

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR MEETING**

March 28, 2019

7:00 P.M.

**CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA**

AGENDA

1. CALL TO ORDER
2. ROLL CALL
- 3.. CONSENT ITEMS
4. OPEN FORUM
5. OLD BUSINESS
 - A. Staff Recommendation Re Board Attendance Policy
 - B. Request for Increase in RAP Fee
 - C. RAP Annual Report
 - D. Discussion of Ad Hoc Committee
6. NEW BUSINESS
 - A. Appeal Hearings in:
 - i. L17-0241, Faussner v. Tenants
 - ii. T18-0012, Edwards v. Bay Apartment Advisors
 - iii. L17-0231, Arms v. Tenants
 - B. Revisions to Regulations for the Just Cause for Eviction Ordinance to Eliminate Exemption Procedure for Owner-Occupied Duplexes and Triplexes
6. SCHEDULING AND REPORTS
7. ADJOURNMENT

Accessibility. This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin or

Spanish interpreter, please email sshannon@oaklandnet.com or call (510) 238-3715 or California relay service at 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantonés, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a sshannon@oaklandnet.com o llame al (510) 238-3715 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 sshannon@oaklandnet.com 或致電 (510) 238-3715 或 711 California relay service。請避免塗搽香氛產品, 參加者可能對化學成分敏感。

Service Animals/Emotional Support Animals: The City of Oakland Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use service animals or emotional support animals.

If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care.

Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
ATTENDANCE POLICY RECOMMENDATIONS

1. Procedure
 - a. Staff will send out member availability schedule for each quarter 30 days in advance of the next quarter;
 - b. Board member will respond in writing within one week;
 - c. Staff will send out the attendance schedule for the next quarter one week before the next quarter starts;
 - d. Board member will find a replacement if unable to attend a scheduled board meeting'
 - e. If Board member is unable to find a replacement, notify staff one week prior to next board meeting if unable to attend with reason for absence;
 - f. Staff will make effort to find replacement.

2. Board attendance will be published on a quarterly basis

Additional Policy Recommendations Requiring Changes to Rent Ordinance

1. Regular Board Members (REQUIRES CHANGE TO THE RENT ORDINANCE)
 - a. Regular board members may not miss more than 50% of all regular full board meetings in a six month period, regardless of whether they are excused.
2. Alternate Board Members (REQUIRES CHANGE TO THE RENT ORDINANCE)
 - a. Alternate board members must be available to attend 50% of all panel meetings in a six month period; participation in a full board meeting counts toward the 50% panel requirement.
3. Removal of Board Member (REQUIRES CHANGE TO THE RENT ORDINANCE TO MODIFY FOR CAUSE)
 - a. Removal of a board member for attendance may be recommended by staff to the Board;
 - b. Board may recommend removal of a board member for cause to the city council;
 - c. Removal of a board member is governed by Section 8.22.040(B)(2) of the Rent Adjustment Ordinance Section 601 of the City Charter states that members of board may be removed for cause, after hearing, by the affirmative vote of at least six members of the city council.

IMPROVING THE WORKS OF BOARDS & COMMISSIONS

CITY OF OAKLAND
OFFICE OF THE CITY AUDITOR



GOLDMAN SCHOOL
OF
PUBLIC POLICY
UNIVERSITY OF CALIFORNIA BERKELEY

JASON Y. SIU
May 5, 2017

The author conducted this study as part of the program of professional education at the Goldman School of Public Policy, University of California at Berkeley. This report is submitted in partial fulfillment of the course requirements for the Master of Public Policy degree. The judgments and conclusions are solely those of the author, and are not necessarily endorsed by the Goldman School of Public Policy, by the University of California or by any other agency.

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My deepest gratitude goes out to City Auditor Brenda Roberts and her staff for making this project possible. Thank you for your passion and service to the City of Oakland.

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EXECUTIVE SUMMARY

Oakland conducts many of its businesses through boards and commissions. These forums provide an opportunity for residents to participate in the policymaking process in an open democratic government. For citizens to participate, commissions need to be open, invite public comment, and be accessible to all. Commissioners must also be accountable. Responsibilities include holding and attending meetings, voting on policies and recommendations, submitting annual reports, and completing training and disclosing financial information to prevent conflicts of interest.

Some of these governing bodies, however, are not operating efficiently and delivering the professional level of service due to lack of training and communication problems with staff liaisons. This Report reviews Oakland's boards and commissions and recommends methods on reforming their management and operations.

RECOMMENDATIONS

Recommendation 1: Develop Curriculum to Train Newly Appointed Members

Recommendation 2: Develop Specialized Training for Board Management for Chairs and Vice Chairs

Recommendation 3: Utilize Social Media to Increase Applicant Pool

Recommendation 4: Provide Stipend for Low-Income Commissioners

Recommendation 5: Periodic Meeting and Training for Staff Members

Recommendation 6: Adopt Attendance Policy

Recommendation 7: Adopt Annual Report Requirement for Policymaking and Quasi-Judicial Boards

Recommendation 8: Use Templates for Agenda and Minutes to Include ADA and ESL Notices

Recommendation 9: Develop Commendation Policy for Public Service

Recommendation 10: Consider Elimination of Inactive Commissions and Consolidate Boards By Subject Matter

I. FINDINGS: OAKLAND

Below are findings pertaining to the City of Oakland. Generally speaking, Oakland has no formal training policy, relies on an honor policy for board and commission members¹ to review ethics materials, and has little accountability to ensure commissioners comply with training. In recent years, the Public Ethics Commission has provided training to some boards, and is undergoing additional reforms.

APPENDIX A identifies the enabling statute, authority, and missions of Oakland's 34 boards and commissions. Understanding each board's role and authority provides guidance on organizing analyses for this report.

CITY OF OAKLAND

- a. **No Formal Training Policy.** Oakland does not have an overarching city policy to train board and commission members. Training occurs at an individual board level, without strong guidelines from the City. That means little oversight and accountability. Each staff liaison provides training in different forms: from emailing an introduction packet² to conducting three-hour in-person orientations.³ Generally, the City Clerk's Office administers the oath of office and collects Form 700s. Pursuant to AB 1234, commissioners who receive compensation, salary, stipend or reimbursements of expenses are required to complete state mandated ethics training.⁴ Many Oakland boards and commissioners do not receive remuneration, and thus are not subject to AB 1234. The State provides training online.
- b. **Reliance on PEC Handbook and Government Ethics Act Video.** The Oakland Public Ethics Commission has a handbook for commissioners and board members covering ethics requirement.⁵ Staff liaisons from different boards and commissions chiefly rely on this ethics handbook for training and orientation. The handbook briefly reviews the Oakland Governments Ethics Act (covering financial and personal conflicts of interest); Sunshine Ordinance (public meeting and agenda); roles and responsibilities as board members; and the city government's structure. In addition, the appendix to the handbook provides frequently used Robert's Rules of Order, telephone numbers to city departments, as well as a list of boards and commissions

¹ Boards and commissions are used interchangeably in this Report.

² See, e.g., Commission for Persons with Disabilities.

³ See, e.g., Public Ethics Commission.

⁴ AB 1234, Article 2.4 ("Any member of a local agency legislative body or any elected local agency official who receives any type of compensation, salary, or stipend or reimbursement for actual and necessary expenses incurred in the performance of official duties.").

⁵ Public Ethics Commission, Board & Commission Member Handbook, *available at* <http://www2.oaklandnet.com/oakca1/groups/cityadministrator/documents/report/oak063333.pdf>.

required to file Form 700. In 2017, the Public Ethics Commission updated the handbook and provided a checklist of orientation activities. The checklist reminds newly appointed commissioners to do the following within 30 days of appointment:

- Take the Oath of Office
 - File Form 700 – Statement of Economic Interests
 - Watch the Public Ethics Commission’s Introduction to the Oakland Government Ethics Act Video
 - Take the State’s online AB 1234 Ethics Training for local officials
 - Review Commission/Board’s applicable laws, by-laws, policies, and procedures with board/commission staff
 - Ask questions about Commission’s procedures and process if unclear about the process or information provided
 - Ask the Public Ethics Commission for advice or assistance
- c. **Little Accountability.** It is uncertain whether all newly appointed board and commission members receive this handbook. Interview with the Executive Director of Public Ethics Commission and a staff liaison to an advisory board noted that training is based on an “honor” policy. There is little accountability metrics in place to ensure compliance with the handbook and its checklist. The State’s online ethics training provides a certificate of completion for AB 1234 requirements, but this obligation only applies to commissioners who receive remuneration.
- d. **Ongoing Efforts.** The Public Ethics Commission, recently with increased funding, has focused on developing training for boards and commissions. Staff from the PEC have gone to different hearings and allocated time to show a 10-minute video on the Oakland Government Ethics Act, followed by a questions-and-answer session. PEC staff is currently developing an online platform, based heavily on San Francisco’s, to train commission members.
- e. **Staff Comments.** The Public Ethics Commission hosted a workshop for Board and Commission staff on April 13, 2017. The PEC heard concerns from staff members to help identify any challenges that liaisons may be facing in supporting their City boards. Problems about boards and commissions members that some staff liaisons noted include:
- Lack of knowledge of government structure
 - Lack of training with ethics laws, including Browns Act and Sunshine Act
 - Some boards and commissions are understaffed, leading to cancelled meetings

- High turnover with staff and commissioners leading to loss of institutional knowledge
- Lack of understanding among some commission members with their commission's jurisdiction
- Problems attaining quorum
- Lack of standardized bylaws and quorum rules, with some boards requiring a majority of attendees, majority of full commission (i.e., Parks and Recreation Commission), representation from certain interest groups (i.e., Rent Board)
- Undefined removal policy – what is “for cause” removal
- Undefined excused absence policy

OBSERVATIONS FROM MEETINGS

A. *Landmarks Preservation Advisory Commission*

During the February 6, 2017, attended by the author of this report, commissioners had a hearing and generally demonstrated an understanding of the items before them. However, both staff and commission members seemed to disregard Robert's Rules of Order formality. For example, the Chair had called a recess to allow the next presenter to set up. But he did so without taking a vote. Nor did he reconvene the meeting with a vote.

B. *City Planning Commission*

In the February 15, 2017 meeting, commissioners generally demonstrated knowledge on matters before the commission. A dispute arose over whether planning staff informed neighbors of attachments to electric poles in the neighborhood. A member of the public spoke about the electric poles, but was never told the amount of time she had at the podium. She was unable to structure her comments to fit two minutes. And because the chair acknowledged that no notice of public comment rules was provided, the public speaker was allowed to speak for an additional two minutes.

II. BENCHMARKING & CASE STUDIES

A. SAN JOSE

From 2007 to 2012, the City of San Jose conducted an aggressive review of its city's boards and commissions, with the goal of defining an effective and efficient governance structure that provides for meaningful engagement between appointed commissioners and the Mayor, City Council and City Administration. In the process, San Jose developed structural improvements to the City's Boards and Commissions.⁶ San Jose's structural improvements, adopted in 2012 into the City Charter, include:

- a. **Required Mandatory Training for Newly Appointed Members.** San Jose now conducts mandatory trainings for members within the first year of appointment.⁷ The City Clerk's Office and the City Attorney's Office coordinate the training, along with Boards and Commission staff. That mandatory training session covers the following:

- City Charter
- Municipal Code
- Council Policy
- City Policies and Procedures
- Brown Act and Sunshine/Open Government Reforms
- Ethics requirements
- Statement of Economic Interest Disclosure requirements
- Parliamentary Procedures
- How to work effectively with staff, fellow commissioners, and stakeholders
- Commission-specific information for each Commissioner covering the purpose, organization, programs, functions, etc. within the purview of the respective commission.

- b. **Additional Training for Chair and Vice Chair.**⁸ Each year, specialized training for incoming and continuing Commission officers (Chair and Vice-Chair and/or Subcommittee Chairs) is now offered, focusing upon the following:

- Meeting management and effective governance

⁶ See APPENDIX D for full information on consolidation of boards and commissions in San Jose.

⁷ San Jose Council Policy 0-4.

⁸ San Jose supplies a handout from the Institute for Local Government on the role of chair, *available at* http://www.ca-ilg.org/sites/main/files/file-attachments/understanding_the_role_of_chair_nov_2012_3.pdf.

- Parliamentary procedure
 - Team building
 - Brown Act and Sunshine/Open Government provisions
- c. **Required Staff Training.** The City Clerk's Office holds quarterly meetings with mandatory training to help staff conduct business within their boards and commissions. The training includes materials and topics covered at commissioner trainings. After a year of quarterly meetings, the City Clerk particularly suggested this approach to keep boards and commissions informed and engaged with the Clerk's office.
- d. **Recruitment of Board Members.** San Jose had relied on city council members to include vacancies in their community newsletters to inform residents of vacancies. In recent years, the City Clerk's Office would post announcements on social media platforms, including Twitter, Facebook, and nextdoor.com. The City Clerk's Office has noticed an increased of applications as a result.
- e. **Vetting Applicants.** Staff members do not make recommendations to the City Council and Mayor on candidates. The City Clerk's Office chiefly ensures that all application materials are complete. If the position requires some specialized skills, then the City Clerk's Office verifies those credentials. The City Attorney's Office then conducts a conflicts check. City Council and the Mayor may have their own vetting and interview process after the administrative tasks are completed.
- f. **Annual Report and Work Plan Requirement.** In 2013, the San Jose City Council passed a resolution to require all city commissions, except charter commissions and the Appeals Hearing Board, to submit an annual report. This requirement is in response to the lack of accountability seen in years prior. For example, in FY 2010–11, only 16 of the City's 30 boards and commissions submitted an annual work plan to the Rules and Open Government Committee. Now, boards and commissions are required to submit an annual work plan and report documenting the following:
- Annual work plan of activities
 - Budget of personal and non-personal costs
 - Annual report of accomplishments
 - Submit the report to Rules or designated Council Committee.

- g. Strict Attendance Requirement.** San Jose specifies that a commissioner who has unexcused absences from (1) any three consecutive regular meetings, or (2) 20% of the meetings in a calendar year, is deemed to have resigned.⁹
- h. Consolidation of Boards and Commissions.** San Jose consolidated boards and commissions with members through attrition eliminating the need to select members for removal. In particular, San Jose consolidated 13 boards and commissions into 6 – largely based on similar subject areas. The Appeals Hearing Board was formed from three previous boards with appellate jurisdiction. For a review of San Jose’s consolidation efforts, see APPENDIX E.

B. BERKELEY

The City of Berkeley has over thirty-five boards and commissions on which more than 350 citizens serve as members. Per state law, AB 1234 only applies to members who receive some remuneration or stipend. Berkeley has focused training on chairs and vice chairs of each commission.

- a. Mandatory Annual Training for Chairpersons and Vice Chairpersons.** Berkeley requires the chair and vice chair to complete mandatory annual training on (a) the parliamentary procedure of conducting and presiding over meetings according to the Brown Act and City policy; (b) the role of the commission and its organization; and (c) the commission's relationship to the City Council, the City Manager, the secretary, other commissions, outside agencies, and the general public. The City Council implemented video training for commission members.
- b. Training Video.** The 55-minute video generally covers materials presented in the Commissioners’ Manual. After viewing the training video, the chair and vice chair must file an Affirmation of Completion within 60 calendar days from their election as Chairperson or Vice-Chairperson. Failure to do so results in the immediate forfeiture of the position of Chairperson or Vice-Chairperson. While not mandatory for commissioners other than the Chair and Vice-Chair, completion of Commissioner training is encouraged for all commissioners.
- c. Commissioners’ Manual.** Berkeley’s 98-page manual for commissioners is both elaborative and informative. The content covers, in pertinent parts, are available in APPENDIX D.

