

MEMORANDUM OF LAW

DATE: February 29, 1996

TO: Kevin Sullivan, Development Services Department

FROM: City Attorney

SUBJECT: Definition of "Hotel" Versus "Apartment" - Homestead Village Proposal

A property owner is processing a proposed "hotel" development in Mission Valley. The "hotel" is described as 140 suites designed to provide business travelers with appropriate facilities for an average two to three-week stay. Attached as Attachment 1 is the "guest profile" provided to the City.

Since each unit is proposed to have certain food preparation facilities, including a small refrigerator, microwave oven, sink and coffee maker, and plates and utensils, a question has arisen as to whether or not the project constitutes an apartment as opposed to a hotel.

The Municipal Code section 101.0101.30 defines "hotel" as follows: "Any building containing six (6) or more guest rooms used or designed to be used for sleeping purposes by guests. Hotel does not include any jail . . . or other institution in which human beings are housed and detained under legal restraint."

Section 101.0101.29 defines "guest room" as follows: "Any rented or leased room which is used or designed to provide sleeping accommodations for one or more guests in apartments; hotels, motels, private clubs, lodges and fraternal organizations. In a suite of rooms, each room that provides access to a common hall or direct access to the outside area shall be considered as one guest room."

It appears from the above two sections that the proposed structure would fall within the definition of "hotel."

However, the question is, does the proposed facility also fall within the definition of "apartment?"

Section 101.0101.5 specifies, "Apartment shall mean the same as Dwelling Unit."

Section 101.0101.19 defines "Dwelling Unit" as "a room or suite of rooms . . . used, intended, or designed to be used or occupied for living purposes by one family, and containing only one kitchen" (emphasis added).

Section 101.0101.20 defines "family" as "two or more persons who

are related by blood, marriage . . . When used as an adjective to describe the occupants of a residential dwelling, . . . the term 'family' is synonymous with the term 'single housekeeping unit'" (emphasis added).

Section 101.0101.76.1 defines "single housekeeping unit" as follows:

The term "single housekeeping unit" refers to the status of the occupants of a residential dwelling unit and means one person, or, two or more persons who reside together, jointly occupy and have equal access to all areas of a dwelling unit and who function together as an integrated economic unit for a period of occupancy which exceeds one month (emphasis added).

Single housekeeping unit status shall not apply to the occupants of a sorority or fraternity, motel, hotel, boarding or lodging home, or any facility that is required to be licensed by a public agency (emphasis added).

The word "kitchen" is defined in section 101.0101.31 as follows: "A room used or designed to be used for the preparation of food."

The word "hotel" is also defined in section 35.0102 (dealing with Transient Occupancy Tax) as follows:

"Hotel" means any structure or any portion of any structure which is occupied, or intended or designed for Occupancy, by Transients for dwelling, lodging, or sleeping purposes, and is held out as such to the public . . . (emphasis added).

The same section also defines "transient" as follows:

"Transient" means any Person who exercises Occupancy, or is entitled to Occupancy, by reason of concession, permit, right of access, license, or other agreement for a period of less than one (1) month. A month is defined as the period of consecutive days from the first calendar day of Occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists (emphasis added).

Conversely, Municipal Code section 101.0410, which describes permitted uses in multi-family zones, allows "apartment houses, excluding premises designed or used for the temporary residence of persons for less than one week" (emphasis added).

Despite the obvious ambiguities, the above definitions, when read together, lead to the conclusion that the facility proposed falls within the definition of "hotel" rather than "apartment." This conclusion is

based upon the fact that the various definitions make it clear that hotels are designed to accommodate guests for less than one month. The facility as described in the Homestead Village's case is clearly designed to cater to individual business travelers for an average period of two to three weeks and, while the units may include certain cooking implements, the proposed suites do not contain a separate room as a kitchen but merely provide for minimal cooking suitable for meeting the needs of transient guests.

The definition of "hotel" contained in the Transient Occupancy Tax ordinance is the most recently enacted definition of hotel in the Municipal Code. The Homestead Village project would clearly be subject to payment of Transient Occupancy Tax and it is in fact similar to a number of other hotel suites projects around the City which have been built and operated and characterized as hotels for a number of years, despite having limited cooking facilities as an accommodation for their guests.

It would not be inappropriate, in connection with the Zoning Code Update, to revise the various definitions to better differentiate between hotels and apartments.

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By

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Attachment 1

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