No. 20-

IN THE

Supreme Court of the United States

JOSE EDWARD VALENTIN; ADAM SHEKHTER; MY SUITE, LLC; 1238 10TH STREET LLC; 1433 EUCLID STREET, LLC; AND AVROHOM KRAM,

Petitioners,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SEVEN

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case raises important questions of law potentially affecting more than 35,000 renters and housing providers in the City of Santa Monica. This zoning ordinance encompasses all private and corporate party irrespective of the ownership interest in the residential rental property. The statute in question is the Santa Monica Municipal Code Section 9.51.020 (A)(1)(e) "Group Residential", as interpreted by the City of Santa Monica in the pending criminal case against Petitioners criminalizes any oral offer made by either an owner or tenant to anyone else to share his or her living quarter.

The Questions Presented are as follows:

1. Whether Santa Monica Municipal Code Section 9.51.020 (A)(1)(e), which prohibits Group Residential use, is unconstitutional under the Fifth and Fourteenth Amendment to the U.S. Constitution because it fails to give adequate guidance to those who would be law-abiding and to guide courts in trying those who are accused.

2. Whether Santa Monica Municipal Code Section 9.51.020 (A)(1)(e) that provides for misdemeanor charges by means of intruding into private homes of individuals who are not family members and deny certain benefits that family members enjoy is constitutional.

PARTIES TO THE PROCEEDINGS BELOW

The caption identifies all the parties to the proceedings below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, petitioner 1238 10th Street LLC and 1433 Euclid Street, LLC state that they have no parent company, and no publicly held corporation owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

- *Jose Edward Valentin et al., v. The People*, No. B305361, Court of Appeal of the State of California, Second Appellate District, Division Seven. Order entered April 22, 2020.

- *The People of the State of California v. Jose Valentin, et al.*, No. BR 054734, Appellate Division of the Superior Court, State of California, County of Los Angeles. Order entered March 20, 2020.

- *The People of the State of California v. Jose Valentin, et al.*, No. BR 054734, Appellate Division of the Superior Court, State of California, County of Los Angeles. Judgment entered February 28, 2020.

- *The People of the State of California v. Jose Valentin, et al.*, No. 8AR26341, Superior Court of the State of California for the County of Los Angeles. Judgment entered August 14, 2019.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Jose E. Valentin; Adam Shekhter; MySuite, LLC; 1238 10th Street, LLC and Avrohom Kram respectfully petition for a writ of certiorari to review the opinion of the for the Appellate Division of the Superior Court of Los Angeles reversing the trial court's order sustaining the demurrer.

OPINION BELOW

The opinion of Appellate Division of the Superior Court, State of California, County of Los Angeles of February 28, 2020 (App., *infra*, 5a – 16a) is unpublished. The opinion of the Appellate Division of the Superior Court, State of California, County of Los Angeles denying rehearing and application for certification of transfer to the Court of Appeal (App., *infra*, 3a – 4a) issued on March 20, 2020. The opinion of the Court of Appeal of the State of California, Second Appellate District (App., *infra,* 1a – 2a) denying transfer issued on April 22, 2020.

JURISDICTION

The issue propounded below is possibly permitted by 28 U.S.C. § 1257(a). The Petition is authorized by U.S. Supreme Court Rule 10(b) and is timely filed in accordance with U.S. Supreme Court Rules 13.1; 30 and the Court's March 19, 2020 order extending the deadline to file any petition for a writ of certiorari to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. A petition for transfer to the court of appeals was denied on April 22, 2020 (App., *infra,* 1a – 2a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution. "The right of the people to be secure in their … houses, papers, and effects, against unreasonable searches and seizures, shall not be violated ... ." The Fifth Amendment to the United States Constitution. "No person shall be … deprived of life, liberty, or property, without due process of law." The Fourteenth Amendment to the United States Constitution. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Santa Monica Municipal Code Section 9.51.020 – defining a Group Residential use – is reproduced in the Appendix E. (App. 27a – 39a).

STATEMENT OF THE CASE

Petitioners Jose Edward Valentin; Adam Shekhter; MySuite, LLC; 1238 10th Street LLC and Avrohom Kram who are the owners of two apartment buildings in Santa Monica, California were charged with a misdemeanor and facing imprisonment under Santa Monica Municipal Code section 1.08.010(a) for violation of Chapter 9 of the Code, known and cited as the Zoning Ordinance.

The criminal complaint alleges that Petitioners violated the Zoning Ordinance by operating what Respondent alleges is a "Group Residential" facility

without obtaining a special permit from the City of Santa Monica. The portion of the ordinance asserted to have been violated – Section 9.08.020 – requires a "Minor Use Permit" to operate what the section defines as "Group Residential" facility within a "Multi-Unit Residential District." The criminal complaint alleges that Petitioners maintained a "public nuisance by using the residential property for "Group Residential" purposes without having a minor use permit during the time period encompassed in the complaint."

The Zoning Ordinance authorizes the imposition of harsh criminal penalties, including substantial fines and lengthy jail sentences; it makes such a violation a strict liability offense. The Respondent's complaint seeks criminal penalties against Petitioners based on allegations that Petitioners violated the Zoning Ordinance by operating a "Group Residential" facility in Santa Monica at 1238 10th Street, Santa Monica, CA 90401 without obtaining a special permit from the City of Santa Monica. Respondent is in effect criminalizing roommates.

The trial court held a pretrial conference to consider jury instructions on the "Group Residential" counts. The Court did not decide what instructions it would give, although it noted that the instructions proposed by Petitioners for Counts 1 through 5 tracked the language in the Zoning Ordinance "almost verbatim," unlike the Respondent's proposed instructions. Petitioners' counsel raised a concern based on a case recently decided by the U.S. Supreme Court, *United States v. Davis,* 139 S.Ct. 2319 (2019), as to whether the Respondents definition of "Group Residential" is clear enough to support a criminal conviction, the trial court invited Petitioners to file a demurrer.

Petitioners agreed that a demurrer would be the proper vehicle to test the issue. Petitioners moved to dismiss the charges by filing a demurrer to the complaint. They contended that the Property is not a "Group Residential" facility based on the definition in §9.51.202(A)(1)(e). Petitioners also contended, alternatively, that the Zoning Ordinance's definition of "Group Residential" does not clearly encompass the layout and kind of leasing arrangements at the subject property and, therefore, criminal penalties cannot be imposed against them.

The Trial Judge, the Hon. William Sadler, sustained Petitioners' Demurrer without leave to amend. The trial court cited the U.S. Supreme Court case *United States v. Davis* 139 S. Ct. 2319 (2019) in support of its position that the section 9.51.020 (A)(1)(e) lacks sufficient clarity to deem Petitioners' use of the property as "Group Residential" use. The court held that Petitioners' interpretation of section 9.51.020(A)(1)(e) is reasonable; the "statutory language is unclear at best"; and, therefore, the rule of lenity required the Court to interpret the statute favorable to the defense in this case. (App. 18a – 20a). Respondent timely appealed the order granting demurrer.

On February 28, 2020, the Appellate Division issued an Opinion which concluded that the trial court erroneously sustained the demurrer as to the counts relating to the "Group Residential" use allegations in the first amended complaint without leave to amend, ruling that the definition of "Group Residential" does not provide adequate notice under the void-for-vagueness doctrine and should not be applied under the rule of lenity. (App. 10a -11a).

The Appellate Division disagreed with the trial court's conclusion that an average landlord in Santa Monica would be unable to determine what the zoning ordinance requires. (App. 16a). The Appellate Division reasoned that given the plain meaning of the ordinance's terms, an average landlord in Santa Monica who is familiar with the City's lease restrictions and rent control policies should be able to understand the living arrangements to which the ordinance applies.

On appeal, Respondent argued that the definition of "Group Residential" is clear and unambiguous. Respondent further argued that the trial court erred in finding that Petitioners' interpretation also is reasonable because it did not follow traditional canons of statutory interpretation to determine whether Petitioners' interpretation is equally as reasonable as Respondent's interpretation. Conversely, Respondents contend that their interpretation of the zoning ordinance is reasonable, or at least plausible.

In its ruling on February 28, 2019, the Appellate Division agreed with Respondent's contention and found that Petitioners' interpretation does not do justice to the plain meaning of the ordinance's terms and leads to illogical conclusion.

Petitioners have exhausted all proper channels for direct review by higher state courts before invoking the jurisdiction of this Supreme Court.

REASONS FOR GRANTING THE PETITION

The interpretation of the Zoning Ordinance concerns matters of great importance to more than 35,000 thousand

of tenants living in the City of Santa Monica, as well as to the thousands of Housing Provides who own rental property within the City of Santa Monica. It is a matter of widespread interest and presents significant constitutional issues.

Petitioners contend that certiorari is warranted because the decision below infringes on fundamental rights protected by the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution. The restriction on misdemeanants impermissible expands authority of the local municipality to inquiry as to the status of occupants of residential units and abridges on constitutional guarantees. Finally, the lower court's rejection on void-for-vagueness analysis conflicts with the Supreme Court findings in *United States v. Davis,* 139 S.Ct. 2319 (2019). These claims merit review.