⁹ San Jose Municipal Code Section 2.08.060.

- d. **Stipend for Low-Income Members.** To alleviate some hardship of citizens to participate on commissions, the City Council has authorized payment of \$40.00 per meeting to Council-appointed members of commissions whose annual family income as filed jointly is below \$20,000.00 per year. If a commissioner desires to establish stipend eligibility, the member must file a statement with the commission secretary.

C. SACRAMENTO

- a. **No Centralized Training.** According to Assistant City Clerk Wendy Klock-Johnson, Sacramento does not have a formal training policy. The City Clerk's Office is in charge of ensuring compliance to State requirements, including the filing of Forms 700s and completion of AB 1234 training. Each department may provide additional training on the subject matter, as needed.
- b. **Individualized Training.** Each commission and department has its own orientations. However, the City Clerk's Office and the City Attorney's Office give periodic trainings for updates at board and commission meetings. According to Ms. Johnson, many boards and commission members are city employees or officials, and have already completed state and local ethics training.
- c. **Compliance Check; No Ethics Commission.** Sacramento does not have an ethics commission. The duty to oversee boards and commissions, to ensure compliance, is therefore with the City Clerk's Office.
- d. **Recruitment.** When a vacancy arises, the City Clerk's Office makes announcements via some traditional outlets: social meeting, library, and council member outreach. In recent years, Sacramento has also utilized social media, such as nextdoor.com, and has noticed an increase in applications as a result. If the position requires specific expertise, then they reach out to certain professional organizations or workplaces. The City Clerk's Office does the bulk of recruitment, and also asks departments if there are constituents they recommend.
- e. **Vetting Process.** The City Clerk's Office reviews applications to ensure compliance with general requirements

III. RECOMMENDATIONS

A. TRAINING AND BEST PRACTICES

**RECOMMENDATION 1:
DEVELOP CURRICULUM TO TRAIN NEWLY APPOINTED MEMBERS**

The Public Ethics Commission is currently developing an online platform for training board and commission members. Interviews with staff members indicate favoring some form of in-person training. San Jose, for example, requires the Office of the City Clerk and Office of the City Attorney to conduct annual mandatory 2-hour trainings for all commissioners and board members. San Jose offers such trainings six times a year: three in January and three in July. Staff in San Jose has responded positively to having these trainings. Berkeley has a 55-minute online video that covers these topics, with quizzes embedded in it to ensure that commissioners understand important concepts. Those questions are included as APPENDIX B of this Report.

1. *Comprehensive Ethics Training*

Oakland should have a more comprehensive training – whether at an annual workshop (like San Jose) or an interactive online platform (like Berkeley). AB 1234 training is not required for most board and commission members if they do not receive remuneration. The only legal requirements then are to take an oath of office and file Form 700s. This is largely insufficient.

Training should include:

- **Membership Requirements** – application; terms of office; temporary appointments; terminations; resignations; accommodations; stipend; use of city resources
- **Ethics and Conflict of Interest** – dealings with parties before the commission; disclosure requirements; incompatible duties, activities, and compensation; and state mandated ethics training
- **Commission Organization** – election of officers; mandatory annual training for officers; duties of officers; power of chair and vice chair; and subcommittees
- **Coordination with City Council** – relationship to council; communication to and from Council
- **Coordination with Staff** – duties of the board secretary; relationship between secretary and commission; relationship with the city administrator

- **Relationship with Other Commissions, Outside Agencies, General Public, Individual Commissioners, Press and Other Media**
- **Public Meetings** – agenda and notice requirements; accessibility of meeting locations; meeting procedures; rules for public participation
- **Commission Procedures** – meeting procedures (establishing meeting rules; processing of motions; reconsideration of a vote); Robert Rules of Order; decorum; polling, quorum, and voting; notice and cancellation of meetings
- **Commission Agenda and Minutes**
- **City Council Agenda Process** – submitting reports to Council

2. *Training on Subject Matter and Board Jurisdiction*

Additional training should be tailored to the board's subject matter and jurisdiction (e.g., quasi-judicial; policymaking; advisory; and oversight). The City Clerk and City Attorney's offices should develop a curriculum appropriate for each category of boards and commissions. For example, in quasi-judicial hearings, due process and evidentiary rules should be covered. In an interview with the staff liaison of an advisory board, the staff indicated that some commission members frequently inquire about expanding that commission's advisory jurisdiction to perform certain individual investigatory tasks. That, however, is beyond the scope of an advisory commission. Training should cover how to make certain commissions most effective: how can an advisory board voice its opinion?

After completion of training, each board and commission member should file a certificate or affirmation of completion to the City Clerk's Office.

**RECOMMENDATION 2:
DEVELOP SPECIALIZED TRAINING FOR BOARD MANAGEMENT FOR
CHAIRS AND VICE CHAIRS**

Oakland should adopt a similar training as Berkeley. Chairs and Vice Chairs of boards and commissions have additional duties of presiding over meetings. Their facilitation of these open public meetings directly affects the public's perception of professionalism from the City of Oakland. Therefore, additional training is warranted.

Berkeley requires the chair or vice chair to complete mandatory annual training on (a) the parliamentary procedure of conducting and presiding over meetings according to the Brown Act and City policy; (b) the role of the commission and its organization; and (c) the commission's relationship to the City Council, the City Manager, the secretary, other commissions, outside agencies, and the general public.

B. BOARD SUPPORT AND RECRUITMENT

**RECOMMENDATION 3:
UTILIZE SOCIAL MEDIA TO INCREASE APPLICANT POOL**

Oakland generally relies on posting vacancies on its website to seek applicants for boards and commissions. City Council members may also include vacancies in their newsletter. Some board liaisons also reach out to community groups or professional associations that fit the board's subject matter.

Oakland should utilize social media for recruitment. San Jose and Sacramento both post announcements on Facebook, Twitter, and nextdoor.com. So does Oakland's Public Ethics Commission. Jelani Killings, Ethics Analyst at PEC, noted that the application pool doubled after using nextdoor.com. The City Clerk's Office at San Jose also noticed an increase in applicants.



Nextdoor.com offers a free web platform where members can make announcements to people who live in their neighborhood.

In 2015, a total of 176 Oakland neighborhoods have Nextdoor groups, and 20 percent of all households in the city use the site.

**RECOMMENDATION 4:
PROVIDE STIPEND FOR LOW-INCOME COMMISSIONERS**

In an effort to increase the diversity of boards and commissions, and to alleviate some financial burdens that may result from public service, the City Council should approve a stipend for commissioners who make under a certain income. For example, the City of Berkeley provides a stipend of \$40.00 per meeting for volunteer board members who earn less than \$20,000 a year. Note, nonetheless, that this would directly subject any commissioners who receive such stipend to the requirements of AB 1234.

**RECOMMENDATION 5:
PERIODIC MEETING AND TRAINING FOR STAFF MEMBERS**

The Public Ethics Commission hosted a workshop for board and commission staff on April 13. The PEC heard concerns from staff members to help identify any challenges that liaisons may be facing in supporting their City boards.¹⁰ The PEC asked whether staff liaisons wanted periodic meetings to address the concerns and bring forth matter to their attention, in which staff responded in the affirmative.

The City Clerk's Office in San Jose holds quarterly meetings for board liaisons. The training includes materials and topics covered at commissioner trainings, as well as updates to ethics laws and city council policies. Board liaisons may also add items to the agenda, thereby alerting the City Clerk's Office of any developments or needs. After a year of quarterly meetings, the City Clerk highly suggested this as a way to keep boards and commissions informed and engaged with the Clerk's office.

Oakland should have periodic meetings and trainings for staff members to ensure that boards and commissions are supported. This also provides a direct forum for staff liaisons to bring attention to any issues or problems.

C. COMPLIANCE AND ACCOUNTABILITY

**RECOMMENDATION 6:
ADOPT ATTENDANCE POLICY**

Problem. The Oakland City Charter provides that members of boards and commissions may be "removed for cause" after a hearing and upon the affirmative vote of at least six City Councilmembers. There is, however, no definition on what constitutes for-cause removal.

Solution. Oakland should define for cause removal in order to provide staff liaisons with guidance. For example, Oakland could specify that a commissioner who has unexcused absences from (1) any three consecutive regular meetings, or (2) 20% of the meetings in a calendar year, is deemed to have satisfied for cause removal.

In 2009, the Oakland City Council asked the League of Women Voters of Oakland to evaluate the operations of boards and commissions and provide recommendations on improving allocation of resources. Among the recommendations is to set an

¹⁰ See above for notes on staff discussion.

attendance policy for regular meetings. The League suggested standards for boards and commissions meeting monthly or more often are

- a. Maximum number of excused absences: 3 per year
- b. Maximum number of unexcused absences: 2 per year
- c. Maximum number of consecutive absences: 2 per year

Defining Excused Absence. Board and commission members, by a majority vote, may excuse a fellow board or commission member’s absence from meetings at the beginning of each meeting for any of the following reasons:¹¹

- 1. Illness of the member, family member of the member, or personal friend of the member;
- 2. Business commitment of the member that interferes with the attendance of the member at a meeting;
- 3. Previously scheduled vacation of the member, notice of which was provided to the respective board or commission in advance of the meeting;
- 4. Attendance of the member at a funeral, religious service or ceremony, wedding, or other similarly significant event;
- 5. Unexpected, emergency situation that prohibits the member’s attendance; or
- 6. Other reason for which the member has given notice to the chair or secretary of his or her unavailability 15 days in advance, as long as the unavailability is not expected to last for longer than 30 days.

Upon resignation or removal, the Mayor should quickly fill the position or elevate an alternate member to that seat. The Mayor, if she wishes, could also reappoint the resigned or removed member.

**RECOMMENDATION 7:
ADOPT ANNUAL REPORT REQUIREMENT FOR
POLICYMAKING AND QUASI-JUDICIAL BOARDS**

The City should require certain boards and commissions to produce an annual report. In 2010, the League of Women Voters of Oakland had submitted a Report and Recommendation suggesting an annual report requirement as well. There are merits to implement accountability measures to ensure that policymaking and quasi-judicial commissions adequately serve the community at large. Because those

¹¹ See, e.g., City of Chula Vista Municipal Code 2.25.110 (“Attendance requirements – Excused absences – Removal for cause”).

commissions perform tasks that directly impact the public, with due process concerns, they should be held to a higher standard.

For example, the Rent Board hears appeals in response to rent adjustment staff decisions. The Rent Board also recommends regulations and changes to the Rent Adjustment Ordinance. The Rent Board wields significant authority that directly impact Oakland residents. This warrants additional accountability to ensure that the Board both performs its statutory duties and that the City is providing adequate support.

San Jose, as well as San Francisco, requires an annual work plan and annual report from each board or commission. The City Clerk’s Office in San Jose has developed a template for boards and commissions. Each annual report should include:

- Objectives for the Fiscal Year
- Time Frame
- Accomplishment and Status of Objectives
- Future Targets and Goals

See APPENDIX E for a sample of San Jose’s three-page template from the Ethics Commission.

**RECOMMENDATION 8:
USE TEMPLATES FOR AGENDA AND MINUTES TO INCLUDE
ADA AND ESL NOTICES**

Boards and commissions should inform the public of available accommodations and resources to residents who need such assistance. All commissions websites and agendas should include language about accommodation. See APPENDIX C for the current status of Oakland’s boards and commissions in notifying the public about accommodations.

The following is an example of language to be included in every public agenda notice:

“This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the [Department] at [phone number] at least three working days before the meeting.”

“Do you need an Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email [email] or call [phone number] five days in advance.”

D. ACKNOWLEDGEMENT OF BOARDS AND COMMISSIONS

**RECOMMENDATION 9:
DEVELOP COMMENDATION POLICY FOR PUBLIC SERVICE**

In 2010, the League of Women Voters of Oakland asked staff to complete a written survey and interviewed past and present members and staff of these boards and commissions.

The survey and the interviews¹² indicated that board members do their work effectively when:

- they focus on policy recommendations which are considered seriously by the city council and its committees;
- boards and commission have their full complement of members and those members participate fully in their bodies' activities;
- elected officials collaborate with boards and commissions in formulating goals and specific charges for the boards and commissions;
- members of boards and commissions take initiatives to bring issues before the bodies of which they are members;
- *the council recognizes the contributions to city government made by members of boards and commissions.*

Oakland should acknowledge the public service of board members. In San Jose, a member of a board may be recognized for his or her service when the member has served for at least one year and who has not been reappointed to that board or commission.

E. RESTRUCTURING AND CONSOLIDATION

**RECOMMENDATION 10:
CONSIDER ELIMINATION OF INACTIVE COMMISSIONS
AND CONSOLIDATE BOARDS BY SUBJECT MATTER**

One of the potential advantages of the consolidation of City boards and commissions is that they would be responsible for providing advice to the City Council and City Administration across a broader spectrum of programs, services, and facilities. This would require the commissions to take a more holistic approach to analyzing and responding to demands for services and the allocation of limited resources across a

¹² Boards and Commissions in Oakland. Findings and Recommendations from the League of Women Voters of Oakland. May 2010.

continuum of needs and services. Moreover, consolidation of certain boards and commissions would save on resources and staff time.

An approach for consolidation involves merging boards and commissions with similar subject areas. For example, from 2007 to 2012, the City of San Jose underwent efforts to improve the efficiency of managing its boards and commissions. It concluded its efforts, in part, with a consolidation plan based on boards and commissions' subject areas.¹³

1. Inactive Commissions

The City's website indicates inactivity from the following boards and commissions; therefore, they should be eliminated. These inactive boards and commissions include:

- Community Jobs Oversight Commission (inactive; unknown status)
- Cultural Affairs Commission (Website indicates commission on hiatus; could also be consolidated – see below)
- Oakland Animal Services Community Advisory Committee (inactive)
- Oakland Successor Agency Oversight Board (inactive; unknown status)
- Violence Prevention & Public Safety Oversight Committee (defunct)
- Wildfire Prevention Assessment District Advisory Board (inactive)

2. Consolidate By Subject Matter

The City Council should consider consolidating the following boards and commissions after receiving community input:

¹³ See APPENDIX D for the results of San Jose's consolidation of boards and commissions.

