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January 12, 2016

Danny Castro  
Community Development Director  
Sausalito Community Development Department  
420 Litho Street  
Sausalito, California 94965

Lamonte Mack  
Code Enforcement Officer  
Sausalito Community Development Department  
420 Litho Street  
Sausalito, California 94965

Re: Sausalito Short-Term Rental Enforcement Program: Unlawful Enforcement Action

Dear Mr. Castro and Mr. Mack:

My firm has been retained by a group of Sausalito property owners, renters, residents, business owners and employers organized to study and address the issue of short-term rentals and short-term rental regulation within the City of Sausalito.

The purpose of this letter is to: (1) notify the City of Sausalito that the City's current enforcement practices related to alleged short-term rental use are resulting in (a) harassment of Sausalito property owners and renters, (b) trespass upon private property, (c) invasion of Sausalito residents' privacy, and (d) unconstitutional searches and seizures; (2) point out deficiencies in the Sausalito Municipal Code provisions the City interprets as prohibiting short-term rentals; and (3) urge the City to undertake a collaborative effort with its citizens to develop clear and sensible regulation of short-term rentals. The purpose of this letter is to inform dialogue and help the City to better assess the current enforcement program. It's not our clients' desire at this time to proceed with litigation, but rather to encourage the City to consider the legal context of the current enforcement program as the city reviews its efficacy. This request comes from feedback by the group to remain collaborative, even as we push back on some of the legal questions we have regarding the current enforcement program.

Sausalito has long been a tourist destination for travelers around the world and until recently, visitors have been allowed to enjoy this beautiful city while lodging in private residences. The City's short-term rental enforcement program is creating a hostile environment within Sausalito's neighborhoods by fostering attitudes of suspicion and mistrust among neighbors. New regulation governing the short-term rental practice is necessary to address rapidly evolving shared economy technology and culture and provide for clear rules to address the interests and concerns of Sausalito's residents, business owners, visitors and government.

The following are a few examples of the "enforcement action" taken by Sausalito Code Enforcement Officer Lamonte Mack, an employee of CSG Consulting, Inc. under contract with the City of Sausalito to investigate and enforce short-term rental violations (referred to herein as, the "**Short-Term Rental Enforcement Program**"):

1. Property 1:

- November 12, 2015: Code Enforcement Officer Mack issued a Compliance Order asserting that the owner of Property 1 may be illegally renting the property on a short-term basis in violation of the Sausalito Municipal Code and ordering that such action cease.
- November 23, 2015: In response to the November 12<sup>th</sup> citation, the attorney representing the Property 1 owners notified Mr. Mack by letter that there are no short-term renters or short-term listings for the property.
- December 10, 2015: Officer Mack conspicuously posted a Notice of Inspection on the front door of Property 1, asserting that: (i) the City has received several complaints about excessive foot and vehicular traffic, (ii) 107 Prospect Avenue is in violation of SMC 10.22.030 and Table 10.22-1 prohibiting transient occupancy in residential zones, and (iii) roll-out containers left in public view cause a public nuisance.

The owners of Property 1 are not renting their property or advertising their property for rent on a short-term basis and are not in violation of the Sausalito Municipal Code provisions regarding short-term rentals. Enforcement Officer Mack was notified of this fact by letter dated November 23, 2015. Further the roll-out containers which on occasion have been located near Property 1 are owned and used by the occupants the neighboring property. Finally, Property 1 is located near a popular walking route where there is commonly significant foot and vehicular traffic by community members accessing Sausalito's walking trails. The owners of Property 1 have been targeted and harassed by Officer Mack despite the fact that the property is being used in compliance with the Sausalito Municipal Code.

2. Property 2:

- October 22, 2015: Code Enforcement Officer Mack was observed trespassing on private property located at Property 2, taking pictures of the private property located across the street.

3. Property 3:

- October 13, 2015: Code Enforcement Officer Mack trespassed onto private property, took pictures inside of the private residence, presented himself as a code enforcement officer to the resident without any proof of authority, accused the resident of breaking the law without informing the resident as to the law purportedly being violated, informed the resident that he (Mack) was investigating and keeping a file on the property, including taking pictures of the residents while in occupancy inside of their home, and otherwise acted in an intimidating and threatening manner causing the resident to feel insecure about his family's safety and privacy.

The actions by Code Enforcement Officer Mack described above are only a few examples of many similar incidents reported since the beginning of CSG's Consulting's contract with the City. There are many other examples of Sausalito property owners and residents receiving violation notices when the use of their property is not in violation of short term rental regulations. The Short-Term Rental Enforcement Program commissioned and sanctioned by the City appears to have a very high incidence of targeting law abiding citizens and further, exposes the City to liability under several legal theories including without limitation, the following:

***Invasion of Privacy for Intrusion into Private Matters***, the elements of which are (Miller v National Broadcasting Co. (1986) 187 CA3d 1463, 232 CR 668):

1. An intentional intrusion, physical or otherwise
2. into plaintiff's private life, seclusion or solitude
3. that would be highly objectionable to a reasonable person; and
4. it is the cause of an adverse effect on the plaintiff.