The statute in question is the Santa Monica Municipal Code's ("SMMC") Section 9.51.020 (A)(1)(e) "Group Residential", as interpreted by the City of Santa Monica in the pending criminal case against Petitioners criminalizes any offer, whether oral or written, made by either an owner or tenant to anyone else to share his or her living quarter. (App. 30a). Not only does SMMC §9.51.020 (A)(1)(e) authorize the imposition of harsh criminal penalties, including substantial fines and lengthy jail sentences; it makes such a violation a strict liability offense.

The property in question is an improved multi-story apartment building of 10 residential units. This property is classified by §9.51.020(A)(1)(d) as a "Multi-Unit Dwelling," *i.e.*:

> "2 or more dwelling units within a single building or within 2 or more building on a site or parcel. Types of multiple-unit dwellings include garden apartments, senior housing developments, and multi-story apartment and condominium buildings. This classification includes transitional housing in a multiple-unit format."

Section (1)(d) also states that "[t]his arrangement [that is, a 'Multi-Unit Dwelling'] is distinguished from group residential facilities" (*id.*), which are defined in the next subsection of 9.51.020 (A)(1) as follows:

> "Shared living quarters without a separate kitchen or bathroom facilities wherein 2 or more rooms are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence, offered for rent for permanent or semi-transient residents for periods generally of at least 30 days."

The Zoning Ordinance provides examples of the kind of facilities that are, and are not, "Group Residential" facilities. Specifically, Section 9.51.020(A)(1)(e) states: "This classification includes rooming and boarding houses, dormitories, fraternities, convents, monasteries, and other types of organizational housing, and private residential clubs, but excludes extended stay hotels intended for long-term occupancy … and Residential Facilities." The subject property is clearly a "Multi-Unit Dwelling," as that is defined in the Zoning Ordinance. As such, it cannot also be a "Group Residential" facility. The Zoning

Ordinance provides, in section 9.51.020(A)(1)(d), that the two classifications are mutually exclusive.

All units at the property include shared space and facilities, but the shared space and facilities are not accessible to the tenants in the other units in the property. Therefore, each unit in the property has its own, i.e., "separate," kitchen, living area, laundry facilities, bedrooms, and bathrooms – just like a traditional apartment.

The Appellate Division Opinion will allow Respondent to impose its vague interpretation of the questioned section of the Santa Monica Municipal Code §9.52.020 (A)(1)(e); this will impact literally thousands of tenants living in the City; as well as Housing Providers. It will deprive tenants of their right to sublet; deprive Housing Providers their due process rights, and deprive the Petitioners of their right to receive a fair notice of what conduct is proscribed.

I. The Zoning Ordinance Is Unconstitutionally Vague And Does Not Give the Required Notice of Proscribed Conduct

A criminal statute that does not define the crime with sufficient certainty violates the constitutional guarantee of due process of law. This case presents a great example of the law that, on its face, does not provide a clear notice of proscribed conduct and authorizes selective or discriminatory enforcement.

Petitioners have been charged with criminal penalties for operating an apartment building in a way that allegedly constitutes a "Group Residential" use thereby requiring

a special permit. However, the "Group Residential" provision in the Zoning Ordinance is unconstitutionally unclear in two respects. Santa Monica Municipal Code §9.51.020(A)(1)(e).

First, it is unclear what "shared living quarters" are. Are the "shared living quarters" the entire building, the specific units within the building, or the portion of the unit that is shared?

Second, it is unclear what the bathroom and kitchen need to be separate from. Do the bathroom and kitchen need to be separate from other units in the building? Do tenants within the same unit need separate bathrooms and kitchens (i.e., two kitchens in a single two bedroom unit)?

The lower court opinion reversing Petitioner's Demurrer does not provide sufficient clarity as to what to be considered a shared living quarter within the meaning of the statute. There are multiple interpretations of the statue that militates against enforcement thereof as it applies to Petitioners. Under the rule of lenity, when a penal statute is reasonably susceptible to multiple interpretations, the statute or ordinance must be construed as favorably to the defendant as its language and the circumstances permit. (*People v. Arias,* 45 Cal.4th 169, 177 (2008) ["If a statute defining a crime or punishment is susceptible of two reasonable interpretations, [the court] ordinarily adopt[s] the interpretation that is more favorable to the defendant]; *People v. Overstreet,* 42 Cal.3d 891, 896 (1986) ["The defendant is entitled to the benefit of every reasonable doubt as to the true interpretation of words or the construction of a statute"].) As the Court stated in *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1986):

> That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

(See also *U.S. v. Cardiff,* 344 U.S. 174, 176-177 (1952); *Katzev v. Los Angeles County,* 52 Cal.2d 360, 371-372 (1959))

In *People v. Heitzman,* 9 Cal.4th 189, 199-200 (1994), the Court identified the two aspects of the certainty requirement:

> First, the provision must be definite enough to provide a standard of conduct for those whose activities are proscribed. . . . [¶] Second, the statute must provide definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement.

As the Court noted in *Ewing v. City of Carmel-By-The-Sea,* 234 Cal.App.3d 1579, 1594 (1991), a vague law not only violates the constitutional right to due process, but impermissibly delegates the legislative job of defining what is prohibited to the police, judges and juries, and it may have a chilling effect, causing people to steer a wider course than necessary to avoid civil or criminal penalties.

Earlier this year, in *Davis*, the Supreme Court struck down a statute making it a crime to use a firearm during the commission of other federal crimes "that by [their] nature, involve[] a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." (18 U.S.C. § 924(c)(3)(B).) The Court concluded that the statute violates due process and separation of powers principles because it provides no "reliable way to determine which offenses qualify as crimes of violence." (139 S.Ct. at p. 2324.) As Justice Gorsuch explained:

> In our constitutional order, a vague law is no law at all. Only the people's elected representatives in Congress have the power to write new federal criminal laws. And when Congress exercises that power, it has to write statutes that give ordinary people fair warning about what the law demands of them. Vague laws transgress both of those constitutional requirements. They hand off the legislature's responsibility for defining criminal behavior to unelected prosecutors and judges, and they leave people with no sure way to know what consequences will attach to their conduct. When Congress passes a vague law, the role of courts under our Constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again. (*Id.* at p. 2323.)

In 2015, the Supreme Court decided a similar case – *Johnson v. U.S.* 135 S.Ct. 2551 (2015). That case involved the application of a provision of the Armed Career Criminal Act of 1984, which imposed enhanced criminal

punishment on persons who commit specific crimes after having been convicted of a "violent felony." The statute defined "violent felony" to include offenses that presented a "serious potential risk of physical injury to another." (*Id.* at pp. 2553-2554, citing 18 U.S.C. § 924(e)(2)(B)(ii).) The Court held that the definition was vague and, therefore, the statute's enhanced punishment provision was void. It rejected the Government's argument that it could use a "categorical" approach to deciding whether a particular crime qualified as a violent crime – that is, deciding whether an offense involved a "serious potential risk of physical injury to another" based on whether the offense ordinarily involves that kind of risk. (*Id.* at p. 2554, citation omitted.)

In light of the rejection of the "categorical" approach in *Johnson*, the Government argued in *Davis* that the statute in question in that case could be saved by adopting a "case-specific approach," where the Court would look to the defendant's actual conduct to decide whether it involved "physical force against [a] person or property." The Court rejected the argument as inconsistent with the statutory language – the statute referred to the "elements" and "nature" of the offense, rather than what occurred in a specific case. (139 S.Ct. at pp. 2327-2328.)

The Government also argued in *Davis* that the Court should employ the canon of "constitutional avoidance" in construing and applying the statute in question, and thus construe the statute in such a way as to save it from being held unconstitutional. (139 S.Ct. at p. 2332.) The Court rejected the argument because of the nature of the statute: When a court is required to construe an ambiguous *criminal* statute, it must adopt the "*narrower*"

construction. (*Ibid.*, original italics.) A construction that expands the scope of a statute in order to save it violates the rule of lenity. As the Court explained:

> Applying constitutional avoidance to narrow a criminal statute, as this Court has historically done, accords with the rule of lenity. By contrast, using the avoidance canon instead to adopt a more expansive reading of a criminal statute would place these traditionally sympathetic doctrines at war with one another. (*Id.* at p. 2333.)

Therefore, the Court rejected the Government's argument that it should construe the statute to apply to a crime that is not inherently violent, but is committed in a violent way. (*Id.* at p. 2332.)

The "void-for-vagueness" doctrine has often been applied in cases challenging the enforceability of a land use regulation or zoning ordinance. (See, e.g., *Zubarau v. City of Palmdale,* 192 Cal.App.4th 289, 311 (2011) [ordinance prohibiting amateur radio operator from having a tower antenna in his backyard]; *Santa Fe Springs Realty Corp. v. City of Westminster,* 906 F.Supp. 1341, 1364 (C.D.Cal. 1995) [ordinance authorizing denial of permit to operate adult business based on a finding that the business would "adversely affect" the use of a church, park, playground, mobile home park, or other place used for similar purposes if it was "insufficiently buffered" from such places].)

Where, as here, a municipality is seeking to enforce a zoning law in a *criminal* case, it is critical that the law be "clear, precise, definite, and certain in its terms."