Proposed B&C	Original B&C	Reasoning
<p>City Planning Commission</p>	<p>Planning Commission</p>	<p>1. LPAB generally has short 1-hour long meetings once per month.</p> <p>2. LPAB advises Planning Commission.</p>
	<p>Landmark Preservation Advisory Board (LPAB)</p>	<p>3. Planning Commission is well staffed to assume responsibility from LPAB or can create subcommittee for LPAB's designation duties.</p>
<p>Public Art & Culture Advisory Commission</p>	<p>Cultural Affairs Commission (CAC)</p>	<p>1. CAC is currently on hiatus;</p> <p>2. CAC promotes artistic and cultural events in city;</p>
	<p>Public Art Advisory Committee</p>	<p>3. Similar subject matter with Public Art Adv. Comm.</p>
<p>Commission on Aging and Disabilities Services</p>	<p>Commission on Aging</p>	<p>1. Both commissions share a common goal of providing the opportunities and supports for older persons and individuals with disabilities to live independent, meaningful, productive, dignified lives and maintain close family and community ties;</p>
	<p>Commission on Persons with Disabilities</p>	<p>2. Consistent with some state agencies and interest group to combine aging and disabilities (see, e.g., National Association of States United for Aging and Disabilities).</p>

METHODOLOGY

In conducting this research and report, I:

- Identified the ethics laws governing boards and commissions from State and local governments
- Reviewed ethics handbook, rules and laws in the City of Oakland
- Interviewed city clerks from benchmark jurisdictions
- Reviewed ethics handbook, rules and laws from benchmark jurisdictions, with emphasis on boards and commissions
- Reviewed and completed AB 1234 online ethics training
- Reviewed agendas and minutes from all boards and commissions from January 2016 to December 2016
- Reviewed websites of boards and commissions to identify public notices related to ADA and ESL accommodations
- Attended board and commission hearings
- Attended staff workshop by Public Ethics Commission
- Reviewed 2010 Report from League of Women Voters of Oakland on Boards and Commissions
- Interviewed staff liaisons across different boards and commissions
- Interviewed a former City Administrator of Oakland

APPENDIX A

6	Cannabis Regulatory Commission	Ordinance No. 12694 C.M.S.; created pursuant to Measure Z (2004)	2004	Citizen oversight	Cannabis / tax / public health	Oversee the ordinance's implementation and disbursement of revenue from licensing and taxation of businesses that sell cannabis.	No - created by voter initiative
7	Children's Fund Planning and Oversight	Article XIII of the Oakland City Charter; est. by Kids First! Initiative (Measure K), an amendment to the City Charter	1996; reauth. 2009	Polycymaking / citizen oversight	Children / budget	Provide oversight for the Kids First Oakland Children's Fund and to guide strategic planning, funding recommendations, and the evaluation of activities of the Fund.	No - created by voter initiative and incorporated in City Charter
8	Citizen's Police Review Board	Inactive Board					
9	City Planning Commission	Ordinance No. 192 C.M.S.; Municipal Code 17.03.010	1932	Polycymaking / quasi-judicial	Planning / zoning	Promote the orderly growth and development of the City through studies, decisions on development proposals, policy recommendations to the City Council, and related activities	Yes - but not recommended due to important authority
10	Civil Service Board	Article IX of the Oakland City Charter	1988	Quasi-judicial	Personnel	Enforcement of the Civil Service Rules; approval of the exemption of positions from the competitive service; approval of classification specifications and performing appellate duties	No - incorporated in City Charter
11	Commission on Persons with Disabilities	Ordinance No. 9968 C.M.S.	1980	Advisory	Human services / disabilities	Advising the Mayor and City Council on matters affecting the disability community	
12	Community Action Partnership Administratring Board	Created pursuant to federal Economic Opportunity Act of 1964	1971	Advisory	Human services / low income	Advise Governing Board of the Community Action Agency and the City Council, and makes policy and funding recommendations for the Community Action Program.	No - board needed to comply with federal Community Services Block Grant (CSBG) Act, Public Law 105-285, Section 678B (11), as well as California Government Code 12747

<p>13 Community Jobs Oversight Commission</p>	<p>Ordinance No. 13140 C.M.S.</p>	<p>2017</p>	<p>Oversight</p>	<p>Community and Jobs Development</p>	<p>Review compliance reports and address issues related to the implementation of the Jobs Policies' related to development of Oakland Army Base</p>	<p>Created as part of Lease and Development Agreement with private developers</p>
<p>14 Community Policing Advisory Board</p>						
<p>15 Cultural Affairs Commission</p>	<p>Ordinance No. 11323 C.M.S.</p>	<p>1991</p>	<p>Advisory</p>	<p>Arts and culture</p>	<p>Makes recommendations to fund, assist and promote public awareness of artistic and cultural activities in the city; encourages support for individual artists and arts organizations; participates in community cultural planning processes; and reviews policies and programs which affect arts and cultural development</p>	<p>Yes - website notes: "The Commission is currently on hiatus." All seats vacant.</p>
<p>17 Head Start Advisory Board</p>	<p>Ordinance No. 13230 C.M.S.; created pursuant to federal program</p>	<p>1972; advisory board est. 2002</p>	<p>Advisory / oversight</p>	<p>Early education / child welfare</p>	<p>Oversee the delivery of services to children and families in accordance with Head Start performance standards.</p>	<p>Yes - Federal grant guideline requires overseeing body for Head Start fund; however, the city council or another body could serve this purpose.</p>
<p>18 Housing Residential Rent & Relocation Board</p>	<p>Ordinance No. 11954 C.M.S.</p>	<p>1996</p>	<p>Quasi-judicial / policymaking / advisory</p>	<p>Housing</p>	<p>Hears appeals in response to Rent Adjustment staff decisions. They also recommend regulations and changes to the Rent Adjustment Ordinance.</p>	<p>No - Important functions under state and local housing laws.</p>
<p>19 Landmark Preservation Advisory Board</p>	<p>Ordinance No. 8883 C.M.S.</p>	<p>1973</p>	<p>Policymaking / advisory</p>	<p>Historic preservation</p>	<p>Identifies historic landmarks in Oakland, conducts design review hearings on historic properties, and advises the City Planning Commission and City Council on preservation.</p>	<p>Yes</p>

20	Library Advisory Commission	Ordinance No. 8064 C.M.S.	1969	Advisory	Library	Makes recommendations to the Oakland City Council on Oakland Public Library policies; provides citizen oversight of Measure Q tax funds; and advocates on behalf of OPL programs and services	
21	Oakland Animal Services Community Advisory Committee	Ordinance No. 13297 C.M.S.	2015	Advisory	Animal welfare	Advise city staff on animal health, care, rescue, welfare, and euthanasia	Yes - lacks activity
22	Oakland Housing Authority	Ordinance No. 6341 C.M.S.; governed by Cal. Health and Safety Code 034270	1938	Policymaking / oversight	Housing		
23	Oakland Independent Redistricting Commission	Measure DD	2014	Policymaking	Public governance	Oakland's District lines be drawn and approved by an independent commission of 13 individuals "reflective of the geographic, racial, ethnic and economic diversity of the City of Oakland".	No - citizen initiative passed.
24	Oakland Municipal Employees Retirement System Board	Article XX of the Oakland City Charter	1927	Oversight	Pension	Protect and oversee investment of the pension funds for the benefit of the OMERS retirees and beneficiaries.	No - charter amendment
25	Oakland Successor Agency Oversight Board	*Inactive Board					
26	Parkland Board	Ordinance No. 8065 C.M.S.	1969	Advisory	Parks and recreation	Reports and makes recommendations to the Oakland City Council on Parks and Recreation policies	No - charter amendment
27	Parks & Recreation Advisory Board	Ordinance No. 8065 C.M.S.	1969	Advisory	Parks and recreation	Reports and makes recommendations to the Oakland City Council on Parks and Recreation policies	No - charter amendment
28	Police & Fire Retirement System	Article XXVI of the Oakland City Charter	1951		Pension		No - charter amendment

29	Public Art Advisory Committee	Ordinance No. 11086 C.M.S.	1989	Advisory	Arts and culture	Works with staff to develop program policies and procedures and approves sites, budgets, selection methods, and proposals for public art; advises the City Administrator, Mayor, and City Council on all matters pertaining to public art.
30	Public Ethics Commission	Oakland City Charter, Sec. 202	1996	Polymaking / quasi-judicial	Ethics	Ensures compliance with the City of Oakland's government ethics, campaign finance, transparency, and lobbyist registration laws
31	Public Safety and Services Oversight Committee	Measure Z	2014	Oversight	Public safety	Oversees the administration of the revenue collection and spending, and the implementation of the programs funded through Measure Z: The 2014 Oakland Public Safety and Services Violence Prevention Act revenue.
32	Violence Prevention & Public Safety Oversight Committee	Measure Y				Oversees the proper administration of the revenue collection and spending, and the implementation of the programs funded through Measure Y revenue.
33	Violence Prevention Assessment District Advisory Board	Ordinance No. 12505 C.M.S.	2004	Advisory	Funding oversight	Produce a budget to the City Council, evaluate the performance of the District's programs
34	Workforce Development Board	Mayoral EO 2016-01	2016	Advisory	Funding oversight	Oversees the federally-funded employment and training programs and services in Oakland
35	Youth Advisory Commission	Ordinance No. 10545 C.M.S.	1985	Advisory	Human service / youth	Advising the City Council on key policy issues affecting youth and meeting with civic leaders to advocate for youth needs
						Defunct
						No - established pursuant to federal grant guidelines
						Yes
						YC Coordinator, in particular, needs to be trained on city ethics laws.

APPENDIX B

APPENDIX B

City of Berkeley, Commissioner Training Video

Available at http://berkeley.granicus.com/MediaPlayer.php?publish_id=544

Quiz Questions

1. A Council member has told Mary Smith, a resident of Oakland, that she will appoint her to the Disability Commission. Mary may:
 - a. Introduce herself at the commission meeting that night as a new commission and participate in the meeting;
 - b. Wait to participate until she moves to Berkeley the following week and is formally sworn in by the City Clerk;**
 - c. Participate as an ex officio member of the Commission until she is formally appointed.

2. Commissioner Nina Nabir intends to celebrate Eld al Fitr, a Muslim holiday, on the same night as a Commission meeting. Her absence:
 - a. Will count against her because it is unconstitutional for the City to favor religious observances;
 - b. May be excused and not counted against her if she completes an excuse form and submits it to the secretary prior to the meeting;**
 - c. Could have been excused for Easter, but not for this devotional practice, because the City only recognizes certain cultural or religious festivals.

3. Commissioner Zach Siegel has been on the commission for eight years but was removed from the commission in his fifth year, for two months, because of his failure to attend three commission meetings. He was then reappointed. He:
 - a. Can continue on the commission because he served less than eight years;
 - b. Is so valuable that he should serve as long as his council member wants him to serve;
 - c. Is disqualified from serving any longer because termination as a result of absenteeism is still counted towards the overall eight-year consecutive year term limit.**

4. Newly appointed commissioners receive a Form 700 from the City Clerk and are asked to complete and return the form as a matter of public record. This

form includes information about the commissioner's financial interest and positions on the staff or board of a non-profit. Commissioners:

- a. **Must fill out the form within 30 days of appointment and on an annual basis or face termination from the commission;**
 - b. Must submit the form, but there is no hurry as long as it is filed within a year;
 - c. Must submit a revised form each time there is a change in financial interest.
5. Housing Commissioner Mike Johnson is an unpaid member of the board of the NAACP which is applying to the Commission for a grant to conduct testing in housing discrimination cases. When the grant is discussed at a meeting, Mike:
- a. **Must disqualify himself, state the reason and leave the room during the discussion and vote on this issue;**
 - b. Has no conflict of interest issue because he has no personal financial interest in the grant;
 - c. Has no conflict of interest because the City and the NAACP have the same goal of prohibiting discrimination.
6. Commissioner Jones has just been appointed to the Planning Commission is on the board of a housing advocate group. It has a policy of advocating for denser development in the downtown. Commissioner Jones' role on the commission is to:
- a. Advocate on behalf of his community group;
 - b. Never take any position that his group may be advocating;
 - c. **Consider and weigh all points of view;**
 - d. Disqualify himself from anything on which his group may have a position, whether or not it is a legal conflict of interest.
7. Powers conferred on the Chair include:
- a. Maintaining decorum and proper debate by eliminating irrelevant, repetitious or otherwise unproductive discussion;
 - b. Appointing commission members to temporary subcommittees subject to the approval of the commission;
 - c. Approving the agenda prior to distribution;
 - d. Signing correspondence on behalf of the commission;
 - e. **All of the above.**

8. John Wilson serves as the chair of the Civic Arts Commission, but was terminated for lack of attendance. His appointing council member then reappoints him. When John returns to the commission, he:
 - a. Is automatically reinstated as Chair;
 - b. Returns to the commission as a regular member and may be re-elected for a term of one year from the date of his return;
 - c. Returns to the commission as a regular member and may be re-elected to serve the remainder of his original one year term.**

9. All of these are acceptable methods for communicating with the city council except:
 - a. A letter to Council from the full commission to express support or opposition on an issue;
 - b. Individual commissioners speaking on their own behalf during the public comment period;
 - c. Three designated commissioners meet individually with each councilmember to garner the five votes needed to support a commission item;**
 - d. Submit a report through the agenda process for consideration of the Council Agenda.

10. The Youth Commission believes that many youth need more information about their rights. It wishes to create a City program of volunteer lawyers to provide legal advice on the street. The Commission can:
 - a. Start to evaluate what the cost and other implications of such a program may be;**
 - b. Direct a staff person to start putting together the program;
 - c. Ask the City Council's permission as to whether it can begin exploring this idea;
 - d. Design a cool logo and contact the local bar association to recruit volunteers.

11. The Health Commission wants staff to develop a public education program about SARS. The staff says that it does not have any time to do so. The Commission should:

- a. **Contact the City Manager to see if staff can support the program and if not ask the Council to fund the program in the budget process;**
 - b. Complain to the City Manager and Council that the staff is being insubordinate;
 - c. Tell the staff person to postpone work on a different ongoing program and instead do work on the SARS issue because it is more pressing.

12. The Waterfront Commission is considering recommending a ban on jet skis at the Marina and Aquatic Park. The Commission should:
 - a. Simply recommend banning jet skis since it is the right thing to do and get on with writing a report to the Council about it;
 - b. Try to have a meeting without notifying the proponents of jet skis in order to avoid unnecessary dissension;
 - c. Do 1 and 2;
 - d. **Write a report, evaluating the effect and implications of a ban, after eliciting and considering all view.**

13. Commissions should:
 - a. **Develop an overall work plan that is within budgetary, legal and policy constraints yet allows room for responding to unfolding circumstances;**
 - b. Create many subcommittees that develop as many proposals as possible so the Council can choose and creativity is not stifled;
 - c. Advance cutting edge proposals even though they may be expensive or of questionable legality because the City should be innovative;
 - d. Only implement what has already been adopted because the Council knows best.

14. Commission meetings should be held:
 - a. In informal settings like a commissioner's home so commissioners can work in a relaxed setting;
 - b. In citizen's home so they can feel included;
 - c. In the Council chambers because it is the most official;
 - d. **In publicly accessible locations.**

15. Because Peace and Justice Commission meetings are getting too long, the Commission establishes three standing subcommittees of three

commissioners each, who meet in each other's home without the public. This is:

- a. Fine, because three people are less than a quorum of the commission;
 - b. Fine, because subcommittees are exempt from the Brown Act;
 - c. A violation of the Brown Act and the ADA;**
 - d. Fine, because otherwise it is not possible to get all the work done.
16. The Labor Commission learns of a wildcat strike at Chez Panisse during public comment. The workers announce that the strike will last for several months. The Commission would like to immediately recommend that Council support the strike. The Commission may:
- a. Take immediate action on this matter with a two-third vote since the Commission became aware of the issue after the agenda was posted;
 - b. Agree to set this matter on a future agenda because it cannot be added to the agenda of the current meeting and they should study the issue before making a recommendation.**
17. Landmarks Preservation Commissioner Joan Lee has invited all the other Commissioners to a party at her landmarked Maybeck home. There is no Brown Act issue present because:
- a. This is a good opportunity for them to discuss their views on how to implement the Landmarks Preservation Ordinance;
 - b. This is not an official meeting so they can discuss what to do on a tricky new project that is coming before them;
 - c. Joan is only planning a purely social gathering at which the Commissioners have been told not to discuss Commission business.**
18. A commission desires the Council to act on their recommendation at the May 19 City Council meeting. How much lead time should the commission allow in order to finalize, adopt, and submit their recommendation?
- a. Two weeks;
 - b. One month;
 - c. Three to four months;**
 - d. One year.

