued the public hearing on these matters to April 19, 2018 in order to provide commissioners more time to review the record on this item. On April 19, 2018, the Planning Commission adopted Resolution No. 18-1250, a resolution (a) denying an appeal and upholding the Director's Zoning Interpretation 17-0001, and (b) finding on a de novo basis that, in contravention of the Zoning Ordinance, the applicable development agreement and project entitlements, the market-rate (non-affordable) dwelling units located in the west tower of 8500 Sunset Boulevard (1) are being used as a "hotel", (2) are not being rented on a "long-term basis" and/or (3) are not being used as approved.

SECTION 9. On April 30, 2018, the appellant, BPREP 8500 Sunset LLC, represented by Eric M. George, filed a timely appeal of the Planning Commission decision (the "appeal statement").

SECTION 10. Notice of the public hearing before the City Council on July 9, 2018 was advertised in the West Hollywood Independent and in the Beverly Press on June 21, 2018, and notices were mailed to surrounding property owners and residents, Neighborhood Watch groups, and constituents requesting notification of proposed hearings on Jun 21, 2018. At the July 9, 2018 City Council meeting, the item was continued to a date uncertain. Notice of the public hearing before the City Council on September 4, 2018 was posted in the West Hollywood Independent and in the Beverly Press on August 23, 2018, and notices were mailed to surrounding property owners and residents,

Neighborhood Watch groups, and constituents requesting notification of proposed hearings on August 23, 2018.

SECTION 11. For the reasons set forth in the City Council staff report dated September 4, 2018, appellant's arguments as set forth in the appeal statement are flawed inasmuch as (among other things) they are unsupported, inaccurate and, in any event, not dispositive.

SECTION 12. The West Hollywood General Plan goals at the time of the 2005 project approval were, and at this time continue to be, met through increasing the housing supply of dwelling units for long-term use. Other land uses achieve the goals of other types of shorter-term housing. In this case, the City approved a project with 190 dwelling units to be condominiums, and these were intended to meet a need for long-term housing stock in the City. Appellants' use of these units is inconsistent with the project approvals (in part based on General Plan consistency).

SECTION 13. The City of West Hollywood approved a Development Agreement and associated entitlements for a project that included 190 dwelling units to be condominiums. The appellants are now utilizing and/or attempting to utilize approximately 100 of those units (a) as hotel rooms, (b) not on a "long-term basis", and/or (c) contrary to the approved project. As a result, the City issued the Official Interpretation to confirm the use of these units are not in compliance with the West Hollywood Municipal Code, the Development Agreement, or project approvals (including the certified EIR).

SECTION 14. Based on the analysis set forth in the staff report, which is incorporated herein by reference, the City Council hereby (A) denies the appeal and upholds the Planning Commission decision to uphold the Director's Zoning Interpretation 17-0001 and (B) finds on a de novo basis that, in contravention of the Zoning Ordinance, the applicable Development Agreement and project entitlements, the market-rate (non-affordable) dwelling units located in the west tower of 8500 Sunset Boulevard (1) are being used as a "hotel", (2) are not being rented on a "long-term basis" and (3) are not being used as approved, as further evidenced by the findings and determinations outlined in the subject staff memorandum dated July 9, 2018.

SECTION 15. The Zoning Interpretation is consistent and in compliance with the West Hollywood General Plan, including the following goals:

H-1: Provide affordable rental housing.

H-2: Maintain and enhance the quality of the housing stock and residential neighborhoods

PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 4th day of September, 2018 by the following vote:

AYES:	Councilmember:	Heilman, Horvath, and Meister.
NOES:	Councilmember:	Mayor Pro Tempore D'Amico and Mayor Duran.
ABSENT:	Councilmember:	None.
ABSTAIN:	Councilmember:	None.



JOHN J. DURAN, MAYOR

ATTEST:



YVONNE QUARKER, CITY CLERK