(1 Rathkopf's The Law of Zoning and Planning (4th ed.) §§ 5.17, 5.22 ("Rathkopf's"); *id.* § 5.17 ["In criminal proceedings, a zoning ordinance typically will be strictly construed in favor of the defendant"].)

As the Court explained in *Sechrist v. Municipal Court*, 64 Cal.App.3d 737, 745 (1976), where a zoning ordinance is challenged as being too vague:

> Often the requisite standards of certainty can be fleshed out from otherwise vague statutory language by reference to any of the following sources: (1) long established or commonly accepted usage; (2) usage at common law; (3) judicial interpretations of the statutory language or of similar language; (4) legislative history or purpose. . . . Zoning regulations are no exception to the foregoing principles.

In *Sechrist*, plaintiff sought to enjoin the prosecution of a complaint charging him with a misdemeanor violation of a zoning ordinance by storing inoperable vehicles at his home, located in a single-family residential ("SFR") zone. He claimed that the ordinance was insufficiently clear in defining what was permitted in an SFR zone. The Court held that whether the ordinance provided sufficient notice that the activity in question was prohibited could be decided in light of: (1) what was, and was not, typically permitted in an SFR zone; (2) "a wealth of zoning cases as well as a reservoir of common law" on the issue of what constitutes "residential use"; and (3) the purposes of SFR zoning – to stabilize the economic and social aspects of a neighborhood, promote aesthetic considerations, and promote a safe and healthful environment to raise a family. (64 Cal.App.3d at pp. 745-746.)

In *In re Scarpitti,* 124 Cal.App.3d 434, 440-441 (1981), the Court identified another factor to be considered in deciding whether a zoning ordinance is too vague to be enforced with criminal sanctions: whether there is "any arguable reason" for the ordinance. In *Scarpitti*, a property owner was convicted of violating a zoning ordinance by parking his commercial truck on his property. The property was zoned for "rural/residential" use with a permitted density of one dwelling unit per four acres. (*Id.* at p. 437.) The Court of Appeal overturned the conviction. It relied, in part, on its conclusion that there was no reason to prohibit the parking of a commercial truck in an area that was zoned for rural purposes, where agricultural and mining equipment was permitted. The Court concluded that the "absence of any arguable reason for banning Scarpitti's truck suggests discriminatory and arbitrary law enforcement, one of the dangerous effects . . . of vague statutes." (*Id.* at pp. 440-441.)

Respondents interpret § 9.51.020(A)(1)(e) to mean that an apartment unit is used for "Group Residential" purposes only where: (1) the unit includes two or more rooms and is rented to two or more tenants (and thus constitutes "shared living quarters"); (2) each tenant signs a separate lease or rental agreement; and (3) the unit does not have its own, "separate" kitchen or bathroom facilities.

As the Trail Judge at the lower lever confirmed, this is a reasonable interpretation, even if it is not the *only* reasonable interpretation. Therefore, even if this Court finds that the People's interpretation is reasonable, under the rule of lenity, the Court must adopt Respondents' construction in this case. As the Court said in *Overstreet*, *supra*, 42 Cal.3d at p. 896, the "defendant [in a criminal case] is entitled to the benefit of every reasonable doubt

as to the true interpretation of words or the construction of a statute."

Petitioners had no notice or understanding that they were operating the apartment building as "Group Residential" facility. It is noteworthy, that at the August 14, 2019 hearing, Judge Sadler found the provision to be "confusing at best" and that it could mean what Respondents say it means. The transcripts of the hearings on June 28 and August 2, 2019 reflect that Judge Sadler had great difficulty in attempting to ascertain what "Group Residential" means. If a Superior Court judge cannot readily divine an unambiguous meaning, then how can the average landlord?

When § 9.51.020(A)(1)(e) is read in its entirety and in context, i.e., in light of other provisions in the Zoning Ordinance, it would be unreasonable to conclude it unambiguously encompasses the kind of the leaving arrangements in place at the subject property. The "Definitions" section in the Zoning Ordinance, § 9.52.020, includes a long list of defined terms, but "shared living quarters" is not among them.

Section 9.51.020(A)(1)(e) identifies examples of what constitutes "Group Residential" use: rooming and boarding houses, dormitories, fraternities, convents, monasteries, and other types of "organizational housing," and private residential clubs. The property in question is just like a traditional apartment, *not* like a rooming or boarding house or any kind of organizational housing. Thus, while § 9.51.020(A)(1)(e) may provide sufficient notice that certain facilities – rooming and boarding houses, dormitories, fraternities, convents, monasteries, organizational

housing, and private residential clubs – cannot be operated without a special permit, it does not provide sufficient notice that arrangements like the quite different ones at the property also require a special permit.

Petitioners' business model thus serves the public interest by enhancing the prospects for individuals who want to live in a particular area to find affordable housing in that area; it does so in a way that has no undesirable impact on the density, residential character of the neighborhood, or property values in the area; and, therefore, there is no rational basis to require a special permit or to treat the arrangements at the Property differently than traditional roommate arrangements or even an apartment building where each unit is occupied by a single family or "household." The use of the property is not analogous to the examples of "Group Residential" included in §9.51.202(A)(1)(e).

II. The Appellate Division's Opinion Is Incorrect

The Respondent's interpretation in general, and the decision the court below in particular, reflect a misapplication of constitutional principles.

The Appellate Division ruling thus does not clearly address what is the definition of "*shared living quarters*?" Is it the entire building, or the specific units within the building, or the portion of each unit that is shared? The Opinion stated without clarity – "the room where a person lives." However, this interpretation of *"shared living quarters"* is a contradiction of §9.51.020 (A)(1)(d)'s definition of "Group Residential." As stated above, the section defines *"shared living quarters"* with the

qualifier language "*wherein*" i.e. "*shared living quarters . . . wherein 2 or more rooms. . .* " Thus, under the section, all "*shared living quarters*" must have two or more rooms. If so, was it proper for the Appellate Division to adopt the definition of the dictionary rather than the section of the code that defines shared living quarters?

There is no judicial precedent for the Respondent's interpretation of § 9.51.020(A)(1)(e). Indeed, the reported decisions concerning the regulation of organizational or group housing all involve a facility managed by an organization that provides special services where the density of the occupancy and/or nature of the activity at the facility may be inconsistent with residential zoning.

As interpreted by Respondent, no tenant living in a two or more bedroom apartment unit would be allowed to sub-rent his or her unit, even while living within the unit. A tenant who sublets an empty bedroom in a 2 or more bedroom unit, creates a "separate rental agreement or lease" with that subtenant. The first rental agreement is between a landlord and tenant; the second rental agreement is the subrental agreement between tenant and subtenant. Thus, the second agreement creates a violation of the Zoning Ordinance according to Respondent. It is black letter law that a subtenant is not in privity with the landlord. Clearly, the subtenant is not part of the original tenancy either. Respondent's interpretation thus requires a tenant who has lost his or her original co-tenant, to be forced out of their unit, if he or she cannot afford the rent living alone. Under the Appellant Division's interpretation, there would be as many "*shared living quarters*" as there are bedrooms. Thus, a two-bedroom unit would have two "*shared living quarters*." Consequently, each "bedroom"

(i.e. "*shared living quarters*") would have to have two "rooms" to qualify as a Group Residential.

Under the Appellate Division's ruling, the trial court would have to draft jury instructions that, as was discussed above, rewrite the statute. A statute that is challenged facially may be voided if it is "impermissibly vague in all of its applications"; that is, there is no conduct that it proscribes with sufficient certainty. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494-495 (1982).

The rule of lenity is especially applicable where the alleged violation does not involve inherent culpability, i.e., where the act constituting the violation would be regarded as innocent but for the statute. *Arthur Andersen LLP v. U.S.*, 544 U.S. 696, 703 (2005); *People v. Stuart,* 47 Cal.2d 167, 175 (1956). Petitioners' conduct is not inherently culpable because the maintenance of an apartment building with arrangements like those at the Property is not inherently immoral, and there is nothing to suggest otherwise. The bottom line is that section 9.51.020(A)(1)(e), as construed by Respondent, is too vague. It does not meet the constitutional requirement of providing clear notice of what may constitute a crime.

Petitioners argued at lower court that under the rule of lenity, when a penal statute is reasonably susceptible to multiple interpretations, the statute or ordinance must be construed as favorably to the defendant as its language and the circumstances permit. *People v. Arias,* 45 Cal.4th 169, 177 (2008) ["If a statute defining a crime or punishment is susceptible of two reasonable interpretations, [the court] ordinarily adopt[s] the interpretation that is more

favorable to the defendant]; *People v. Overstreet*, 42 Cal.3d 891, 896 (1986) ["The defendant is entitled to the benefit of every reasonable doubt as to the true interpretation of words or the construction of a statute"].)

In its opinion the lower court concluded that Petitioners interpretation of the statute in question would lead to illogical conclusion. The lower court found the Respondent's interpretation of "Group Residential" to be correct. However, the lower court employed - what this Court found so troubling in *Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117 (2016) - the distributive canon to give the statute the meaning Respondent desires. It is noteworthy, the lower court fell into the trap of redefining the statute which is in contravention to the plain meaning rule. A reasonable reading of "Group Residential" provision, on its face, does not give basis for the misdemeanor charges as the living arrangements at the property do not provide basis for such. It also bears repeating that there is no evidence that "Group Residential" is commonly understood in the real estate industry to encompass the layout of units at the property.