19. Which of the following actions requires a resolution?

- a. The Mental Health Commission would like the Council to officially oppose state budget cuts by sending a letter to the Governor;
- b. The Commission Labor wants the Council to designate March 1st as Eugene V. Debs Day;
- c. The Citizens Humane Commission requests that the Council create a new ordinance banning the dressing of pets in holiday outfits;
- d. All of the above;
- e. **None of the above.**

APPENDIX C

APPENDIX C: ACCOUNTABILITY

	Board/Commission	Agenda Posted (Y/N)	Minutes Posted (Y/N?)	Notice to People w/ Disabilities (Y/N)	Notice of Language Translation (Y/N)	Annual Report Posted (Y/N)	List of Commissioners on Website (Y/N)	Commissioners' Biography on Website (Y/N)	Other notes
1	Commission on Aging	Y	Y	N	N	N	Y	Y	
2	Bicycle & Pedestrian Advisory Commission	Y	Y	Y - via Public Works page	N	N	Y	N	
3	Board of Port Commissioners	Y	Y	N	N	Y	Y	Y	
4	Budget Advisory Commission	Y	Y	N	N	N	N	N	
5	Business Tax Board of Review								No set meeting schedule; start this meeting INACTIVE
6	Cannabis Regulatory Commission	Y	Y	Y	N	N	Y	N	Meeting minutes not easily identifiable on website; attached to new agendas.
7	Children's Fund Planning and Oversight	Y	Y	N	N	Y (in form of strategic plan)	Y	N	This Committee's agendas and minutes are posted on a separate site.
8	Citizen's Police Review Board	N/A							
9	City Planning Commission	Y	Y	Y	N	N	Y	N	
10	Civil Service Board	Y	Y	Y	Y	N	N	N	
11	Commission on Persons with Disabilities	Y	Y	Y	Y	Y - last available report in 2013	Y	Y	Annual report required in Ordinance.
12	Community Action Partnership Adminstrating Board	Y	Y	Y	N	N	Y	N	
13	Community Docs Oversight Commission								

29	Public Ethics Commission	Y	Y	Y	Y	N	Y	Y	Y	Y	
30	Public Safety and Services Oversight Committee	Y	Y	N	N	N	N	Y	N		
31	Violence Prevention & Public Safety Oversight Committee	N	N	N	N	N	N	N	N		Website not up to date.
32	Women's Prevention Assessment District Advisory Board	Y	Y	Y	Y	Y	Y	Y	Y	N	
33	Workforce Development Board	Y	Y	N	N	N	N	Y	Y	Y	
34	Youth Advisory Commission	N	N	Y	N	N	N	N	N	N	

Note: possible ethics violation in 2024 YC issued by SJEI with enclosures of 2024 ballot. See Vote Easier Guide available at <http://www.voteeasier.com> or call groups/contributor/00 comments/marketing/ethics/00 2050021.pdf

APPENDIX D

APPENDIX D
San Jose's Consolidation Plan

San Jose consolidated boards and commissions with members through attrition eliminating the need to select members for removal.

CONSOLIDATED	ORIGINALS	NEW APPOINTMENT & MEMBERSHIP
Airport Commission	(1) Airport Commission; (2) Airport Noise Advisory Committee	11 members nominated by Council Members
Appeals Hearing Board	(1) Appeals Hearing Board; (2) Traffic Appeals Board; (3) Building Code and Disabled Access Boards	11 members nominated by Council Members
Housing Commission	(1) Advisory Commission on Rents, Housing and Community Development; (2) Mobilehome Advisory Commission	11 members nominated by Council Members
Library Commission	(1) Early Care and Education Commission; (2) Library Commission; (3) Library Bond Oversight Committee; and (4) Library Parcel Tax Oversight Committee	15 members, 11 nominated by Council District, plus 4 specifically appointed with an early childcare background to be nominated by Council Appointment Advisory Commission
Human Services Commission	(1) Human Rights Commission and (2) the Disability Advisory Commission	13 members, 11 nominated by Council Members, 1 disability service provider or disabled representative, 1 domestic violence service provider or survivor, both to be nominated by Council Appointment Advisory Commission

APPENDIX E

SAN JOSE ETHICS COMMISSION
Work Plan for FY 2016-17

Objective for FY 2016-17	Actions	Timeframe
<p>1. Monitor compliance with all campaign and ethics ordinances in Title 12 of the Municipal Code [Ref: SJMC 12.04.070(A)]</p>	<ul style="list-style-type: none"> • Periodically review and assess impact of compliance data obtained from the city clerk's prima facie review of disclosures and reports filed in accordance with campaign and ethics ordinances <ul style="list-style-type: none"> ○ Evaluate cumulative results of compliance monitoring and identify possible areas of concern with regard to campaign and ethics regulations • Work with the city clerk to develop and implement a plan for diverse community outreach regarding campaign and ethics regulations and procedures 	<p>Ongoing</p> <p>February 2017</p> <p>March 2017</p>
<p>2. Review and investigate allegations of violations of Title 12 and take enforcement action where appropriate [Ref: SJMC 12.04.070(B)]</p>	<ul style="list-style-type: none"> • Review, investigate and take appropriate enforcement action for each allegation of a Title 12 violation per regulations and procedures for commission investigations and hearings, with the objective of having the independent evaluator's report and recommendations available within 30 calendar days after receipt of a complaint <ul style="list-style-type: none"> ○ Evaluate cumulative results of investigations and identify possible areas of concern with regard to campaign and ethics regulations 	<p>Ongoing</p> <p>February 2017</p>
<p>3. Make recommendations to the city council with regard to campaign and ethics regulations and policies [Ref: SJMC 12.04.070(C)]</p>	<ul style="list-style-type: none"> • Provide recommendation(s) for each campaign or ethics issue referred by the city council, with the objective of providing a response within 120 calendar days <ul style="list-style-type: none"> ○ Continue working with the city attorney to complete development of proposed amendments to the Gift Ordinance and forward for approval by the city council per a referral from the mayor's 2015 biennial ethics review • Periodically review and assess impact of legislative (and judicial) activity <ul style="list-style-type: none"> ○ Evaluate cumulative results of legislative review and identify possible areas of concern with regard to campaign and ethics regulations • Based on evaluations of cumulative results from compliance monitoring, investigations and legislative review, work with the city attorney and city clerk to: <ul style="list-style-type: none"> ○ Prioritize and initiate detailed review of identified areas of concern with regard to campaign and ethics regulations ○ Develop and forward to the city council recommendations for amending regulations, procedures and/or forms • Continue working with the city clerk to develop and implement a plan for establishing a statewide knowledge network of local ethics commissions • Settle challenges to commission decisions as required 	<p>Ongoing</p> <p>November 2016</p> <p>Ongoing</p> <p>February 2017</p> <p>April 2017</p> <p>June 2017</p> <p>February 2017</p>
<p>4. Settle challenges to commission decisions in accordance with Section 4.24.050 of Title 4 [Ref: SJMC 12.04.070(D)]</p>		<p>Ongoing</p>

SAN JOSE ETHICS COMMISSION
Work Plan for FY 2016-17

Objective for FY 2016-17	Actions	Timeframe
<p>5. Respond to complaints alleging that records or some part of records are being withheld improperly under the Public Records Act [Ref: SJMC 12.21.430(C)]</p>	<ul style="list-style-type: none"> • Review and evaluate each public records complaint as required and respond within 30 calendar days • If intentional or repeated public records violations are found, consider recommending corrective action to the appropriate council appointee 	<p>Ongoing</p> <p>Ongoing</p>
<p>6. Provide to the council each fiscal year an annual work plan of activities to be undertaken and a subsequent report of accomplishments [Ref: SJMC 2.08.030(C)]</p>	<ul style="list-style-type: none"> • Develop and issue a 2017-18 work plan and 2016-17 annual report 	<p>June 2017</p>

SAN JOSE ETHICS COMMISSION
Annual Report for FY 2015-16

Objective for FY 2015-16	Timeframe	Status & Accomplishments	Future Target/Goals
<p>1. Monitor compliance with all campaign and ethics ordinances in Title 12 of the Municipal Code [Ref: SJC 12.04.070(A)]</p>	<p>July 2015 - June 2016</p>	<ul style="list-style-type: none"> • Periodically reviewed compliance data obtained from the city clerk's prima facie review of disclosures and reports (Ongoing) • Due to actions taken by the mayor and city council making clear the distinction in responsibilities between the city clerk and city attorney, which reduced the workload of the city clerk's office, and due to organizational changes in the city clerk's office which reallocated staff to ensure more oversight of elections, the commission did not develop a plan for improving overall compliance • Worked with the city clerk to explore opportunities for diverse community outreach regarding campaign and ethics regulations and procedures (Ongoing) 	<ul style="list-style-type: none"> • Continue to periodically review and assess impact of compliance data obtained from the city clerk's prima facie review of disclosures and reports • Evaluate cumulative results of compliance monitoring and identify possible areas of concern with regard to campaign and ethics regulations • Continue working with the city clerk to develop and implement a plan for diverse community outreach
<p>2. Review and investigate allegations of violations of Title 12 and take enforcement action where appropriate [Ref: SJC 12.04.070(B)]</p>	<p>July 2015 - June 2016</p>	<ul style="list-style-type: none"> • Conducted hearings for and dismissed four complaints that, upon review, did not identify specific facts demonstrating sufficient cause for investigation (July 2015, September 2015, March 2016) <ul style="list-style-type: none"> ○ Referred one issue not relating to Title 12 to the District Attorney for review and possible investigation (July 2015) • Investigated three complaints and conducted hearings to determine appropriate disposition: <ul style="list-style-type: none"> ○ For two complaints, the second being an extension of the first, found that no violations had occurred (January 2016) ○ For one complaint, found that violations of SJC 12.06.910 had occurred regarding filing of "late contribution reports," and imposed a civil penalty that was subsequently rescinded due to mitigating circumstances (January 2016) 	<ul style="list-style-type: none"> • Continue to review, investigate and take appropriate enforcement action for each allegation per regulations and procedures for commission investigations and hearings, with the objective of having the independent evaluator's report and recommendations available within 30 calendar days after receipt of a complaint • Evaluate cumulative results of investigations and identify possible areas of concern with regard to campaign and ethics regulations

SAN JOSE ETHICS COMMISSION
Annual Report for FY 2015-16

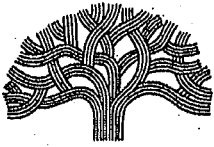
Objective for FY 2015-16	Timeframe	Status & Accomplishments	Future Target/Goals
<p>3. Make recommendations to the city council with regard to campaign and ethics regulations and policies [Ref: SJMC 12.04.070(C)]</p>	<p>July 2015 - June 2016</p>	<ul style="list-style-type: none"> ● Provided a recommendation to the city council in response to a referral regarding possible changes to the length of the campaign contribution period (March 2016) ● Periodically reviewed applicable legislative [and judicial] activity (Ongoing) <ul style="list-style-type: none"> ○ Worked with the city attorney and city clerk to develop an ordinance for approval by the city council making the Title 12 definition of “committee” consistent with a recent change to the California Government Code (June 2016) ● No progress was made on development of proposed amendments to the Gift Ordinance due to higher priorities in the city attorney’s office (Ongoing) ● Based on recommendations derived from the commission’s evaluation of campaign and ethics issues during FY 2014-15, worked with the city attorney and city clerk to develop specific amendments to applicable regulations, procedures and forms <ul style="list-style-type: none"> ○ Ordinance 29642, amending certain provisions of regulations governing the commission, elections and campaign contributions, was adopted by the city council (October 2015) ○ A replacement for Resolution 76954, amending regulations and procedures for commission investigations and hearings, was prepared for approval by the city council (June 2016) ○ The complaint form was revised by the city clerk (April 2016) 	<ul style="list-style-type: none"> ● Continue to provide recommendation(s) for each campaign or ethics issue referred by the city council, with the objective of providing a response within 120 calendar days ● Continue to periodically review and assess impact of applicable legislative (and judicial) activity ● Evaluate cumulative results of legislative review and identify possible areas of concern with regard to campaign and ethics regulations ● Continue working with the city attorney to develop proposed amendments to the Gift Ordinance for approval by the city council per a referral from the mayor’s biennial ethics review ● Prioritize areas of concern identified from compliance monitoring, investigations and legislative review, and develop recommendations for amending regulations, procedures and/or forms ● Continue working with the city clerk to develop and implement a plan for establishing a statewide knowledge network of local ethics commissions

SAN JOSE ETHICS COMMISSION
Annual Report for FY 2015-16

Objective for FY 2015-16 (continued)	Timeframe	Status & Accomplishments	Future Target/Goals
4. Settle challenges to commission decisions in accordance with Section 4.24.050 of Title 4 [Ref: SJMC 12.04.070(D)]	July 2015 - June 2016	<ul style="list-style-type: none"> Worked with the city clerk to initiate exploration of opportunities for establishing a statewide knowledge network of local ethics commissions (Ongoing) No challenges were received (Ongoing) 	<ul style="list-style-type: none"> Settle challenges to commission decisions as required
5. Respond to complaints alleging that records or some part of records are being withheld improperly under the Public Records Act [Ref: SJMC 12.21.430(C)]	July 2015 - June 2016	<ul style="list-style-type: none"> No complaints were received (Ongoing) 	<ul style="list-style-type: none"> Review and evaluate each public records complaint as required, and respond within 30 calendar days
6. Provide to the council each fiscal year an annual work plan of activities to be undertaken and a subsequent report of accomplishments [Ref: SJMC 2.08.030(C)]	July 2015 - June 2016	<ul style="list-style-type: none"> Developed and issued the 2016-17 work plan (June 2016) Developed and issued the 2015-16 annual report (June 2016) 	<ul style="list-style-type: none"> Continue issuing work plans and annual reports as required

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CITY OF OAKLAND

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Michele Byrd
Director

SUBJECT: RAP Fee Increase

DATE: February 19, 2019

City Administrator Approval

Date:

3/7/19

RECOMMENDATION

Staff Recommends That The City Council Approve An Ordinance Amending Ordinance No. 13497 C.M.S. (The 2018-19 Master Fee Schedule) To Increase The Rent Adjustment Program Service Fee From \$68.00 Per Unit To \$101.00 Per Unit.