Code Enforcement Office Mack's actions satisfy each of the above elements. By entering upon private property and taking pictures inside of private residences, Officer Mack has intentionally intruded into the private lives of Sausalito residents in an objectionable manner, and this action has created fear and insecurity, making Sausalito residents feel unsafe in their homes.

***Invasion of Privacy for Portraying a Person in a False Light***, the elements of which are:

1. Dissemination of information;
2. that may be false or erroneous;
3. that places plaintiff in a derogatory and false light; and
4. that would be offensive to a reasonable person

Officer Mack has satisfied all of the above elements by conspicuously posting violation notices with false and unsubstantiated information on the front door of legally compliant properties, placing the owners and residents in a derogatory and false light.

***California Constitution Article 1, Section 1***, which provides:

"All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring,

possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”

As described above, the Sausalito Code Enforcement program violates the right to privacy guaranteed by the California Constitution.

**4<sup>th</sup> amendment to the US Constitution**, which provides:

“[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

A search under the 4<sup>th</sup> Amendment occurs when a governmental employee or agent violates an individual's reasonable expectation of privacy. Sausalito citizens have a reasonable expectation of privacy within the interior of their homes, and a search occurs when an agent of the City takes photographs inside of a residence. Searches and seizures inside a home without a warrant are presumptively unreasonable and unconstitutional. *Payton v. New York*, 445 U.S. 573 (1980). Unless Officer Mack can produce a search warrant authorizing every picture taken within private residences, Sausalito's Code Enforcement Program endorses unconstitutional searches.

**California Civil Code Section 1708.8**, which provides:

“(a) A person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another person without permission or otherwise committed a trespass in order to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity and the invasion occurs in a manner that is offensive to a reasonable person.

(b) A person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity, through the use of any device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the device was used.” *See also Miller v. National Broadcasting Co.*, 187 Cal. App. 3d 1463, 1487-88 (1986).

**Trespass, under California Penal Code Section 602**, generally defined as entry upon the property of another without permission or a right to do so.

There are several reports of Officer Mack on private property taking pictures and otherwise investigating the subject property and/or other nearby property. Officer Mack does not have authority or permission to enter private property and this action constitutes a trespass.

In each of the above examples and in many others, in furtherance of the Short-Term Rental Enforcement Program, Code Enforcement Officer Mack took offensive action against Sausalito residents who are in full compliance with the Sausalito Municipal Code provisions governing short-term rentals. These actions not only evidence the waste of City funds appropriated for short-term rental enforcement, but serious offenses by the City against its law abiding citizens for which the City could incur significant liability. Moreover, the City's Short-Term Rental Enforcement Program encourages neighbors to monitor and report on activities that “may be” in violation of short-term rental regulations; but as described above and in many other cases were not in violation. In addition to being inefficient, tortious, and sometimes criminal, this Program fosters a hostile environment within Sausalito neighborhoods which is changing the nature and character of Sausalito's traditionally welcoming and warm community.

Further, the Sausalito Municipal Code does not expressly prohibit short-term rentals and the City's interpretation of the existing code is subject to challenge under California case law precedent. The City asserts that short term rentals are prohibited under

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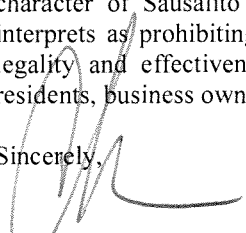
Section 10.22.030 and Table 10.22-1 because “transient occupancy” is not permitted in residential zones. However, the definition of “transient occupancy” set forth in Section 10.88 of the SMC is as follows:

“Transient occupancy” means occupancy of residential structures, hotel rooms, or dwelling units on a temporary period of less than 30 days.”

If transient occupancy is not permitted in residential zones, then Sausalito residents would be prohibited from having guests stay at their homes for less than thirty (30) days. Clearly, transient occupancy is widely permitted within residential zones, otherwise, visits from grandparents, grandchildren, family members and other out-of-town guests would be against the law in Sausalito. We also understand that the City continues to collect transient occupancy tax (“TOT”) from residents who obtained Vacation Rental Permits under Ordinance 1206 (the temporary America’s Cup Vacation Rental Ordinance), when under the terms of the Ordinance all Vacation Rental Permits expired on October 15, 2013. There was testimony and commentary regarding this fact at a June 30<sup>th</sup> City Council Meeting. If the City is collecting TOT from property owners under expired Ordinance 1206, the City is interpreting and applying the SMC in a discriminatory manner, permitting short-term rentals and collecting TOT on some residential properties and prohibiting the practice on others.

Sausalito’s Short-Term Rental Enforcement Program is costing the City money, subjecting the City to liability, changing the character of Sausalito’s neighborhoods and **Is Not Working**. Further the Sausalito Municipal Code provisions the City interprets as prohibiting short-term rentals are vague, outdated and subject to challenge. We urge the City to reconsider the legality and effectiveness of its Short-Term Rental Enforcement Program and to work with its property owners, renters, residents, business owners and employers to develop sensible regulation of short-term rentals in Sausalito.

Sincerely,



Christine Gregorak, Esq.

cc:  
Mayor, Jill James Hoffman  
City Attorney, Mary Wagner  
Sausalito City Council