III. The Zoning Ordinance Violates the Constitutional Right of Privacy

The present case concerns the home – a place that is traditionally protected most strongly by the constitutional right of privacy. Fourth Amendment to the U.S. Constitution states: "The right of the people to be secure in their … houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."

The question presented in this case, like in the cases cited below, are whether a constitutional right is implicated by the government intrusion into privacy rights of individuals who are not family members and a denial of certain benefits that family members enjoy is justifiable?

The Zoning Ordinance in question does not pass the constitution's master as it may not rely on a classification based upon persons family status or their intended use of the premises because it renders the distinction arbitrary or irrational.

The leading precedent on privacy is *White v. Davis*, 13 Cal.3d 774-775 (1975) where the California Supreme Court quoted these words:

> "The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose . . . . [para.] The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is a compelling public need . . . ."

The inherent legitimacy of the Respondent's function does not grant it the unbridled power to pursue what it deems reasonable and necessary by any and all means.

The landmark case of this sort is *City of Santa Barbara v. Adamson*, 27 Cal.3d 123, 126–134 (1980) where the Supreme Court of California struck down an ordinance enacted by the City of Santa Barbara on constitutional basis citing that it attempted to regulate a class of people who can reside together under the same roof). In *Adamson*, the court held that a city could not constitutionally enforce a local ordinance that regulated the number or type of unrelated persons with whom adults chose to reside in a home although the plaintiffs in that case could have sought to legalize their situation under the local ordinance by seeking to qualify for another type of housing. The court concluded in its analysis that "zoning ordinances are much less suspect when they **focus on the use than when they command inquiry into who are the users**." (emphasis added). It held invalid the distinction affected by the ordinance between (1) an individual or two or more persons related by blood, marriage, or adoption, and (2) groups of more than five other persons. *Id.* Only one reasonable conclusion can be drawn from *Adamson*: there is an autonomy interest in choosing the persons with whom a person will reside, and in excluding others from one's private residence.

Another California Supreme Court case on point is *Hill v. Athletic Assn.*, 7 Cal.4th 1 (1994). The court reached a similar conclusion as in *Adamson, supra*, 27 Cal.3d 127, and stated that reasonable expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms. Legally recognized privacy interests are generally of two classes: (1) interests in precluding the dissemination or misuse of sensitive and confidential information ('informational privacy'); and (2) interests in making intimate personal decisions

or conducting personal activities without observation, intrusion, or interference ('autonomy privacy)." *Id* at 35.

It is clear that under *Hill, supra*, 7 Cal. 4th 1, and *Adamson, supra*, 27 Cal. 3d 123, the courts found that the local ordinance unconstitutionally infringed the right of privacy in the home. Clearly, the right to choose with whom to live is fundamental and is subject to strict scrutiny. No justification put forward by local municipalities in the above-referenced cases was compelling enough to survive the judicial review.

Lastly, in *Tom. City and County of San Francisco*, 120 Cal. App. 4th 674 (2004) the Court of Appeal expanded on the "autonomy privacy" interest in choosing the persons with whom a person will reside, and in excluding others from one's private residence. The court struck down a local San Francisco ordinance, seeking to discourage persons from acquiring private residential property using tenants in common (TIC) agreements. The court found that the city's ordinance violated the constitutional rights of privacy and equal protection guaranteed by the California Constitution.

It must be emphasized that the instant case deals with homes, which have traditionally been subject to the highest protection against intrusions. There is no case law that provides the City with the support it seeks to allow an intrusion in privacy rights in homes. Indeed, the cases cited herein demonstrate strict adherence to the principle of stare decisis.

The instant case surely falls within the ambit of the right to privacy protected by the Constitution. The City

has no compelling countervailing interest in enacting and enforcing the SMMC §9.51.020(A)(I)(e) as it is legally forbidden to the City under the law. A constitutional privacy violation was demonstrated at the lower court, and the trial court property sustained the demurrer.

It will become abundantly clear upon a review of the facts and issues in this case that this case poses novel legal issues that have not been addressed by the courts but implicate fundamental rights.

Section 9.51.020(A)(I)(e) of the Santa Monica Municipal Code violates the equal protection clause of Fourteen amendment to the U.S. Constitution to the extent it differentiates between owner-approved and tenant-approved residents of the same residential unit.

If Respondent wants to address problems associated with overcrowding, it should apply the law evenly to all households. As stated by the Supreme Court of California: "[z]oning ordinances are much less suspect when they focus of the use than when they command inquiry into who are the users." *See City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 133 (1980).

The court in *College Area Renters & Landlord Assn. v. City of San Diego*, 43 Cal. App. 4th 677, 678 (1996) granted a summary judgment in favor of College Area Renters and Landlord Association striking down City of San Diego Municipal Code section 101.0463 as violating the equal protection clause of the California Constitution.

In *College*, the City of San Diego stated the main purpose of the invalidated ordinance was to address

nuisance problem associated with nonowner occupied rentals-including overcrowding and inadequate living space, lack of on-site and public street parking, excessive noise, litter, and inadequate property maintenance which adversely affects the character of one-family residential zones. The ordinance limited the number of adult occupants of a rented one-family dwelling unit premised on the square footage of bedroom areas, the number and size of bathrooms, and the amount of off-street parking.

In striking the municipal code section the court found it to be based on irrational distinction between tenant approved occupants and owner approved occupants of those dwellings. Although equal protection does not demand that a statute apply equally to all persons, it does require that persons *similarly situate* with respect to the legitimate purpose of the law receive like treatment. See *College* (emphasis in original). The court found that the ordinance does not pass the constitution's master and concluded that the statute did not survive a rational basis test as it was not rationally related to a legitimate state purpose. A zoning ordinance may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational. *Id.* at 427- 428.

The present ordinance, as in *College*, applies to all renters, as long as they are not for less than 30 days, and these tenants should be viewed as similarly situated for purposes of controlling occupancy of rent controlled units. There is no sufficient connection between the tenant approved occupants and owner approved occupants of the same unit to justify imposition of occupancy restriction on residents.

Another precedent in support of the Action position is *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4th 451 (2001). There the court invalidated on equal protection grounds an ordinance that distinguished between tenant-occupants and owner-occupants of detached dwellings in single-family residential neighborhoods. The ordinance was designed to address nuisance problems associated with a nonowner occupied rentals, including overcrowding, lack of parking, excessive noise, and inadequate maintenance "which adversely affects the character of one-family residential zones." The court reviewed the city's argument under rational basis standard and found that the occupancy restrictions bear no rational relationship to the legislative goal of preventing undue concentration of population and traffic.

The City of Santa Monica repeats its mistake by enacting the ordinance in question as it classifies similarly situated tenants according to the nature of their agreements in direct violation of equal protection clause. The city failed to adduce any facts that would warrant another conclusion. The striking similarity between the Section 9.51.020(A)(I)(e) and the Municipal Code section in *College Area Renters & Landlord Assn.* justifies only one conclusion: Section 9.51.020(A)(1)(e) is unconstitutional and Judge Hon. William Sadler sustaining Demurrer to the Respondent's complaint should be affirmed.

Ultimately, there is no possible justification to read section 9.51.020 (A)(1)(e) to mean what Respondent contends it means. The language of the statute, as written, does provide authority to impermissibly inquiry into the nature of arrangements of co-occupants of a single unit statute. It cannot be emphasized enough that this statute

violates the cornerstone principles of the Constitution as it applies to owners and anyone with ownership right to sublease respective unit to other people.

The Santa Monica Municipal Code section 9.51.020 (A)(1)(e) poses the gravest threat to more than 35,000 thousand of renters and housing providers of the City of Santa Monica. Section 9.51.020 (A)(1)(e) provides for criminal prosecution for an ordinary practice of renting conventional multi-bedroom units to different tenants without defining impermissible conduct with sufficient clarity. It impermissibly delegates the legislative job to law enforcement agencies. The suspect section clearly violates the constitutional principles set forth above. Therefore, the Court should grant this petition for a writ of certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioners

Date: September 21, 2020

APPENDIX

APPENDIX A — ORDER OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SEVEN, FILED APRIL 22, 2020

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

B305361

JOSE EDWARD VALENTIN *et al.*,

Appellants,

v.

THE PEOPLE,

Respondent.

(Super. Ct. [App. Div.] No. BR054734.)
(Super. Ct. No. 8AR26341)

ORDER

THE COURT:

The court has read and considered the petition filed by appellant on April 13, 2020, seeking transfer of their case from the Appellate Division of the Los Angeles County Superior Court to this court. (Cal. Rules of Court, rule 8.1006.) This court has determined that transfer

under rule 8.1002 of the California Rules of Court is not necessary to secure uniformity of devision or settle an important question of law. The petition is denied.

/s/	/s/	/s/
PERLUSS, P.J.	SEGAL, J.	FEUER, J.

APPENDIX B — ORDER OF THE APPELLATE DIVISION OF THE SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, FILED MARCH 20, 2020

APPELLATE DIVISION OF THE SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

No. BR 054734

Airport Trial Court

No. 8AR26341

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

JOSE VALENTIN, *et al.*,

Defendants and Respondents.