EXECUTIVE SUMMARY

The Oakland Rent Adjustment Program (RAP) implements the Oakland Rent Adjustment Program Ordinance passed by the voters in 1980. Since then, the scope of RAP expanded with the voter-passed Just Cause for Eviction Ordinance (Just Cause) and the City Council's adoption of procedures regulating the withdrawal of rental units from the rental market (Ellis Act evictions) in 2003. As rents have dramatically increased and displacement and homelessness have reached crisis proportions, both the City Council and the voters have passed new ordinances in response to these needs. More rental units have been brought under the protection of the Rent Adjustment and Just Cause Ordinances by Measure JJ and Measure Y, and the Tenant Protection Ordinance, Uniform Relocation Ordinance and the Tenant Move-Out Ordinance all contemplate active administrative enforcement by RAP.

The result has greatly expanded the demands on RAP as it carries out its mission and dual responsibility to monitor and protect against unwarranted rent increases and evictions while continuing to attract persons who are willing to invest in residential rental properties and ensuring that property owners receive a fair return on their investment.

Between November 2017 and October 2018, RAP has had a vacancy in its key leadership position, the RAP Manager. This vacancy made it difficult to address the increasing demands and operate proactively. The RAP Manager hired in October 2018 possesses in-depth experience and has both a legal and programmatic background. She is leading the unit to

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implement several new approaches that address these increased demands and will ensure that the program is well understood in the community, easy to use and transparent, and engages in enforcement to ensure compliance with the laws and regulations passed by the voters and the City Council.

There are two programmatic models for approaching the regulation of the landlord-tenant relationship: passive enforcement and active enforcement. Currently, Oakland uses the passive enforcement model, offering limited public information and enforcing its regulations only in response to complaints. An active enforcement model on the other hand, uses extensive outreach to inform tenants and owners about their rights and obligations under the law, maintains full and accurate records through reporting requirements for initial rents and eviction proceedings, ensures information provided by owners is also sent to current tenants for review, provides robust mediation and dispute resolution services, and encourages compliance rather than trying to mitigate conflict on the back-end. The new measures outlined above demonstrate a mandate to move toward active enforcement of the local laws.

What will the proposed fee increase do?

The proposed fee increase of \$33 per unit (from \$68 to \$101) will allow Oakland to move from passive enforcement to an active model, while enabling staff to provide efficient, accurate, enhanced, and more effective services to the public. Specifically, the additional resources deployed as a result of the proposed RAP fee increase would create a strengthened program so that it is equipped to proactively enforce the ordinances under its charge and meet increased demands at an optimal level, with updated and modernized policies, procedures, and practices.

The fee increase will also address the remaining outstanding RAP audit findings. To date, three of the 10 findings have been addressed. Five of the remaining seven findings rely on this fee increase in order to implement them in a complete and timely manner. **Attachment A** is a review of the audit findings, progress in addressing them, and the way in which this proposed fee increase would facilitate the closing of the remaining findings.

Finally, the proposed fee increase will facilitate the staffing needed to address increased work volume resulting from various recently adopted measure, including the most recent Measure Y and the mandatory seismic retrofit ordinance. The former increases the number of units covered by Just Cause, and the latter will generate an uptick in capital improvement petitions.

The expected outcomes are summarized below and further detailed in **Table 5**, which provides a quantitative analysis of the "level of service" improvements that the increased fee will deliver as compared to current levels of service.

- Improved service to the public as evidenced by timely processing of petitions, scheduling of hearings, and rendering of decisions;
- Increased and enhanced outreach efforts, as evidenced by expanded drop-in hours, increased informational seminars, workshops, and community presence;
- Increased utilization of less costly alternative methods to resolve disputes through creation of a mediation program;
- Improved timelines in addressing public inquiries;

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- Improved RAP fee collection and monitoring of covered units and their rental rates;
- Increased awareness and understanding of Oakland's Rent Adjustment, Just Cause, and related laws, as evidenced through enhanced, user-friendly public facing materials;
- Improved accuracy and quality control in all aspects of the program;
- Increased monitoring for compliance; and
- Enhanced ability to collect, analyze, and distribute data

While the fee increased in 2016 from \$30 per unit to \$68 per unit, in large part this increase only ensured that the program fully covered existing costs at that time. The 2016 Agenda Report pertaining to the fee increase concluded the following: *"The scenarios described in this supplemental report do not account for the staffing needed to address the current backlog of RAP appeals cases, or the needed funding to entirely address all concerns with the RAP program."* Essentially, the fee increase to \$68/unit funded a baseline level of operation that included the hiring of three additional staff, development of the initial phase of a case management database, and a modest increase in legal services for low-income tenants. It did not address the increased number of petitions and client inquiries, the impact of new legislation and regulations over the past several years, or the need to recast program implementation and enforcement in a manner responsive to the changing housing landscape.

BACKGROUND/LEGISLATIVE HISTORY

On July 19, 2016, the City Council adopted Ordinance No. 13389 C.M.S. amending Ordinance No. 13320 C.M.S (the 2015-16 Master Fee Schedule) which resulted in an increase of the RAP Fee from \$30 per unit to \$68 per unit. The Agenda Report recommending the \$68 fee included the following components: a) increased staffing, b) technology upgrades, c) public education, and d) third party legal services.

On May 8, 2018, the Master Fee Schedule Agenda Report for FY 2018-19 was presented to the Finance Committee and included an increased RAP fee in the amount of \$96.02. The Finance Committee directed staff to return on May 22, 2018 with a Supplemental Report presenting further analysis of the RAP program and what the fee increase would cover.

On May 22, 2018, the Finance Committee moved the item to the May 29, 2018 City Council meeting.

On May 29, 2018, the item was continued to June 5, 2018 at which time it was removed from the agenda and the Master Fee Schedule was amended without a change to the RAP fee for FY 2018-19.

Since June 5, 2018, RAP staff has drawn from a one-time fund balance to hire four Limited Duration Appointment (LDA) positions, of which three have been filled.

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ANALYSIS AND POLICY ALTERNATIVES

The analysis of the proposed fee increase is conducted on two levels: 1) addressing **increased demands on the program** which involves: a) backlogs and a lack of timeliness related to increased volume of petitions and inquiries received, b) the impact of new legislation, and c) the need for programmatic and systems improvements; and 2) **facilitating the shift to an active enforcement model**. The analysis then describes the cost to operate the program at an optimal level and presents the calculations that indicate the proposed fee structure needed to cover this cost.

Alternatives to the proposed fee increase follow the analysis described above.

Background

Strong rent control and eviction protections are essential elements of anti-displacement policies. High rents in Oakland are directly related to the vast number of Oakland citizens being forced to move out of the city or suffering homelessness in the current housing climate. By changing the programmatic model from a passive, complaint-driven model to an active enforcement model, the City will more effectively meet the urgent need to ensure that rents are stable and set at levels compliant with the law, that the public is informed and complying with the law, and that RAP is fulfilling its obligations under the Rent Adjustment and Just Cause Ordinances. Studies have revealed that cities with active enforcement programs achieve greater compliance and reduce the amount of rent overcharges paid by tenants. For example, in 2009, Berkeley and Los Angeles conducted separate research analyzing their respective programs. Los Angeles, like Oakland, employed a passive enforcement model whereas Berkeley implements active enforcement of its ordinance. The research found that 27% of Los Angeles tenants were paying 5% or more above the legal allowed amount for their unit whereas in Berkeley only 5% were being overcharged¹.

These studies indicate that active enforcement models are not only more effective in protecting against rent violations, but also in ensuring compliance with the law.

The fee increase from \$30 to \$68 in 2016 enabled RAP to hire three additional staff (two Hearing Officers and one Program Analyst) and to engage in the following activities:

- Redesign of RAP website to improve access to information
- Creation of a web-based case management system
- Increased scheduling of appeals to four times per month
- Renewed contract with Centro Legal de la Raza for continuation of legal services to low-income tenants

While these efforts were positive steps, progress has been slow and incremental.

¹ Los Angeles report: Economic Roundtable, Economic Study of the Rent Stabilization Ordinance (RSO) and the Los Angeles Housing Market, 2009, available at the L.A. Housing Department web site; Berkeley report: Berkeley Rent Stabilization Board, Report on the April – May 2009 Survey of Tenants of Registered Rental Units, March 15, 2010, available on the Berkeley Rent Stabilization Program web site.

Level One Analysis: Increased Demands on the Rent Adjustment Program

1. **Increased volume of petitions:** Between 2014 and 2017, the number of petitions, citations, and Ellis Act filings increased by 33%. While the rate of filings slowed somewhat in FY 2017-18, the higher level of petitions over that period coupled with inadequate staffing levels, systems, and infrastructure resulted in a significant backlog across the numerous steps in the process: from intake and data entry to sending notices to all parties to hearings and through to appeals and citations. Appeals are currently running about 14% of appealable decisions, with some involving numerous tenants who may have different issues at play. As such, the appeals can involve varying levels of complexity that impacts the time to hear and decide on the cases. In order to keep up with appeals, the Rent Board and Appeal Panels are meeting weekly.

Due to insufficient staff resources, outdated regulations, and lack of adequate technology the ensuing delays include:

- Parties are waiting three to four months before a petition is processed.
- Parties are waiting five to six months to have their case heard before a hearing officer.
- Rendering of hearing decisions range from a low of three months to as much as six months for more complicated cases.
- Appeals are waiting four to six months to get placed on a Board or Appeal Panel agenda, with the full life cycle of some appeals running as long as nine to 12 months.

Additionally, the inability to conduct work in a timely manner has resulted in an average of 56 appeals remaining pending at the end of a fiscal year, which then gets compounded by new appeals being generated with each new year.

2. **New Regulations and Procedures:** The following reflects the changes that are placing additional demands on staff time to set up systems, implement, track, and monitor:
 - Measure JJ
 - Extended Just Cause to buildings built before Dec. 31, 1995, expanding the number of covered units.
 - Property owners must petition for rent increases above CPI or banking.
 - Annual notice to tenants and owners
 - Uniform Relocation Ordinance (owner move-in relocation requirement) has created the need for monitoring and reporting, as well as addressing public inquiries.
 - Just Cause Certifications
 - Monitoring no-fault evictions
 - Certification forms needed
 - Tenant Move Out Agreement Ordinance creates new filings, as well as tracking and monitoring responsibilities.
 - Measure Y expanded the number of units covered by the Just Cause ordinance.

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- The Mandatory Seismic Retrofit Ordinance will create an increase in capital improvement petitions.²

3. **Programmatic and Systems Improvements Needed:** The new measures outlined above call for RAP to adopt a more robust programmatic model. Because of limited staffing and technological resources, RAP has been unable to build out and improve its internal infrastructure in the following areas: a) operating systems, including compliance, b) public information and outreach, and 3) data collection and analysis. The following describes each area, all of which would be addressed through the staffing and direct costs proposed in the new fee structure.

- a) Operating system improvements are needed to reduce paperwork, improve timeliness and accuracy, and ensure that staff works at highest and best use levels. In addition, systems are needed to conduct consistent compliance activities that ensure the intent of all laws is being met, that all parties are held accountable, and citations and fines are levied appropriately.
- b) Enhanced outreach, education and support to tenants and property owners is needed to ensure that the public understands their rights and responsibilities under the law, the options available to address issues/problems, and that there are resources to tap for legal consultation and/or representation. Enhancing these activities is expected to result in a decrease in petitions, an improvement in the quality of petitions, and more effective visits at RAP drop-in clinics. These new activities (described in detail in **Attachment B: Public Information and Outreach Plan**) would include:
 - i. Increased drop-in hours for both tenants and property owners³.
 - ii. Informational workshops and seminars.
 - iii. Updated and more user-friendly public information materials.
 - iv. Enhanced website that is user-friendly, offers relevant information on key issues and needs, and is regularly updated, including providing online publication of annual report.
 - v. Annual notifications to landlords and tenants regarding rent ceiling information.
 - vi. Topical informational postcards mailed to property owners and tenants regarding their rights and responsibilities.
 - vii. Creating a mediation program and other alternative conflict resolution procedures.

² In San Francisco, upon implementation of a mandatory seismic retrofit ordinance, there was a 22% increase in capital improvement petitions at the start of the compliance period, and a 43% increase two years later when completion dates become due.

³ RAP has just selected Housing and Economic Rights Advocates (HERA) to administer a small property owner legal services, outreach, and public information program. They were selected pursuant to a Request for Qualifications process conducted in the Fall of 2018 and began work in March 2019.

- c) Database and systems improvements needed include:
- i. Building out the database to add features that streamline the processing of cases, such as uploading of case documents, enhanced search capabilities, and a tickler and notification system.
 - ii. Improving database external-facing functions to create improved interactivity and so petitioners have easier access to information.
 - iii. Creating a client management system to ensure quality and accuracy of information provided, enable holistic delivery of services, and track common issues enhancing data collection and inform future public outreach campaigns.
 - iv. Creating a system to track and monitor rents, such as a rent registry which will also facilitate RAP's tenant notification requirement (noted in 3.b.v. above).
 - v. Ensuring data can be delivered easily to the public upon request and that data collection facilitates analyses that assist the general public, the Rent Board, and the City Council in understanding the impact of RAP, surface trends and patterns, and inform policy discussions and decisions.

Level Two Analysis: Reorganization of Rent Adjustment Program Responsibilities to Facilitate Shift to Active Enforcement

As noted above, newly adopted rent measures demonstrate a mandate to move toward active enforcement of the local laws. To accomplish this and to address all of the issues described above, RAP is reorganizing its activities under the leadership of a new Program Manager. This reorganization creates three divisions within the unit:

- The Hearings Division to address petitions (including eliminating the backlog), elevate the use of mediation to resolve disputes when possible, and ensure timely rendering of decisions.
- The Public Information, Outreach, and Enforcement Division will carry out the enhanced activities described above and detailed in ***Attachment B***.
- The Administration and Policy Division which will manage the Rent Board, as well as oversee data collection and analysis, budget management and other administrative, policy, and managerial functions.

Table 1 provides an overview of these divisions and a brief description of the activities each will carry out.

Table 1. RAP Divisions and Areas of Activity

Division	Activity Description
Hearings Division	<ul style="list-style-type: none"> • Conducts hearings and prepares hearing decisions • Conducts mediations of owner/tenant disputes (separate and independent of the petition process) • Analyzes and recommends regulatory amendments to City Attorney based on hearing trends and changes in the law
Public Info, Outreach, and Enforcement	<ul style="list-style-type: none"> • Delivers informational services to the public through drop-in clinics and responding to phone calls and emails • Prepares, updates, and distributes public information materials • Makes presentations at workshops, seminars, and other public events • Attends community-based civic events to answer questions related to landlord and tenant issues and to distribute information on RAP • Provides topical informational postcards to owners and tenants • Monitors rent ceilings and sends annual mailing to owners and tenants • Processes citations for violations of the Rent Adjustment Program Ordinance and the Just Cause for Eviction Ordinance • Monitors Ellis Act compliance • Monitors and enforces the Tenant Protection Ordinance • Monitors and enforces the Tenant Move-Out Ordinance • Monitors and enforces the Uniform Relocation Ordinance • Coordinates with Finance Department's Revenue and Taxation Bureau to field public inquiries concerning exemptions, fees, and increases compliance monitoring
Admin & Policy	<ul style="list-style-type: none"> • Manages the Rent Board, including appeals and policy matters • Manages database, data collection and analysis • Manages RAP webpage and prepares annual report • Tracking and monitoring of rents and rent increases • Administration of contracts, billings, invoicing • Budget management • Coordinates with Revenue and Taxation Division • Coordinates with City Attorney's Office

Program Cost Categories

The RAP budget has four key cost categories: 1) Staffing, 2) Operations & Maintenance (O & M), 3) Third Party Consultants, and 4) Technology. The following section describes each cost category.

