

February 1, 2022

via TRUE FILING

Judith L. Haller, Acting Presiding Justice  
Terry B. O'Rourke, Associate Justice  
Patricia Guerrero, Associate Justice  
California Court of Appeal, Fourth Appellate  
District, Division One  
Symphony Towers  
750 B Street, Suite 300  
San Diego, CA 92101

Re: *Bankers Hill 150 v. City of San Diego*  
Case No. D077963

Dear Justices Haller, O'Rourke, and Guerrero,

The League of California Cities (CalCities) respectfully requests that the Court deny the Building Industry Association (BIA)'s and Greystar GP II, LLC (Greystar)'s requests to publish the Density Bonus Law portion (Part (B)) of the Court's opinion in *Bankers Hill 150 v. City of San Diego*, Case No. D077963.

CalCities is an association of 479 California cities, dedicated to protecting the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. CalCities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities, and identifies cases of state or national significance.

CalCities has a substantial interest in the resolution of Density Bonus Law issues because the cities it represents are land use regulators, charged by State law with planning and zoning for housing, commercial, and other land uses across California, within legal bounds, to promote and maintain the health, safety, and welfare of their constituents.

It is telling that the City of San Diego, the prevailing Respondent in this case, has requested that the Court not publish the Density Bonus portion of the Opinion. As San Diego has stated in its Opposition, the Density Bonus issues detailed in the Court's Opinion were not briefed by the parties. In order to assist the Court in resolving land use issues that have far-reaching implications not only for local government, but also for the development community, these issues should be thoroughly vetted before resolution. A review of the *Bankers Hill* appellate briefs reveals that the State Density Bonus Law, Government Code Section 65915 et seq., was not discussed in any of the briefs, and in fact not even cited. The parties' briefs primarily addressed general plan consistency. This Court also requested subsequent

letter briefs from the parties on the effect of the First District's decision in *California Renters Legal Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal. 5<sup>th</sup> 820. The *San Mateo* case is not a density bonus case, and the parties' letter briefs, like the previous briefs, did not touch on State Density Bonus Law at all.

The meaning and application of the Density Bonus Law is of critical importance to CalCities' members. To give just one example, Government Code Section 65915(e) states that local governments cannot apply a development standard that has the effect of physically precluding "a development" at the densities permitted under the Density Bonus Law. The meaning and application of Section 65915(e) is an issue that CalCities and its members (likely, along with the Building Industry Association (BIA) and its members) would have thoroughly briefed and analyzed, had the Density Bonus Law issues been identified and briefed by the parties as central to the resolution of this case. Because these issues are crucially important to local government and the development community, and have far-reaching consequences on the construction of housing across the State, Cal Cities respectfully requests that publication of an Opinion extensively addressing the Density Bonus Law should wait for a case in which the parties and amici have extensively briefed the issues.

For all of these reasons, Cal Cities asks that this Court deny the requests for publication of Part (B) of the *Bankers Hill* Opinion.

Thank you.

/s/

Corrie Manning  
General Counsel  
League of California Cities

cc: All counsel of record via True Filing (proof of service attached)

**PROOF OF SERVICE**

*Bankers Hill 150, et al. v. City of San Diego, et al.*

Court of Appeal Case No. D077963

Superior Court Case No. 37-2019-00020725-CU-WM-CTL

I, Laura L. Luz, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 1300 Clay Street, Eleventh Floor, City Center Plaza, Oakland, California 94612. My business email address is lluz@goldfarblipman.com. On February 1, 2022, I served the document described as:

**CAL CITIES LETTER IN OPPOSITION  
TO REQUEST FOR PUBLICATION**

on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

BY ELECTRONIC SERVICE: I caused the above-listed document to be served electronically by:

☒ Sending it electronically to the above-named parties using the email addresses listed in this Proof of Service, via electronic filing and service provider TRUEFILING, which has been approved by the court to file and transmit the documents to opposing parties.

☒ [State] I certify and declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare that I am employed in the offices of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on February 1, 2022, at Oakland, California.

  
\_\_\_\_\_  
Laura L. Luz

### **SERVICE LIST**

*Bankers Hill 150, et al. v. City of San Diego, et al.*  
Court of Appeal Case No. D077963  
Superior Court Case No. 37-2019-00020725-CU-WM-CTL

Everett L Delano III DELANO & DELANO 104 W. Grand Avenue, Ste. A Escondido, CA 92025 Tel: (760) 741-1200 Fax: (760) 741-1212 Email: everett@delanoanddelano.com	<i>Attorneys for Appellants Bankers Hill 150 and Bankers Hill/Park West Community Association</i>  E-Service via TrueFiling
Mara W. Elliott, City Attorney George F. Schaefer, Assistant City Attorney M. Travis Phelps, Deputy City Attorney 1200 Third Avenue, Suite 1100 San Diego, CA 92101-4100 Tel: (619) 533-5800 Fax: (619) 533-5856 Email: cityattorney@sandiego.gov	<i>Attorneys for Respondent City of San Diego</i>  E-Service via TrueFiling
Jeffrey A. Chine Heather S. Riley Allen Matkins Leck Gamble Mallory & Natsis LLP 600 W. Broadway, Suite 2700 San Diego, CA 92101-0903 Tel: (760) 741-1200 Fax: (760) 741-1212 Email: jchine@allenmatkins.com hriley@allenmatkins.com	<i>Attorneys for Real Parties in Interest/Respondent Greystar GP, LLC, Nutmeg and Olive, LLC and Cathedral Church of St. Paul</i>  E-Service via TrueFiling
Bryan W. Wenter, AICP Miller Starr Regalia 1331 N. California Blvd, 5th Floor Walnut Creek, CA 94596 Tel: (925) 935-9400 Fax: (925) 933-4126 Email: bryan.wenter@msrlegal.com	<i>Attorneys for the California Building Industry Association and the Building Industry Association – Bay Area</i>  E-Service via TrueFiling

Clerk of the Superior Court County of San Diego 330 W. Broadway San Diego, CA 92101	via U.S. Mail only
California Attorney General's Office Information Only Environmental Section 1300 I Street Sacramento, CA 95814	via U.S. Mail only