ORDER

The March 13 petition for rehearing or, in the alternative, application for certification of transfer to the Court of Appeal has been read and considered, and it is denied. The petition for rehearing is not supported by good cause, and transfer is not necessary to secure uniformity of decision or to settle an important question of law. (See Cal. Rules of Court, rule 8.1005(a)(1).)

Appendix B

/s/	/s/	/s/
Richardson, J.	Kumar, Acting P.J.	Ricciardulli, J.

APPENDIX C — OPINION OF THE APPELLATE DIVISION OF THE SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, DATED FEBRUARY 28, 2020

APPELLATE DIVISION OF THE
SUPERIOR COURT, STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

JOSE VALENTIN, *et al.*,

Defendants and Respondents.

BR 054734

Airport Trial Court

No. 8AR26341

OPINION

INTRODUCTION

Appellant the People of the State of California brought an action against the owners of two apartment buildings, the company that manages one of the properties (MySuite, LLC), and four individuals associated with the owners of the properties or the manager, charging defendants

with violating various ordinances in the Santa Monica Municipal Code (SMMC). The trial court sustained a demurrer filed by MySuite. The People filed an appeal, arguing the court erred in applying the doctrine of lenity to find defendant's interpretation of the subject ordinance was reasonable. We reverse.

PROCEDURAL HISTORY

The People filed their complaint[1] on December 18, 2018, alleging that defendants (collectively referred to herein as MySuite) operated units in an apartment building as "group residential use" without obtaining a minor use permit. MySuite pled not guilty. It filed a motion to quash in which it asked the court to rule that its conduct

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1. In the misdemeanor complaint, the City of Santa Monica alleged Jose Edward Valentin, Adam Shekhter, Reuben Saul Robin, MySuite, LLC, and 1238 l0th Street LLC violated a zoning ordinance on 4 separate dates in 2018 by engaging in a "Group residential" use in a building without a required minor use permit (SMMC, § 9.48.010, subd. (A), counts 1-4), maintained a public nuisance on the property (SMMC, § 8.96.030, subd. (b), count 5), and, in bad faith, influenced or attempted to influence tenant to vacate a unit through fraud, intimidation, or coercion (SMMC, § 4.56.020, subd. (f), count 6). In count 7, Valentin, 1433 Euclid Street, LLC, and Avroham Kram were alleged to have, in bad faith, influenced, or attempted to influence, a tenant to vacate a unit through fraud, intimidation, or coercion. (SMMC, § 4.56.020, subd. (f).)

In a first amended complaint, the People added an eighth count, under SMMC section 8.96.030, subdivision (b), alleging one of defendants' buildings created a public nuisance because it was substandard.

was not covered by the definition of "Group Residential" in the zoning ordinance. The court denied the motion to quash, finding it not to be the proper procedure for raising the issue of whether or not the subject property was being used for "Group Residential" purposes. MySuite made the same argument in a hearing concerning proposed jury instructions, but the court did not issue a ruling on jury instructions for the definition of group residential use.

On July 11, 2019, MySuite filed a demurrer on the ground that the definition of "group residential" is clear on its face but unconstitutionally vague as applied to its multi-unit apartment building. The People filed a first amended complaint, while the demurrer was under submission. They continued to allege MySuite operated a group residential use without having obtained a minor use permit. On August 14, 2019, the court sustained the demurrer as to the counts relating to the "group residential use" allegations in the first amended complaint without leave to amend, ruling that the correct interpretation of the term "group residential" applies to the units in MySuite's building, but the definition of "group residential" does not provide adequate notice under the void-for vagueness doctrine and should not be applied under the rule of lenity. The court indicated it was concerned about the average landlord's ability to determine what the zoning ordinance demands.

FACTS

The basis for the charges in the People's complaint is as follows: MySuite owns and operates a multi-unit apartment building in Santa Monica. After it purchased

the property in 2015, MySuite subdivided some of the units into two separate units so that one of the units was left without a kitchen. It completed this project in June 2018 and immediately began to rent out the units. In July 2018, the City of Santa Monica (the City) issued notices of uninhabitability to MySuite regarding the units that did not have kitchens. MySuite then removed the locks from the front doors of the newly constituted units and, in this way, made the two units one unit once again.

After September 2018, now that the units were one apartment again, both sides of the units had access to the kitchen. As the City considered this arrangement to be a "group residential use" because they were typically divided into a Unit A and a Unit B, with each unit leased separately to different individuals, who shared the kitchen, it informed MySuite that MySuite still had to obtain a minor use permit, pursuant to the applicable zoning ordinance.[2] When MySuite did not comply, the City filed the misdemeanor complaint.

Section 9.08.020 of the SMMC requires a landlord to obtain a minor use permit in order to rent property as a group residential use. "Group Residential" is defined as "Shared living quarters without separate kitchen or bathroom facilities wherein two or more rooms are rented to individuals under separate rental agreements or leases, either written or oral … for periods generally of at least 30 days." (SMMC, § 9.51.020(A)(l)(e).)

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2. MySuite contends the units in its buildings have only one lease agreement. As this appeal is from a ruling on a demurrer, such a factual dispute need not be resolved here.

Appendix C

DISCUSSION

Standards of Review

An order sustaining a demurrer to all or any portion of a complaint is appealable. (Pen. Code, § 1466, subd. (a)(3).) Such an appeal is reviewed de novo. (*People v. Keating* (1993) 21 Cal.App.4th 145, 151.)

Void-for-Vagueness and Rule of Lenity

MySuite does not contest the People's definition of "group residential." Rather, in its demurrer, MySuite claimed the term, as applied to its multi-unit building, was void as vague.

The void-for-vagueness doctrine "derives from the due process concept of fair warning, bars the government from enforcing a provision that 'forbids or requires the doing of an act in terms so vague' that people of 'common intelligence must necessarily guess at its meaning and differ as to its application.' [Citations.]" (*People v. Hall* (2017) 2 Cal.5th 494, 500; see also *People v. Heitzman* (1994) 9 Cal.4th 189, 199-200 [law must provide ordinary people notice of the conduct that is prohibited and law enforcement officers the guidelines for what constitutes a violation].) An "as-applied" void-for-vagueness challenge depends on the facts of a particular case because it "contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived

the individual to whom it was applied of a protected right. [Citations.]" (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.) Fair notice may be achieved, if the government provides a party a specific warning about the conduct that is prohibited. (*Cranston v. City of Richmond* (1985) 40 Cal.3d 755, 771.)

The rule of lenity provides that when two interpretations of a penal statute are equally reasonable, the statute is ordinarily interpreted in favor of defendant. (*People v. Arias* (2008) 45 Cal.4th 169, 177; *People v. Jones* (1988) 46 Cal.3d 585, 599.) This rule is inapplicable, however, "unless two reasonable interpretations of the same provision stand in relative equipoise, i.e., that resolution of the statute's ambiguities in a convincing manner is impracticable." (*People v. Jones, supra,* 46 Cal.3d at p. 599.) "Thus, although true ambiguities are resolved in a defendant's favor, an appellant court should not strain to interpret a penal statute in defendant's favor if it can fairly discern a contrary legislative intent." (*People v. Avery* (2002) 27 Cal.4th 49, 58 (*Avery*); see also *People v. Wade* (2016) 63 Cal.4th 137, 147 [citing *Avery*]; *People v. Cole* (2006) 38 Cal.4th 964,986 [same].)

Plain Language of Zoning Ordinance

In the People's view, under the plain terms of the ordinance, a living arrangement is a group residential use if two or more tenants reside in the same living quarters ("shared living quarters"); the shared living quarters contain a kitchen or bathroom; and the bedrooms are rented to the tenants under separate leases of at least

30 days. MySuite contends an apartment unit qualifies for group residential use when it includes two or more rooms; is rented to two or more tenants; each tenant signs a separate rental agreement; and the unit does not have its own separate kitchen or bathroom facilities.

Given the parties' divergent views, first, we determine whether the ordinance can be fairly interpreted by "'look[ing] to the statute's words and giv[ing] them their usual and ordinary meaning. [Citation.] The statute's plain meaning controls the court's interpretation unless its words are ambiguous.' [Citations.]" (*People v. Arias, supra,* 45 Cal.4th at p. 177.) Statutes are also to be interpreted in such a way to avoid absurd results. (*People v. Valladoli* (1996) 13 Cal.4th 590, 604.)

Bearing the principles above in mind, in the group residential use ordinance, the plain meaning of "shared" is "used, done, belonging to, or experienced by two or more individuals." (Merriam-Webster Online Dictionary (2020), http://www.merriam-webster.com.) In the SMMC, "living quarters" is defined as "[a] structure or portion thereof which is used principally for human habitation." (SMMC, § 9.04.02.030.450.) The plain meaning of "living quarters" is similarly "the room where a person lives." (Merriam-Webster Online Dictionary (2020), http://www.merriam-webster.com.) For starters then, in the group residential use ordinance "shared living quarters" means two or more tenants have to share the same space or living quarters.