1. **Staffing:** There are four categories of staff assigned to RAP work:
 - a. RAP staff: a unit within HCD, RAP staff are 100% dedicated to RAP activities.

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- b. HCD staff: a small percentage of FTE provides oversight, support, and hands-on assistance to the RAP unit. These include the Director, Deputy Director, Fiscal Manager, and Business Analyst.
- c. City Attorney's Office: Staff from the City Attorney's Office engage directly in RAP activities including, but not limited to, providing guidance on decisions, advising on policy matters, supporting the Rent Board, responding to legal inquiries from RAP staff, assisting in training of Board and staff, and crafting resolutions and policy memos.
- d. City staff: The Finance Department's Revenue and Taxation Bureau supports RAP fee collection and billing for delinquencies, as well as fields questions. Additionally, Finance staff provide budget management oversight and assistance.

Table 2 provides a breakdown of the current RAP staff positions as well as those proposed to address the increased demands and to meet the pressing needs described earlier in this report.

Table 2. Current and Proposed Staff Positions

Personnel	Current FTE	Proposed FTE	Additional FTE
RAP Staff			
Program Manager	1	1	0
Sr. Hearing Officer	1	1	0
Hearing Officers	5	6	+1
Program Analysts	6	8	+2
Administrative Assistants	3	5	+2
Ass. Program Manager	0	1	+1
Home Mgmt Specialists	0	2	+2
Legal Admin. Assistants	0	3	+3
Total RAP Staff	16	27	+11

Table 3 describes the activities to be carried out by the additional proposed staff positions above.

Table 3. Description of Proposed New Staff Positions

Hearing Officer (1)	The Hearing Officer will conduct hearings that serve to both reduce backlog and prevent future backlog on cases being heard and decisions rendered. They will also make recommendations for regulation and ordinance changes geared to help the program run more efficiently and ensure consistency in hearing decisions.
Program Analysts (2)	<ul style="list-style-type: none"> • One new Program Analyst will work on improving and managing operational systems, database improvements, data collection and data analysis for both internal staff uses and external purposes, preparing the Annual Report and responding to public information requests. This position will assist with contract monitoring and supporting the Rent Board. • One new Program Analyst will work on building out a robust outreach and public information function that will include updating public-facing informational materials, creating monthly fact sheets on topical areas as well as a newsletter, utilizing social media, and coordinating outreach events.
Home Management Specialists (2)	The two new Home Management Specialists will carry out the new Public Outreach and Education activities described in Attachment B .
Administrative and Legal Assistants (5)	<ul style="list-style-type: none"> • Three new Legal Administrative Assistants will be tied to the Hearings division and ensure that all of the case file paperwork is properly handled, that mailings are conducted on time, and that parties to petitions have the information they need to participate in hearings in an informed manner. • Two new Administrative Assistants will support the enforcement activities of the program, assisting with data entry and mailings associated with tracking and monitoring of rents and rent increases.
Assistant Program Manager (1)	The Assistant Program Manager will assist in the general management of the program, specifically focused on supervising implementation of the robust public information and outreach and enhanced enforcement activities.

2. **O & M:** These costs consist of direct administrative costs such as printing, office supplies, postage, equipment, staff training, and facilities.
3. **Third Party Consultants:** Currently there are two third party contracts in place:

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- a. **Low Income Tenant Legal Services:** Currently this contract is held by Centro Legal de la Raza. These services provide legal consultation and representation for low-income tenants related to the rent adjustment and tenant protection ordinances. An RFP will be issued in April 2019 that will revisit the scope for this work, ensure it is aligned and integrated with the City's anti-displacement activities, and will create a competitive process for selecting the provider of the services to ensure the City is getting the best suited and priced service.
 - b. **Small Property Owner Legal Services:** A contract for these services was just awarded to Housing and Economic Rights Advocates (HERA) pursuant to a Request for Qualifications process held in the Fall of 2018 and they began work in March 2019. HERA's scope will include public information and outreach, education, and one-on-one legal assistance services to small property owners.
4. **Technology:** The first phase of technology improvements were funded with General Fund resources in the amount of \$365,000 and resulted in a baseline case management system for petitions that needs additional features to enhance its capacity such as the ability to upload documents to reduce or eliminate the use of paper when filing a petition and moving through the hearing and appeal processes and improved search and filtering functions.

Proposed Budget

The cost to carry out these activities at the optimal level identified above is \$8,087,443 for 2019-2020. Table 4 presents the proposed budget.

Table 4. Proposed Budget for 2019 – 20

	2019 - 20 Proposed Budget
Personnel	
City	\$ 533,422
HCD (RAP + non-RAP staff)	\$ 5,429,592
City Attorney	\$ 1,249,429
O&M and Facilities	\$ 400,000
Third Party Contracts	\$ 400,000
Technology ⁴	\$ 75,000
TOTAL	\$ 8,087,443

⁴ The first phase of technology improvements were funded with an allocation of \$365,000 from the General Fund.

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Units Covered and Revenue

The adoption of the \$68 fee was based on an estimate of 70,000 rental units covered by both Rent Adjustment and Just Cause or Just Cause only. Since that time, the passage of Measure JJ and Measure Y have added approximately 10,000 covered units for a total of 80,000 units. Based on the total cost to operate the program described in this report and meet the outcomes presented, the per unit fee would need to increase to \$101.00 per unit.

How the Proposed Fee Increase Will Impact the Level of Service to Oakland Residents and Property Owners

Table 5 provides an overview of the improvements to the level of service customers will experience as a result of the fee increase.

Table 5. Comparison of Level of Service by RAP Service Activity

RAP Service Activity	Current Level of Service	New Level of Service
Processing of petitions, scheduling hearings and appeals, and rendering decisions.	<ul style="list-style-type: none"> • Three to four months before a petition is processed. • Five to six months to have their case heard before a hearing officer. • Three months to six months for rendering a hearing decision. • Four to six months for an appeal to get placed on a Board or Appeal Panel agenda. • Full life cycle of some appeals running nine to twelve months. 	<ul style="list-style-type: none"> • Processing petitions within one week of receipt of petition. • Hearings on petition will occur within two months of filing. • Hearing decision rendered within two months of hearing. • Appeal placed on Board Agenda within two months of the filing of the appeal. • Appeal decision rendered within two months of the filing of the appeal. • Full life cycle of appeals reduced to a maximum of four months
Outreach and public information		
Seminars and workshops	None in 2018; prior years one to two per year.	Nine to 10 per year
Community outreach events	Three to four per year	13-14 per year
Drop-in hours	14 hours per week	30 hours per week

RAP Service Activity	Current Level of Service	New Level of Service
Public information materials	Updated sporadically, not user-friendly	Create 16 topical information sheets, four informational postcards mailed to landlords and tenants, the creation of a Guide to Rent Control in Oakland, update landlord information packet, update tenant information packet
Mailings	None	Twice a year to all tenants and property owners indicating the unit's lawful rent ceilings.
Legal services	No landlord services	Adds \$50,000 contract for landlord legal services
Response time on public inquiries	Complaints from the public have referenced calls unreturned and waiting on hold for more than five minutes.	No more than 48 hours. A dedicated receptionist will handle all calls for an immediate initial response.
Mediation Program to resolve disputes more quickly	None	20 - 30 per month
Monitoring of covered units pertaining to fee collection, exemptions, and rental rates	No monitoring of fee collection or rental rates. Exemption inquiries handled case by case and can take up to two weeks to resolve due to lack of staff.	Proactive inspections of properties claiming an exemption, monitor and maintain data on the lawful rent ceiling for all covered units, creation of a mechanism for tenants to affirmatively challenge exemption status.
Compliance monitoring	None	Proactive enforcement of citation violations including board initiated compliance hearings.
Collection, analysis and distribution of data	Limited capacity; on a case-by-case basis.	Generate reports on evictions, anti-displacement, and trends in rental rates and compliance.

Alternatives

- Reduce number of new staff positions proposed: The key cost component that escalates the fee are the additional 11 staff positions identified in **Table 3**. To lower the fee, positions could need to be eliminated. The following are several categories of fee increase-funded positions and the impact of eliminating them:
 - Elimination or reduction of administrative support to the Hearings Division would limit the ability to achieve timeliness in processing petitions and scheduling hearings and appeals.

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- Elimination of a Program Analyst, Assistant Program Manager, and/or the Home Management Specialists, would slow the pace and impact an enhanced public information and outreach model designed to facilitate a reduction in petitions, improved petition quality, and create a more informed public.
 - Elimination of staffing to handle enforcement would dilute efforts to ensure compliance and maximize fee collection. It would make it difficult to ensure that the intent of legislation the City Council and the voters approve can be effectively implemented.
- Retain current fee at \$68 per unit for all units: By retaining the current fee, the current level of service, including the backlogs and delays would remain as status quo. Incremental improvements would be possible over time; however, it could take several years to see material improvements.

PUBLIC OUTREACH

The proposal to increase the RAP fee was discussed with both tenant and property owner stakeholders over the course of one-on-one and group meetings in February and March 2019.

FISCAL IMPACT

Adoption of the Ordinance presented with this March 19, 2019 Agenda Report to the Finance and Management Committee will increase the Rent Adjustment Program Fee, generating an increase in revenue of \$2,647,443 which will be used to hire additional staff as described in **Table 2** and pay for operating expenses, as outlined in **Table 4**.

COORDINATION

This report was prepared in coordination with the Finance Department and the City Attorney's Office.

SUSTAINABLE OPPORTUNITIES

Economic: Stable rents and housing stability improve low income tenants' economic well-being. Improved program functioning and increased education on how the laws are implemented will facilitate owners' ability to ensure that their property(ies) and future investments are protected.

Environmental: Improving owners' and tenants' knowledge of the Rent Adjustment Ordinance can mitigate adverse environmental impacts resulting from existing rental housing and encourage cohesion and vested interest of owners and tenants in established neighborhoods.

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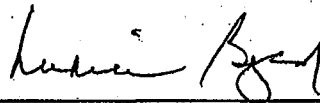
Social Equity: Heightened awareness of the program, education regarding owner and tenant rights under the program, and improved program performance will ensure that owners' and tenants' rights are protected and that there is equal access to exercising those rights.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Approve An Ordinance Amending Ordinance No. 13497 C.M.S. (The 2018-19 Master Fee Schedule) To Increase The Rent Adjustment Program Service Fee From \$68.00 Per Unit To \$101.00 Per Unit.

For questions regarding this report, please contact Maryann Leshin, Deputy Director, Housing and Community Development Department at (510) 238-6225 or Chanee Franklin Minor, Manager, Rent Adjustment Program at (510) 238-3262.

Respectfully submitted,



Michele Byrd, Director
Housing and Community Development Department

Attachments (2)

- A: Progress in Addressing RAP Audit Findings
- B: Public Information and Outreach Plan

Item: _____
Finance & Management Committee
March 19, 2019

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Attachment A: Status of RAP Audit Findings

	Audit Findings	Current Audit Standing and Action Plan	Fee Increase Impact
1	<ul style="list-style-type: none"> • Increase the number of Rent Board alternates to provide sufficient volunteer Board members. • Attendance records should be provided to the Mayor on a semiannual basis. 	Closed.	N/A
2	<p>Board Training:</p> <ul style="list-style-type: none"> • Develop a training program that extends over the course of a year, with sessions held during Board meetings. • Track progress and send information on attendance to Mayor 	<p>Open.</p> <p>The following, should be completed by May/June 2019:</p> <ul style="list-style-type: none"> • Board manual • Training modules and schedule • Re-establishment of Board Policy Committee 	Fee increase would fund staff positions to carry out these activities on an ongoing basis.
3	<p>Develop a Communication Strategy for accessing Rent Board materials online for differing users.</p> <ul style="list-style-type: none"> • Packets should be scanned and uploaded to website. • Provide interested parties with information in advance of the meeting. 	<p>Open.</p> <p>The scaling back of mailed packets by May/June 2019.</p> <p>Explore use of new technology (ie: tablets).</p>	Can take place with current fee.
4	Case & Appeal Decisions should be posted on website and/or electronic portal.	Closed.	

Attachment A: Status of RAP Audit Findings

	Audit Findings	Current Audit Standing and Action Plan	Fee Increase Impact
5	<p>Address resource needs through temporary staffing and planning for new permanent positions.</p> <ul style="list-style-type: none"> • Review workflow processes for efficiencies; update policies and procedures • Determine appropriate staffing levels • Implement a formal and routine quality assurance program. • Hearing Officers should not conduct onsite inspections or properties. • Work with City Attorney's Office to propose changes to RAP Ordinance to create efficiencies. 	<p>Open.</p> <p>The following should be pursued:</p> <ul style="list-style-type: none"> • Improved case management system • Streamlining procedures • Increase use of mediation • Analyze staffing needs and propose fee increase accordingly 	<p>Fee increase will cover the cost of enhanced case management system, staff to revise/update procedures; implement a robust mediation program.</p> <p>This Agenda Report presents the results of staff's analysis of staffing needs.</p>
6	<p>Improve case management system; track cases, store records electronically (to reduce paperwork), produce performance metrics and trend analysis, and facilitate regular reporting on RAP activities.</p>	<p>Open.</p> <p>Database improvements needed, including rent tracking.</p>	<p>Fee increase would cover ongoing database maintenance along with the staff time to set up and manage the systems that will facilitate smoother operations, reduction of paperwork, generation of performance metrics data/policy analyses, and regular and timely reporting.</p>

Attachment A: Status of RAP Audit Findings

	Audit Findings	Current Audit Standing and Action Plan	Fee Increase Impact
7	Formulate a public outreach and communication plan.	Open. Initiation of Communication and Outreach Plan (see Attachment B) and preparation of public information materials by March 2019.	Fee increase would cover staff time to create these materials, update them on an ongoing basis, and implement the Communication and Outreach Plan. It would also cover cost of printing and mailings.
8	Design dedicated, professional space for hearing and other public RAP business	Open. Implementation has been held up by lack of budget authority to carry out. Timing for addressing TBD.	Staff propose to use RAP fund balance of approximately \$1,000,000 to fund the implementation of space improvements called for in this audit funding.
9	Validate that all covered properties are being assessed.	Closed.	
10	Develop and monitor the RAP budget	Open. Preparation of Annual Report and RAP budget analysis by March 2019.	This is being carried out with current fee.