The plain meaning of "without" is "the absence or lack of something or someone." (Merriam-Webster

Online Dictionary (2020), http://www.merriam-webster.com.) The plain meanings of "separate" are "set or kept apart" and "not shared with another." (Merriam-Webster Online Dictionary (2020), http://www.merriam-webster.com.) Therefore, the phrase "without separate kitchen or bathroom facilities" can reasonably be interpreted to mean not having separate kitchen or bathroom facilities.

As used in the ordinance, the term "wherein" is reasonably interpreted to relate back to the phrase "shared living quarters" and its plain meaning is "in which." (Merriam-Webster Online Dictionary (2020), http://www.merriam-webster.com.) The phrase "two or more rooms are rented to individuals under separate rental agreements" relates to the specific rooms the tenants rent in the living quarters and the rental agreement that each individual has that formalizes their individual tenancies.

Considering the plain meaning of the ordinance's terms in context, "group residential use" can be reasonably interpreted to apply to a living arrangement involving two or more tenants who share the same living quarters, that does not have separate kitchen or bathroom facilities; and each tenant has entered into separate rental agreements of at least 30 days for their room or rooms in that living quarters.

The three questions the People pose to determine whether a "group residential use" is in place-do two or more tenants share a living quarters; do they share a kitchen or bathroom; and do the tenants rent rooms in the living quarters under separate leases for 30 days or more-are consistent with the ordinance's plain language.

We also note that in its reply brief in support of its demurrer, MySuite stated, "its undisputed that leasing practices at one of the apartment buildings that are the subject of this case … includes 'co-living' arrangements-that is, arrangements where tenants within a unit are each allocated certain space (including a bedroom) for his or her exclusive use and are permitted to share space (including a kitchen and laundry facilities) with the other tenants in the unit." This description appears to fall within the definition of "group residential use."

Both parties appear to agree that "shared living quarters" refers to a unit in a building where there are tenants who are sharing some portion of the unit, and they have separate leases in the shared space. The point at which they diverge is the meaning to be attributed to the phrase "separate kitchen or bathroom facilities." The People contend it refers to space in the "shared living quarters." While asserting it is unclear what the phrase means, MySuite adds that it can reasonably be construed to mean that "a unit is used for 'Group Residential' purposes where it does not have its own, i.e., 'separate,' kitchen or a bathroom and, therefore, where residents must share a kitchen or bathroom with other residents in the building."

We find MySuite's interpretation does not do justice to the plain meaning of the ordinance's terms and leads to illogical conclusions. MySuite's interpretation then differs from the People's in that MySuite suggests the living quarters that is shared does not have a kitchen or a bathroom. That interpretation, however, would lead to an absurd result because, as the People note, a living

quarters, by definition, cannot lack its own kitchen or bathroom; it has to have such facilities to be a living quarters. A statute cannot be interpreted in such a way that it leads to absurd results. (*People v. Valladoli, supra,* 13 Ca1.4th at p. 604.)

Moreover, as the People contend, and MySuite appears to agree, under MySuite's interpretation, a group residential use would occur only if individuals who reside outside of the living quarters share the kitchen or bathroom with tenants residing in the subject living quarters. That is to say, the tenants in one living quarters would have to exit their unit to use a kitchen or bathroom that is located in a different living quarters where the kitchen or bathroom is located. Again, that leads to an absurd result. Moreover, MySuite's interpretation would lead to the logical conclusion that a single living quarters located in a building in which there are no other living quarters could never be classified as having a "group residential use."

As MySuite's interpretation is inconsistent with the plain meaning of the ordinance, we need not apply other contract interpretation principles, such as considering the ordinance's legislative history. However, even if we were to accept MySuite's contention that the ordinance is ambiguous and the trial court's pronouncement that it is unclear, the legislative history to which MySuite directs us does not necessarily support its contentions. In a draft of the Zoning Ordinance Update in November 2013; "Group Residential" was defined as "Shared living quarters without separate kitchen or bathroom facilities for each room or unit, offered for rent for permanent or

semi-transient residents on a weekly or longer basis." In a redline version from October 2014, the definition of "Group Residential" was updated by deleting the terms "for each room or unit" and "on a weekly or longer basis." The definition thus became "Shared living quarters without separate kitchen or bathroom facilities wherein two or more rooms are rented to individuals under separate rental agreements or leases…." Despite the City contemplating including the phrase "for each room or unit," the current definition of "group residential use" is the only version of the ordinance that was enacted.

The fact that the final version of the zoning ordinance did not contain the "for each room or unit" phrase is not necessarily indicative of the legislative intent one way or another. As the People contend, a reasonable explanation is that the ordinance's language was made to be more precise with the addition of the phrase "wherein two or more rooms are rented to individuals under separate rental agreements or leases." This legislative history, therefore, does make MySuite's interpretation equally plausible and reasonable.

When an ordinance can be given a reasonable and practical construction, courts have held it not to be unconstitutionally vague. (See, e.g. *Tobe v. City of Santa Ana, supra,* 9 Cal.4th at 1080 ["camp" not unconstitutionally vague].) The trial court found the People's interpretation of the ordinance to be correct, but it concluded an average landlord in Santa Monica would be unable to determine what the ordinance requires. As is evident from the discussion above, we do not agree with that conclusion. Given the plain meaning of the ordinance's

terms, an average landlord in Santa Monica who is familiar with the City's lease restrictions and rent control policies should be able to understand the living arrangements to which the ordinance applies.

In sum, we find the "group residential use" ordinance can be given a reasonable and practical construction, that does not render it vague (*Tobe v. City of Santa Ana, supra,* 9 Cal.4th at p. 1080); and it provides adequate and sufficient notice to landlords of what is prescribed and allows the appropriate authorities to identify a group residential use, which would require obtaining a minor use permit (*People v. Heitzman, supra,* 9 Cal.4th at p. 199-200). Further, the rule of lenity is inapplicable to the circumstances of this matter because the interpretation of the ordinance advanced by MySuite is neither reasonable nor tenable. (*Avery, supra,* 27 Cal.4th at p. 58.)

DISPOSITION

The court's order sustaining the demurrer is reversed.

/s/_____
Richardson, J.

We concur:

/s/_____
Kumar, Acting P.J.

/s/_____
Ricciardulli, J.

APPENDIX D — EXCERPTS OF CALIFORNIA SUPERIOR COURT TRANSCRIPT, DATED AUGUST 14, 2019

SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY
OF LOS ANGELES

No. 8AR26341

Los Angeles, Dept. WE 71 Hon. William Sadler, Judge

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

01 JOSE VALENTIN, 02 ADAM SHEKHTER, 04 MY SUITE LLC, 05 1238 10TH STREET, LLC, 06 1433 EUCLID LLC, 07 AVROHOM KRAM,

Defendants.

REPORTERS' TRANSCRIPT OF PROCEEDINGS ON APPEAL

8-2-19 & 8-14-14

[49]Case number:	8AR26341
Case name:	*Peo vs. Valentin, et. al.*
Los Angeles, California	Wednesday, August 14, 2019
Department WE 71	Hon. William Sadler, Judge
Reporter:	Stella A. Cordova, CSR No. 7538
Time:	A.M. Session

Appendix D

Ms. Suh: Eda U. Suh on behalf of the People

Mr. Braver: Andrew Braver for the People.

Mr. Goldman: James Goldman for Defendants.

Mr. Braun: Harland Braun.

The Court: All right, today is the day for my ruling on the issue of the Demurrer. The Court will allow the withdrawal of the previous plea of Not Guilty. There is a Discretionary Call. I am doing it for the purpose of hearing this Demurrer. The Court heard argument, reviewed the briefs provided by all counsel, and conducted its own research. The Court finds there is sufficient ambiguity in the statute to render it unconstitutionally vague as applied to the Defendant's conduct as said in Counts 1 to 5.

This is my analysis. The Court relies upon the standard set forth in *U.S. vs. Davis*, 139 Supreme Court [50]2319, and there are cases *pre-Davis* which gave guidance. the Court finds the law does not give ordinary people, even the ordinary person in business of rental properties fair law of what the law demands.

The People's argument in effect is that the Defense's possible interpretation of the statutes are all wrong because it's a matter of law.

Other reasonable interpretations run afoul of other distinct law. This is an appellate argument, however, the Defense interpretation of the statute in this matter is

that the phrase "without separate kitchen or bathroom facilities refers to shared living quarters, not to the lease holders wherein two or more rooms are rented."

Since the Defendant's apartment building consists of several units I cannot say that the Defendants' interpretation of relevant statute is misguided.

The Defense interpretation of the statute appears to what the People -- to be what the People have previously labeled Building Z in their exhibits. If the issue is painting someone in a corner -- that was the analogy used previously, that was me painting myself into a corner. I believe that is what their interpretation is.

The People argue that it is not a reasonable interpretation because Building Z is in fact a typical rooming house or dorm. The problem is the statute seems to -- at least a reasonable interpretation of the statute -- preclude these residences as non group residential. This makes it not a rooming house or dorm by the statutory [51]definition itself.

In other words, yes, Building Z does look like a dorm or rooming house, but the statute says at least one reasonable interpretation is that it is not according to the dictates of 951 -- 9.51.02.

Additionally, while most dorms or rooming houses consist of multiple bedrooms with shared bathrooms or kitchens, this building consists of multiple units where the residents share the bathrooms and kitchens with other tenants of the individual units.

Ultimately, the Court agrees with the people as to what the correct interpretation of what the statute is, but disagrees with the people as to the average landlord's ability to determine what the law demands.

The Court believes the statutory language is unclear at best. If the average landlord were to look at the legislative history of the statue, the initial, not the draft statutory language for each room or unit would make the average landlord believe that the city council was excluding the language for a reason.

The Rule of Lenity says when there are two or more interpretations of the statute, the interpretation of the statute favorable to the Defense is employed.

Finally, the Court has reviewed *People vs. Superior Court JcPenney's* which is a relatively recent case. You might want to look at that 2018, DJDAR, 3232. I believe its ruling is in accord with the most recent case dealing with the vagueness docket.

[52]The Court grants the Defense Demurrer as to these, leave, and does so without leave to amend.

That being said, I assume what this will do, the People will probably want to file a writ in this matter which they, you know, should, so I understand.

Once again, I think I mentioned the previous time, your last argument was very good. It doesn't mean that you win, but your argument was very good, nonetheless,

so I assume that you are going to want to ask to continue this matter or seek a stay for the purpose of getting a writ in this matter.

Mr. Braver: That is correct.

(Counsel confer off the record.)

Mr. Braver: That is correct.

The Court: I assume there is no opposition to continue this matter for the purpose of seeking a writ.

I will do that -- 30 days?

Ms. Suh: Yes.

Mr. Braver: Yes. There is one matter about the First Amended Complaint. I am not sure if you get to that. I want to make sure that the record correctly reflects the Demurrer should apply to Counts 2, 3 and 4 of the First Amended Complaint.

The Court: Counts 2, 3 and 4, what's up with -- there was an Amended Complaint that was filed.

Mr. Braver: That is correct.

The Court: How does that change the dynamics?

Mr. Braver: Count 1 is no longer -- it's -- it is [53]Alleging the same conduct, but is no longer based on

a violation of the Zoning Ordinance of Group Residential Use, instead it's based on a Public Nuisance Violation. And at the August 2 hearing, the People applied for Leave to Amend. Defendants did not object, and, Your Honor granted Leave to Amend, so the Defendants entered a Plea of Not Guilty to the First Amended Complaint, and the Court permitted the Defendants to withdraw their Plea for the purposes of the Demurrer.

The Court: I just want to make sure because I looked at the Amended Complaint. I didn't see anything particularly different about the language, so you can tell me legally what -- how this is different.

Mr. Braver: Previously, Count 1, which refers to the Defendant's operating a unit without a kitchen alleged a violation of the Group Residential Use Zoning Ordinance. Count 1 still refers to the exact same conduct, but it now alleges -- but now has a count of Public Nuisance instead of Group Residential.

The Court: So I don't understand. Is it -- is it the theory of the People that the -- that the Defendants' conduct in this matter was a public nuisance because there was a violation of the statute? That I understand, and that I understood from previous counts beforehand where there is another theory of liability.

Mr. Braver: There are two amended nuisance counts in the First Amended Complaint. The first issue is when the Defendants operated a living quarters or apartment [54]without a kitchen. We were alleging that operating a living quarters without a kitchen is a public nuisance.

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Once they changed the arrangements of the living quarters so that the unit that previously did not have a kitchen was then shared with the unit that did have a kitchen, at that point, there was a group residential use which is both a violation of the Zoning Code and also a violation of the Public Nuisance Law.

The Court: That I agree with the People on, if the issue is -- because the -- the challenge in this matter was a challenge to the vagueness of the statute as applied, and there could be no application of the statute, there could be no reasonable interpretation of the statute that would allow for the Defendant to rent a unit without a bathroom at all.

Mr. Braver: Your Honor, the portion of the Code that prevents Defendants from renting a unit without a bathroom is entirely separate from the portion of the Code that deals with group residential. It's in a different section of the Code. It's in a different article of the Municipal Code. It's in Article 8 instead of Article 9, but it's the exact same conduct.

The Court: And even if it was, let's say you are dealing with the same statutory language even if it was the same exact statutory language, I am not ruling that the issue is because there is some conduct that a reasonable interpretation of that language of the statute -- this isn't as an applied challenge, this isn't a facial [55]challenge, it can't be a facial challenge because any clear reading of the statute would clearly preclude renting a unit without a bathroom, right? So however you want to parse it, without a bathroom entirely, I know there is an issue about -- we've

gone through that. I gave you my rulings on the other counts, but on Count 1, if the issue is whether -- that the Defendant didn't rent -- rented a unit without a bathroom in its entirety, then I agree it's not subject to the Demurrer.

Mr. Braver: That is correct.

Mr. Goldman: Maybe the solution would be to make an order applicable to the original Complaint, and then we can file a Demurrer to the First Amended Complaint, and they can take that up to the Court of Appeal, because I don't think we believed this issue as to whether or not this new theory is legally viable. I think it's basically the same theory, but I am sure Counsel disagrees with me.

The Court: That doesn't matter anyway. First of all, No. 1, that is, the Defendant was already arraigned on the Amended Complaint, so we're at an Amended Complaint already.

The issue is going to be -- however you parse it, the issue is the same and, I'm sorry, if the argument is that you never ever -- I don't believe legally a facial challenge will be a -- is going to lie. This is going to be as an applied challenge because your clients -- the argument is your clients conducted certain arguments based upon an interpretation of the statute, and that [56]interpretation of the statute where they had, you know, different units inside the building, and their conduct, their conduct in reliance upon your interpretation of the statute is at issue. But there is no interpretation that would -- of that statute that would allow for no bathroom. You will just not win that one, I believe.

Mr. Goldman: I don't think that is the issue raised in the First Amended Complaint.

The Court: That is exactly the issue.

Mr. Braver: That is correct. the issue in the First Amended Complaint is that there is a section of the Municipal Code which says it's a public nuisance if a landlord operates a vehicle that is not up to State Habitability Codes, and the State Habitability Code requires that every unit have a kitchen and bathroom, so it's entirely different than Group Residential even though it's the same conduct, so that is correct.

The Court: So we have Counts 2, 3, 4 and 5, correct, that are subject to the Demurrer?

Mr. Braver: yes.

Ms. Suh: That is correct. Your Honor, I do want to also indicate that the people have -- have agreed to dismiss Counts 1 and 2 as a part of this filing.

The Court: Dismiss Counts 1 and 2.

Mr. Braver: Of the Original Complaint.

Ms. Suh: Of the Original Complaint.

Mr. Braver: We're not going to keep the original Count 1. We're substituting with the Amended Count 1.

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[57]The Court: Well, he was -- I have an Amended Complaint, so I just think I am not dealing with that. He has been arraigned as to this Amended Complaint so we're -- we've got this Amended Complaint. That's where we're at right now, okay.

Mr. Braver: Very good.

The Court: So the Court is then granting the Demurrer as to Counts 2, 3, 4 and 5. Now, that being said, why don't both Counsel approach. I want to talk briefly about the possibility of a resolution in this matter.

(Bench Conference held off the record.)

The Court: August 28th. I will put that over as zero of 30. You are authorized to waive time, and waive time on your client's behalf to make that a zero of 30 date?

Mr. Braun: Yes.

Mr. Goldman: At 8:30 a.m.?

The Court: Why don't you come at 10:30. Because -- come at 10:00 in case I'm in trial.

Mr. Braun: Thank you.

The Court: You are ordered to return on that date.

(Proceedings concluded.)

APPENDIX E — STATUTORY SECTIONS

Santa Monica Municipal Code
Article 9 Planning and Zoning
Division 5: General Terms
Chapter 9.51 Use Classifications

9.51.020 Residential Use Classifications

A. **Residential Use Classifications.**

1. ***Residential Types.***

a. *Single-Unit Dwelling.* A dwelling unit that is designed for occupancy by one household, located on a single parcel that does not contain any other dwelling unit (except an accessory dwelling unit, where permitted), and not attached to another dwelling unit on an abutting parcel. This classification includes individual manufactured housing units installed on a foundation system pursuant to Section 18551 of the California Health and Safety Code.

b. *Accessory Dwelling Unit.* A dwelling unit providing complete independent living facilities for one or more persons that is located on a parcel with another primary, single-unit dwelling as defined by State law. It shall include permanent provisions for living, sleeping, eating,

cooking, and sanitation on the same parcel as the single-unit dwelling's location. A second unit may be within the same structure as the primary unit, in an attached structure, or in a separate structure on the same parcel. This use is distinguished from a duplex. See Division 3, Section 9.31.300, Accessory Dwelling Units, for further details.

c. *Duplex.* A single building that contains 2 dwelling units or 2 single unit dwellings on a single parcel. This use is distinguished from an Accessory Dwelling Unit, which is an accessory residential unit as defined by State law and the ordinance codified in this chapter.

d. *Multiple-Unit Dwelling.* 2 or more dwelling units within a single building or within 2 or more buildings on a site or parcel. Types of multiple-unit dwellings include garden apartments, senior housing developments, and multi-story apartment and condominium buildings. This classification includes transitional housing in a multiple-unit format. The classification is distinguished from group residential facilities.