ATTACHMENT B

STAFF COMMUNICATION AND OUTREACH WORK PLAN 2019
 GOAL: DEVELOP SOCIAL MEDIA STRATEGY, ENHANCE PUBLIC FACING MATERIALS, AND EXPONENTIALLY INCREASE OUTREACH

MEDIA	PURPOSE/DETAIL	DRAFT PRODUCTION PREPARATION START DATE	FINAL DUE DATE	PUBLICATION OR EVENT DATE
PRINT MEDIA				
Annual Report	Fiscal Year (FY) Budget and RAP Outcomes, mission, policy, services, standard format	Nov	March	April
Newsletter	Trends and policy changes, services	July	September	October
Informational Postcards	Rent Increases (Landlords)	March	April	May
	Habitability (Tenants)	August	September	October
	Seismic Retrofit Ord (Landlords)			
Guide to Rent Control	Rent Control and Eviction Protection Information	October	March	April
New Tenant Checklist	Checklist for New Tenants	March		May
Tenant Packet	Tenant Rights and Responsibilities	March		May
Landlord Packet	Landlord Rights and Responsibilities	March		May
Magnet	RAP Information	March		May
ELECTRONIC MEDIA				
Social Media	Create Program Facebook Page	July		September
CP Posted	Post on program website	July		July
Press Releases	Issue Specific			
Info Sheets	Security Deposits	Jan		May
	Eviction/Ownership	Jan		May
	Just Cause for Evictions	Jan		May
	Subletting	Jan		May
	Guide to the Ellis Act	Jan		May
	Owner Move-In Evictions	Jan		May

MEDIA	PURPOSE/DETAIL	DRAFT PRODUCTION PREPARATION START DATE	FINAL DUE DATE	PUBLICATION OR EVENT DATE
	Uniform Reconciliation of Finance	Jan		Mar
	Tenant Rights and Responsibilities	Jan		Mar
	Landlord Rights and Responsibilities	Jan		Mar
	Costa-Hawkins State Law	Jan		Mar
	Move-In/Move-Out Checklist for Tenants and Landlords	Jan		Mar
	Measure Y	Feb		Mar
	Notice of Rent Increase Template	Jan		Mar
	RAV Fee Pass Through Information	Jan		Mar
	Lease Breaking	Jan		Mar
	Landlord and Tenant Resources	Jan		Mar
	Small Property Owners Seminar Owner Occupied Duplex/Triplex	Feb		Mar
In House Seminars	Landlord 101	March		April
	Tenant Rights	May		June
	Landlord and Tenant Rights and Responsibilities - Security Deposits	September		October
Workshops	Tenant Rights Workshop	April		May
	Small Property Owners Workshop	May		June
	Workshops for Oakland - A Workshop for Oakland Property Owners	June		July
	Tenant Rights Workshop	August		September
	Small Property Owners Workshop	August		September
	Tenant Rights Workshop (Spanish)	September		October
Outreach Events	Chinatown Lunar New Year Bazaar			1/26/2019
	Bike to Work Day			5/10/2019
	Temescal Street Fair			6/9/2019
	Juneenth Celebration			6/23/2019
	Oakland Art and Soul Festival			7/27/2019
	National Night Out			8/6/2019

MEDIA	PURPOSE/DETAIL	DRAFT PRODUCTION PREPARATION START DATE	FINAL DUE DATE	PUBLICATION OR EVENT DATE
	Laurel Street Fair			8/10/2019
	Chinatown Street Festival			8/24/2019
	Oakland Pride Festival			9/8/2019
	Rockridge Out and About			9/15/2019
	OaktoberFest in the Diamond			9/29/2019
	East Bay Rental Housing Ass: Fair			TBD
	Diá de Los Muertos: Festival			11/3/2019
				TBD
				TBD

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Kent Cian
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 13497 C.M.S. (THE 2018-19 MASTER FEE SCHEDULE) TO INCREASE THE RENT ADJUSTMENT PROGRAM SERVICE FEE FROM \$68.00 PER UNIT TO \$101.00 PER UNIT.

WHEREAS, the City of Oakland periodically amends its Master Fee Schedule to account for the cost increases relating to municipal programs, services, and activities; and

WHEREAS, in the Fiscal Year (FY) 2001-2002, the City Council established the Rent Adjustment Service Fee (the Fee) to fund the Rent Adjustment Program (RAP); and

WHEREAS, City staff undertook an analysis and evaluation of the revenue requirements to fund RAP's ongoing services, programs, and activities as well as ensure that the program is operating efficiently, accurately, and in a proactive manner regarding compliance and data, and the fee structure necessary to proportionately allocate the costs of providing these government services and program; and

WHEREAS, the agenda report provided by staff in support of the amendment of this Ordinance was prepared and includes the proposed fee and documentation supporting the estimated and reasonable costs to provide the services in a manner that ensures full compliance with the laws governing RAP; and

WHEREAS, the investigations conducted by staff reflected in the agenda report show that existing revenues are and will be insufficient to cover the current and projected costs of operating and maintaining identified City government programs, services, and activities; and

WHEREAS, the fee modifications and additions proposed by RAP, and the facts and analysis in support thereof, are identified in the agenda report; and

WHEREAS, the agenda report shows that revenues derived from the proposed fees will not exceed the funds required to provide the related government programs, services, and activities; and

WHEREAS, the agenda report shows that the amounts of the proposed fees and charges will not exceed the proportional cost of service provided or benefit attributable to each fee payer; and

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WHEREAS, the agenda report shows that the proposed fees for a product, benefit or service are imposed for a specific government service, benefit or product provided directly to the payer that is not provided to those not charged and does not exceed the reasonable costs to the City of providing the services, benefit, or product; and

WHEREAS, the City Council finds that based on the significant increase in petitions and the new laws and regulations recently adopted there is good cause for raising the RAP service fee from \$68 to \$104 per unit, thereby enabling RAP to meet its responsibilities; and

WHEREAS, this action is exempt under the California Environmental Quality Act ("CEQA") pursuant to, but not limited to the following CEQA guidelines: Section 15378 (regulatory actions), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning; and

WHEREAS, based upon all written reports and presentations to the City Council, including the agenda report and each of the Attachments thereto, the City Council finds and determines that the proposed modification to the RAP fee set forth herein is necessary to reimburse the City for the costs of performing various municipal and regulatory functions, and that this fee does not exceed the proportional cost of the service or benefit attributable to the fee payer); and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines that the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City Council.

SECTION 2. The Master Fee Schedule for the Housing and Community Development Department: Residential Rent Adjustment Section at (B), as set forth in Ordinance Number 13497 C.M.S., is hereby amended as follows to increase the Rent Program Service Fee from \$68 to \$104 per unit (additional are shown as double underline and deletions are shown as ~~strikethrough~~):

**RESIDENTIAL RENT ADJUSTMENT
B. RENT PROGRAM SERVICE FEE**

	CURRENT FEE (FY 2018-2019)	PROPOSED FEE (FY 2019-2020) and thereafter
1 Annual Service Fee per Unit (Fees are due January 1 and delinquent March 1)	\$68.00	<u>\$101.00</u>
2 If paid within 30 days late, add 10% late fee. In addition, add simple interest of 1% of the balance owed (Fee + late charges) per month or fraction of a month late	\$68.00 + 10% Unit	<u>\$101.00</u> + 10% Unit
3 If paid within 60 days late, add 25%	\$68.00 + 25% Unit	<u>\$101.00</u> + 25% Unit
4 If paid after 60 days late, add 50% <u>In addition, add simple interest of 1% of the balance owed (Fee + late charges) per month or fraction of a month late</u>	\$68.00 + 50% Unit	<u>\$101.00</u> + 50% Unit

5 Petition Fee per Unit

\$68.00

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. Effective Date. This Ordinance take effect seven (7) days after final adoption, unless it has been passed with six (6) votes, in which case it takes effect immediately upon adoption. The amended Fee amount will apply to those fees first due July 1, 2019 and thereafter.

SECTION 5. This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning).

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the City of
Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING ORDINANCE NO. 13497 C.M.S. (THE 2017-18 MASTER FEE SCHEDULE) TO INCREASE THE RENT ADJUSTMENT PROGRAM SERVICE FEE FROM \$68.00 PER UNIT TO \$101.00 PER UNIT.

This Ordinance amends the City of Oakland's Master Fee Schedule to increase the Rent Program Service Fee from \$68 per unit to \$101 per unit.



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2019 MAR 14 AM 10: 26

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Michele Byrd
Director, HCDD

SUBJECT: Rent Adjustment Program Annual
Report: 2014-15 Through 2017-18

DATE: February 20, 2019

City Administrator Approval

Date:

3/19/19

RECOMMENDATION

Staff Recommends That The City Council Receive: The Annual Report Of The Rent Adjustment Program For Fiscal Years 2014-15, 2015-16, 2016-17, And 2017-18.

EXECUTIVE SUMMARY

The preparation of an Annual Report to the City Council regarding the status of the Rent Adjustment Program is mandated in O.M.C. Section 8.22.050.A, with required components identified pursuant to Measure JJ, approved by the voters in November 2016. While the Annual Report for FY 2014-15 and 2015-16 was prepared in draft form just prior to the retirement of the Rent Adjustment Program (RAP) Manager in November 2017, completion was delayed in part due to the loss of this leadership position, combined with the impact of an ongoing backlog of petitions and appeals requiring immediate attention. A new RAP Manager was hired in October 2018, creating the capacity to complete this report and bring it current to the most recent completed fiscal year.

Highlights and key challenges during this four-year period include:

Highlights

- The rate of petitions increased dramatically from 2014 through 2017.
- The RAP fee was increased from \$30 to \$68 per unit in 2016.
- Measure JJ was passed by the voters in November 2016.
- A new case management database was developed in 2017.

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- The substantial rehabilitation exemption was subject to a moratorium from October 2017 through the close of this reporting period. In September 2018, the City Council voted to eliminate the exemption.
- A Tenant Move-Out Agreement Ordinance was adopted in March 2018.
- The City Auditor's office conducted an audit of RAP which was released in June 2016. The audit included 10 findings with accompanying recommendations for how to address them.

Key Challenges

- Backlogs and resulting delays were endemic during the reporting period in the following areas:
 - Processing petitions
 - Scheduling hearings and appeals
 - Returning phone calls, emails, and other client inquiries
 - Mailing appeals decisions
 - Responding to Public Records Act Requests
 - Complying with Rent Program's mandate to store and collect data concerning eviction notices
- The fee increase adopted in 2016 enabled RAP to cover all existing costs at that time as well as add three positions, and commence development of a database; however, the increase has not been adequate to provide for sufficient staffing to address backlogs.
- The development of the database has been a critical improvement for program functionality, however additional features are needed to increase efficiency and improve public access.
- Collection and analysis of data on evictions; owner move-in's, and other areas has been stymied by lack of staff resources and database limitations.

BACKGROUND/LEGISLATIVE HISTORY

The Oakland City Council first adopted a Residential Rent Adjustment Program in 1980 by Ordinance. The Ordinance has been modified several times since. The current version of the Ordinance became effective February 2002 with significant amendments adopted in August 2014 and February 2017. The Rent Adjustment Ordinance is codified as OMC Chapter 8.22, Article I. The Residential Rent Board adopts regulations that govern the operation of the Residential Rent Adjustment Program.

On November 5, 2002, the voters of Oakland adopted the Just Cause for Eviction Ordinance (Measure EE). The Ordinance was amended in November 2016 by Measure JJ, and in

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November 2018 by Measure Y. The Just Cause for Eviction Ordinance is codified as OMC Chapter 8.22, Article II.

Below is a brief description of these ordinances and RAP's engagement in them, as well as additional ordinances RAP has oversight of:

- **Rent Adjustment Ordinance and Regulations.** The RAP Ordinance and Regulations set the rates of annual rent increases, provide mechanisms for landlords to increase rents above the annual rate in specific circumstances, establish criteria for exemptions, and authorize adjudication of tenant-landlord disputes that arise under the ordinance. Additionally, the Ordinance mandates the establishment of the Rent Adjustment Program with the stated purpose of protecting tenants from unlawful rent increases and evictions while encouraging investment in residential rental properties in the City.
- **Just Cause for Eviction Ordinance and Regulations.** The Just Cause for Eviction Ordinance prohibits property owners from terminating a tenancy without good or just cause. RAP informs the public on their rights and responsibilities under the Ordinance. Additionally, RAP tracks and enforces owner filings and compliance requirements under the Just Cause for Eviction Ordinance and Regulations.
- **Uniform Residential Tenant Relocation Ordinance.** This ordinance, passed in January 2018, creates a uniform schedule of relocation payments which now extends to tenants evicted when the owner or a qualifying relative moves into the unit, and also when a tenant must move out to facilitate repair work. RAP leads the public information campaign to inform Oakland residents of their rights and responsibilities under the Ordinance.
- **Tenant Protection Ordinance.** This ordinance provides tenants legal recourse if they are harassed by their landlord. The ordinance provides civil remedies for violations. RAP counsels the public on their rights and responsibilities under this Ordinance.
- **Tenant Move-Out Agreement Ordinance.** This ordinance defines the requirements for owners if they wish to offer a tenant compensation to vacate their rental unit. RAP tracks owner filings and compliance requirements under the Tenant Move-Out Agreement Ordinance.

In addition, RAP manages the petition, hearing and appeals processes, manages the Residential Rent Adjustment Board, provides information to individual property owners and tenants on a drop-in basis in the Housing Resource Center (HRC) as well as by telephone, conducts outreach at numerous community events and venues, and produces public information materials.

O.M.C. Section 8.22.250.A (**Attachment A**) specifies the requirements for the annual report to the City Council. This annual report is comprised of data and information for four fiscal years: July 1, 2014 through June 30, 2018. This report addresses O.M.C. Section 8.22.250.A, along with other information, and is divided into the following sections:

1. Policy
2. Public Contact and Outreach
3. Filings: Petitions and Appeals

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4. Evictions, Ellis Act, Tenant Move-Out Agreements, and Other Activities
5. Rent Board Activities, Meetings, and Attendance
6. Program Audit Response
7. Financial Reporting
8. Initiatives for 2018/2019 and Beyond

ANALYSIS AND POLICY ALTERNATIVES

1. Policy

The following policies related to rent adjustment, just cause for eviction, and related matters were adopted during the reporting period.

- a. **Measure JJ:** A November 2016 ballot initiative, Measure JJ was passed by the voters and expands the number of units covered by the Just Cause for Eviction Ordinance ("Just Cause") to those units built prior to December 31, 1995, and requires property owners to petition for rent increases above CPI and banking.
- b. **Substantial Rehab Moratorium and Elimination:** The substantial rehabilitation exemption from the Rent Adjustment Ordinance was subject to a moratorium from October 2017 through October 2018. (After the reporting period, in September 2018, the City Council voted to eliminate the exemption, as well as extend the moratorium until the earlier of April 2019 or the adoption of an ordinance to eliminate the exemption.)
- c. **Uniform Relocation Ordinance:** The City Council passed this ordinance in January 2018 to create a uniform schedule of relocation payments which now extends to tenants evicted when the owner or a qualifying relative moves into the unit, and also when a tenant must move out to facilitate repair work. It also applies to Ellis Act evictions. The set schedule adopted adjust annually (July 1st) in accordance with the CPI.
- d. **Tenant Move-Out Agreement Ordinance:** In March 2018, the City Council passed this ordinance which defines the requirements for owners if they wish to offer a tenant compensation to vacate their rental unit. RAP tracks owner filings and compliance requirements under the Tenant Move-Out Agreement Ordinance.

2. Public Contact and Outreach

RAP Staff Public Contact and Outreach

The Rent Adjustment Program (RAP) functions as a public information resource for Oakland tenants and property owners to obtain information about the laws within RAP's purview and the policies and procedures for implementing these laws. Public inquiries include questions about how the laws apply to individual situations, including issues such as rent increases,

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eviction notices, relocation benefits, security deposits, and processes mandated by state law.