i. *Senior Citizen Multiple-Unit Residential.* A multiple-unit development in which occupancy of

individual units is restricted to one or more persons 62 years of age or older, or a person at least 55 years of age who meets the qualifications found in Civil Code Section 51.3.

ii. *Single-Room Occupancy Housing.* Multiple-unit residential buildings containing housing units that may have kitchen and/or bathroom facilities and are guest rooms or efficiency units as defined by the State Health and Safety Code. Each housing unit is occupied by no more than 2 persons and is offered on a monthly rental basis or longer. See Division 3, Section 9.31.330, Single Room Occupancy Structures, for further details.

iii. *Single-Room Occupancy Housing, Market-Rate.* Multiple-unit residential buildings containing housing units that may have kitchen and/or bathroom facilities and are guest rooms or efficiency units as defined by the State Health and Safety Code. Each housing unit is occupied by no more than 2 persons and is offered on a monthly rental basis or longer. Single-Room Occupancy Housing, Market-Rate shall not include any of the following:

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(1) 100% Affordable Housing Project, as set forth in Section 9.52.020.0050;

(2) Elderly and Long-Term Care, as set forth in subsection (A)(3);

(3) Emergency Shelter, as set forth in subsection (A)(4);

(4) Residential Facility, as set forth in subsection (A)(7);

(5) Supportive Housing, as set forth in subsection (A)(8); or

(6) Transitional Housing, as set forth in subsection (A)(9).

e. *Group Residential.* Shared living quarters without a separate kitchen or bathroom facilities wherein 2 or more rooms are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence, offered for rent for permanent or semi-transient residents for periods generally of at least 30 days. This classification includes rooming and boarding houses, dormitories,

fraternities, convents, monasteries, and other types of organizational housing, and private residential clubs, but excludes extended stay hotels intended for long-term occupancy (30 days or more; see Hotel and Motel), and Residential Facilities. Group Residential includes, but is not limited to, the following:

i. *Congregate Housing.* A residential facility with shared kitchen facilities, deed-restricted or restricted by an agreement approved by the City for occupancy by low- or moderate-income households, designed for occupancy for periods of 6 months or longer, providing services that may include meals, housekeeping and personal care assistance as well as common areas for residents of the facility. See Division 3, Section 9.31.110, Congregate and Transitional Housing, for further details.

ii. *Senior Group Residential.* A residential facility that provides residence for a group of senior citizens [as defined in Health and Safety Code Section 1569.2(k)] with a central kitchen and dining

facilities and a separate bedroom or private living quarters. See Division 3, Section 9.31.310, Senior Group Residential, for further details.

2. ***Corporate Housing.*** Rental housing which has all the following attributes:

   a. The housing is designed for use by individuals who will reside on the property for a minimum stay of at least 30 consecutive days, but who otherwise intend their occupancy to be temporary.

   b. The housing is intended for use by persons who will maintain or obtain a permanent place of residence elsewhere.

   c. The housing includes 2 or more of the following amenities:

      i. Maid and linen service.

      ii. Health club, spa, pool, tennis courts, or memberships to area facilities.

      iii. Business service centers.

      iv. Meeting rooms.

v. Fully furnished units including a combination of some, but not necessarily all of, the following: furniture, appliances, housewares, bed linens, towels, artwork, televisions, entertainment systems, and computer equipment.

vi. Valet parking.

3. ***Elderly and Long-Term Care.*** An establishment that provides 24-hour medical, convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves, and is licensed as a skilled nursing facility by the State of California, including, but not limited to, rest homes, nursing homes, and convalescent hospitals, but not Residential Care, Hospitals or Clinics.

4. ***Emergency Shelter.*** A temporary, short-term residence providing housing with minimal supportive services for homeless families or individual persons where occupancy is limited to 6 months or less, as defined in Section 50801 of the California Health and Safety Code. Medical assistance, counseling, and meals may be provided. See Division 3, Section 9.31.130, Emergency Shelters, for further details.

5. ***Family Day Care.*** A day-care facility licensed by the State of California that is located in a dwelling unit where a resident of the dwelling provides care and supervision for children under the age of 18 for periods of less than 24 hours a day.

    a. *Small.* A facility that provides care for up to 6 children including children who reside at the home and are under the age of 10, or up to 8 children in accordance with Health and Safety Code Section 1597.44, or any successor thereto.

    b. *Large.* A facility that provides care for up to 12 children, including children who reside at the home and are under the age of 10, or up to 14 children in accordance with Health and Safety Code Section 1597.465, or any successor thereto. See Division 3, Section 9.31.140, Family Day Care, Large, for further details.

6. ***Mobile Home Park.*** Any area or tract of land where 2 or more lots are rented, leased, or held out for rent or lease, to accommodate mobile homes used for human habitation in accordance with Health and Safety Code Section 18214, or any successor thereto.

7. **Residential Facility.** Facilities that provide permanent living accommodations and 24-hour primarily non-medical care

and supervision for persons in need of personal services, supervision, protection, or assistance for sustaining the activities of daily living. Living accommodations are shared living quarters with or without separate kitchen or bathroom facilities for each room or unit. This classification includes facilities that are operated for profit as well as those operated by public or not-for-profit institutions, including group homes for minors, persons with disabilities, people in recovery from alcohol or drug addictions, and hospice facilities. See Division 3, Section 9.31.270, Residential Care Facilities, for further details.

a. *Residential Care, General.* A Residential Facility licensed by the State of California and providing care for more than 6 persons.

b. *Residential Care, Limited.* A Residential Facility licensed by the State of California providing care for 6 or fewer persons.

c. *Residential Care, Seniors.* A housing arrangement chosen voluntarily by the resident, the resident's guardian, conservator or other responsible person, where residents are 60 years of age or older and where varying levels of care and supervision are provided as agreed to at the time of admission or

determined necessary at subsequent times of reappraisal. This classification includes continuing care retirement communities and life care communities licensed for residential care by the State of California.

d. *Hospice, General.* A facility that provides residential living quarters for more than 6 terminally ill persons.

e. *Hospice, Limited.* A facility that provides residential living quarters for up to 6 terminally ill persons.

8. ***Supportive Housing.*** Housing which meets the definition of Health and Safety Code Section 50675.14 with no limit on length of stay that are occupied by the target population as defined in subdivision (d) of Section 53260 of the California Health and Safety Code, and that are linked to onsite or off-site services that assist supportive housing residents in retaining the housing, improving their health status, and maximizing their ability to live, and where possible, work in the community. Supportive housing as defined by Subdivision (b) of Section 50675.14 may be provided in a multiple-unit structure or group residential facility. Facilities may operate as licensed or unlicensed facilities subject to applicable State requirements.

9. ***Transitional Housing.*** Dwelling units with a limited length of stay that are operated under a program requiring recirculation to another program recipient at some future point in time. Transitional housing may be designated for homeless or recently homeless individuals or families transitioning to permanent housing as defined in subdivision (h) of Section 50675.2 of the California Health and Safety Code. Facilities may be linked to on-site or off-site supportive services designed to help residents gain skills needed to live independently. Transitional housing may be provided in a variety of residential housing types (e.g., multiple-unit dwelling, single-room occupancy, group residential, single unit dwelling). This classification includes domestic violence shelters. See Division 3, Section 9.31.110, Congregate and Transitional Housing, for further details. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015; amended by Ord. No. 2536CCS § 22, adopted February 28, 2017; Ord. No. 2610CCS § 2, adopted May 28, 2019)

1.08.010 Violations, penalty options.

(a) **Criminal Sanctions.** It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements of this Code. Any person violating any of the provisions

or failing to comply with any of the mandatory requirements of this Code, shall be guilty of a misdemeanor, unless otherwise provided. Any person convicted of a misdemeanor under the provisions of this Code, shall be punishable by a fine of not more than five hundred dollars, or by imprisonment in the City or County Jail for a period not exceeding six months, or by both such fine and imprisonment. Any offense which would otherwise be an infraction is a misdemeanor if the defendant has been convicted of the same offense three or more times within the twelve month period immediately preceding the commission of the offense and the convictions are alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall be punishable accordingly.

(b) **Civil Actions.** The City Attorney may bring an action in a court of competent jurisdiction to enjoin a violation of any provisions of this Code or any other ordinance of the City, or to enforce administrative penalties or fines imposed.

(c) **Administrative Fines and Penalties.** The City may impose administrative fines or penalties for any of the following acts or omissions:

(1) All violations of Articles 3, 4, 5, 6, 7, 8, and 9 of this Code.

(2) Failing to comply with any condition or requirement imposed on or by any entitlement, permit, contract or environmental document issued or approved by the City. Administrative fines may be imposed, enforced, collected, and reviewed in accordance with the provisions of Chapter 1.09. Administrative penalties may be imposed, enforced, collected and reviewed in compliance with the provisions of Chapter 1.10.

(d) **Nuisance Abatement.** In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be, by this City, abated as such, and each day such condition continues shall be regarded as a new and separate offense.

(e) **Alternative Remedy.** Nothing in this Section shall prevent the City from using one or more other remedies to address violations as established by this Code. (Prior code § 1200; amended by Ord. No. 1813CCS § 7, adopted 9/12/95; Ord. No. 2043 § 2, adopted 5/14/02; Ord. No. 2057CCS § 3, adopted 10/22/02)