RAP staff respond to inquiries primarily through "Drop-In" hours. As of June 30, 2018, RAP was open to the public 14 hours per week where residents come to the Housing Resource

Center (HRC) on a first-come, first-served basis. Drop-in hours were Mondays and Wednesdays from 9:00 – 12:00 noon and 2:00 – 4:00 pm, and on Tuesdays and Thursdays from 10:00 – 12:00 noon and 2:00 – 4:00 pm. RAP staff takes phone calls every day from 8:30 am – 5:00 pm. Starting in February 2019, RAP drop-in hours increased to 24.5 hours per week as follows: Mondays from 9:30 – 1:00 pm and Tuesdays through Thursdays from 9:30 am - 4:30 pm. Table 1 below details the amount of public contact during the reporting period.

Table 1. Public Contacts

Fiscal Year	Public Drop-In Visits	Phone Inquiries
2014-15	3,269	15,550
2015-16	4,088	17,220
2016-17	*	20,000**
2017-18	3,161	20,000**

* There is not an accurate count of drop-in visits for FY 2016-17

** The phone inquiries for the past two fiscal years are an estimate.

RAP staff also conducted outreach and provided information about RAP to the public at community events and workshops throughout the year. On average, RAP staff has been present at four public events and conducted three workshops or presentations per year between June 2014 and July 2018. **Attachment B** is a listing of staff outreach activities during the reporting period.

Public Contact, Outreach and Legal Services for Low-Income Tenants

RAP utilizes a third-party contractor to carry out legal services for low-income tenants. Pursuant to Resolution No. 84706 C.M.S., a contract effective July 1, 2013 was executed with Centro Legal de la Raza (CLR) to provide these services to tenants. The goals of the contract are to:

- Conduct outreach to tenants
- Provide legal consultation to tenants regarding RAP issues
- Provide legal representation and represent tenants in hearing and appeals before the Board

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In March 2014, CLR began conducting RAP clinics at the HRC and continue to do so every Monday. In October 2015, pursuant to Resolution No. 85843 C.M.S., additional funds were allocated to CLR to add clinics and to include services related to the Tenant

Protection Ordinance (TPO). CLR satisfactorily carried out its two-year term for this contract and had its three renewals exercised.

On July 10, 2018, the City Council approved an extension to the existing CLR contract for RAP and TPO services for a six-month period, expiring December 31, 2018. (Resolution No. 87266 C.M.S.).¹

Attachment C provides CLR's performance in meeting the goals set forth in their contractual agreements from 2014 through 2018. In summary, CLR has met or exceeded nearly all its goals. The provision of RAP legal services plays a valuable role in assisting tenants with low incomes who could not otherwise afford legal advice, counsel, or representation.

Public Contact, Outreach, and Legal Services for Small Owners of Rental Property

Obtaining a service provider to deliver outreach, education and legal services to property owners has been challenging. Two RFP processes, one in 2013 and another in 2016 were unsuccessful. In 2013, no proposals were submitted and in 2016 there was one proposer but the parties were unable to reach an agreement on contract terms.

On October 19, 2018, a Request for Qualifications (RFQ) for legal services, outreach, and public information for small owners of residential rental properties was released. Three proposals were received on the November 13, 2018 due date. Housing and Economic Rights Advocates (HERA) was selected as the City's contractor. Service delivery will commence in March 2019. The target audience for these services will be small owners of residential rental property (with 15 units or less), and the scope of services will include:

- Outreach and distribution of public information materials
- Workshops
- Counseling and technical assistance

¹ On December 11, 2018, the City Council extended the CLR work through June 30, 2019. Staff will be issuing a Request for Proposals (RFP) in April 2019 to ensure a competitive process in selecting the next legal services provider.

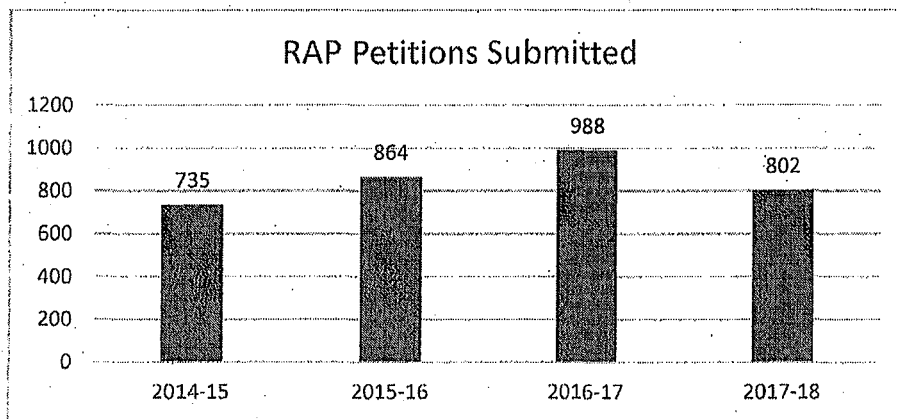
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3. Filings: Petitions and Appeals

Number of Petitions

Table 2 below depicts the number of petitions and applications filed during the reporting period. In FY 2014-15, the number increased by 33.3% (from 551 to 735). The number of petitions and applications filed in FY 2015-16 increased by 18% (from 735 to 864) and then by 14% in FY 2016-17 (from 864 to 988). The number of petitions filed in 2017-18 reflects a downward trend of 19% (from 988 to 802).

Table 2. RAP Petitions Submitted 2014-15 through 2017-18



Grounds for Petitions

Table 3 presents the grounds identified by property owner and tenant petitioners during the reporting period. Often, more than one claim is made on a single petition, therefore the total number of specific grounds is greater than the number of petitions filed.

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Table 3. Grounds for Petitions Filed

	2014-2015	2015-2016	2016-2017	2017-2018
Approval of Increase	11	17	43	93
Exemption	71	67	177	97
Costa Hawkins Violation	22	12	25	5
Decrease in Housing Services	349	373	377	252
Enhanced Notice Error	0	3	0	1
Exceeds 30% in 5 years	0	7	82	66
Exemption Based on Fraud or Mistake	0	4	62	26
Health, Safety, Code Violations			289	205
Incorrect Rent Increase			2	85
No Concurrent RAP Notice	185	291	289	204
No Ground Selected			0	4
No Pre-Approval of Increase			12	90
No RAP Notice at Inception or 6 months Prior	228	310	300	224
No Rent Reduction after Cap Improvement Increase	0	1	20	12
No Summary Provided	103	83	111	44
Rent Increase Exceeds CPI or more than 10%	455	552	517	303
Rent Increase Violates State Law			10	91
Second Increase in 12 months	81	133	92	72
Extension of Time	4	2		

The most common grounds for petitions throughout the four-year reporting period were for rent increases exceeding the CPI and decreased housing services. With the passage of Measure JJ in 2016, the burden was shifted to the property owner to request a rent increase greater than the annual CPI or banked increases. While the initial year following this requirement resulted in an uptick in petitions with this ground cited, the following year experienced a modest decrease.

Decreased housing services is based on a tenant's claim that there is a loss of services that the property owner is obligated to provide by law or by the terms of the lease. While RAP does not collect data at present on types of "lost" or "decreased" services, staff finds that the most common are: rodent and insect infestation, water intrusion from roof or windows; in operable appliances; deteriorated carpet or flooring; need for painting; and mold issues.

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The most common ground for a property owner to petition RAP is the request for an exemption, with 2016-17 reflecting the height of this type of activity. The subsequent decrease is primarily a function of the moratorium on substantial rehab exemptions.

Processing Petitions

During FYs 2014-15 and 2015-16, the timeframe to process a petition was approximately four months. However, following three years of steady increase in petitions the entire lifecycle of a petition, including an appeal getting to the Rent Board, is presently averaging nine to 12 months, as follows:

- Three to four months before a petition is processed.
- Five to six months to have a case heard before a Hearing Officer.
- Rendering of hearing decisions are taking three months to complete; sometimes up to six months for more complicated cases.
- Appeals are waiting four to six months to get placed on a Rent Board meeting agenda, due to lack of quorum – some appeals are taking up to one year to resolve.
- Mailing delays of up to six months after a decision has been rendered on a case

Table 4 shows the number of cases resolved and as well as pending cases and appeals.

Table 4. Cases Resolved, Cases Pending, and Appeals Pending

Fiscal Year	Cases Resolved	Pending Cases	Pending Appeals
2014-15	606	129	39
2015-16	683	136	44
2016-17	860	128	84
2017-18	717	85	57

Tables 5 shows how the cases were resolved during the reporting period.

Table 5. Resolution of Cases

Final Decisions	Number			
	2014-15	2015-16	2016-17	2017-18
Hearing Decision	220	314	350	337
Administrative Decision	66	55	127	67
Appeal Decision	57	52	52	63
Involuntary Dismissal	73	88	111	93
Remand Decision	4	7	0	18
Settlement Agreement	56	63	32	15
Voluntary Dismissal	108	101	153	135
Admin Appeal Decision	22	3	73	23
TOTAL	606	683	860	717

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Appeals to the Rent Board

Historically, only a small number of appeals remained pending at the end of the fiscal year. However, one of the consequences of the increase in petitions has been a backlog of appeal cases. The Rent Board has typically heard appeals on the second and fourth Thursday of each month, however this meeting schedule was not sufficient to address the backlog. As a result, Appeal Panels were formed in 2016² comprised of three Board members: one tenant, one property owner, and one neutral member. Initially, staffing constraints made it difficult to prepare the packets for the Appeal Panels, so few were held. Starting in 2017, after the RAP fee was increased from \$30 per unit to \$68 per unit, increased staff capacity facilitated the operation of the Appeal Panels. At present, there are typically four meetings held per month: two Regular Board meetings and two Panel meetings.

Another issue exacerbating the backlog of appeal cases being heard has been the cancellation of meetings due to lack of a quorum. This issue intensified throughout much of FY 2017-18 with six meetings cancelled in a six-month period due to lack of a quorum. With improvements made in the advance scheduling of meetings, Board member notifications, and ensuring that complete packets are received on time, the number of such cancellations has greatly diminished in the past six months.

Table 6 shows how appeals were resolved.

Table 6. How Appeals Resolved

	2014-2015	2015-2016	2016-2017	2017-2018
Appealable Decisions	363	464	588	515
# of Appeals	96	96	99	73
Appeals Resolved	57	52	52	63
Unresolved at end of FY	41	44	47	10
Appeal Rate	26%	21%	17%	14%

4. Evictions, Ellis Act, Tenant Move-Out Agreements, and Other Activities

The Just Cause for Eviction Ordinance requires that a copy of every eviction notice served to residents of a covered unit be filed with the RAP within 10 days of service. RAP has been receiving a decreasing number of notices, as depicted in Table 7 below.

² Appeal Panels were created by ordinance in June 2016. The first panel meeting was in September 2016.

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Table 7. Total Eviction Notices

FY	Received	Increase/Decrease
2014-15	10,248	
2015-16	8,652	-18%
2016-17	7,861	-10%
2017-18	6,848	-15%

The Alameda County Superior Court provided the number of unlawful detainer filings for Alameda County and for the City of Oakland shown on Table 8.

Table 8. Unlawful Detainer Lawsuits

FY	Received	Increase/Decrease
2014-15*	2,826	
2015-16*	2,556	-11%
2016-17	2,171	-15%
2017-18	1,977	-9%

*These figures were estimates provided by the County; the figures from 2016-17 and 2017-18 are actual count

The decreased number of eviction notices received by RAP as well as the reduction in unlawful detainer lawsuits during the reporting period may be the result of an increase in rent increase notices causing tenants to move out prior to receiving an eviction notice for non-payment of rent.

RAP staff began collecting and tracking No-Fault Eviction (NFE) Notices for duplexes and triplexes pursuant to regulations adopted in 2017. Between July 1, 2017 and June 30, 2018, 67 NFE notices were received, of which two were for repairs and three were Ellis Act cases. These notices require owners to submit certifications annually to retain their exemption from the Rent Adjustment Ordinance and the Just Cause for Eviction Ordinance. The exemption from Just Cause for Eviction for owner-occupied duplexes and triplexes was recently eliminated pursuant to Measure Y, adopted by the voters in November 2018.

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Applications Pursuant to the Ellis Act

Table 9 identifies the number of Ellis Act cases submitted to RAP.

Table 9. Ellis Act Cases

FY	Total	Increase/Decrease
2014-15	4	
2015-16	34	88%
2016-17	16	-113%
2017-18	17	6%

Tenant Move-Out Agreements

Adopted by the City Council in January 2018, this ordinance defines the requirements for owners if they wish to offer a tenant compensation to vacate their rental unit. RAP tracks owner filings and compliance requirements under the Tenant Move-Out Agreement Ordinance. Owners are required to provide a disclosure form to tenants prior to negotiating a move-out agreement. This disclosure informs the tenants of their rights, including that a tenant may refuse a move-out offer and that if the owner, once refused, re-opens the negotiations within six months it constitutes harassment under the City's Tenant Protection Ordinance. The owner must also provide a disclosure certification form to the City regarding their intent to negotiate a move-out agreement. Owners are not required to send the City a copy of their Move-Out Agreement, if successful, but some have.

Staff began receiving these in May 2018, and as of the close of the 2017-18 fiscal year, received 61 Disclosure Certification forms. RAP is also in receipt of 13 Agreements that provide for payments in amounts ranging from \$9,150 to \$30,000. While the Ordinance requires owners to send the City the actual agreements, many do not and the unit does not have staff capacity to conduct compliance monitoring.

Other Activities: Administrative Citations

Between 2014 and 2016 there were six administrative citation cases, with one citation penalty issued in the amount of \$100. The violation was remedied and the citation penalty was paid.

In FY 2016-17 there were 34 citations, and in FY 2017-18 there were 19 citations. Approximately 50 percent were for non-payment of fees. Currently RAP does not have

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the staff capacity to support the enforcement and/or collection of penalties for citation violations.

Other Activities: Administrative Writs

During the reporting period, City Attorney staff handled the following administrative writs that were all appeals from Rent Board decisions:

- Murry v. Rent Board (landlord writ)
- Regan v. Rent Board (landlord writ)
- Michelsen v. Rent Board (landlord writ)
- Marker v. Rent Board (tenant writ)
- Hyde Street v. Rent Board (landlord writ)
- Sherman v. Rent Board (tenant writ)
- Turner v. Rent Board (tenant writ)
- Golden State Ventures v. Rent Board (landlord writ)
- Baragano v. Rent Board (tenant writ)

5. Rent Board Activities, Meetings, and Attendance

Board Activities

The Rent Board holds public meetings to hear appeal cases, discuss procedural and policy matters, and craft regulations. Below is a listing of Board policy and procedural discussions during the reporting period:

FY 2014 – 15:

- The Board discussed the definition of "deferred maintenance" followed by a recommendation to the City Council to define the capital improvements that could not be passed through due to delayed maintenance. The Council adopted the recommendation.
- The Board reviewed the RAP Annual Report; followed by the City Council receiving the report on an informational basis.

FY 2015 – 16:

- The Board discussed amendments made to the Ellis Act Ordinance, including increasing of relocation benefits.
- Discussion of a report to the City Council regarding an increase to the RAP fee took place.
- The Board discussed a proposal to establish an owner requirement to file petitions for rent increases based on capital improvements.

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FY 2016-17:

- Proposed revisions to Rent Adjustment regulations, such as:
 - Process for landlords' filing for rent increases (per Measure JJ)
 - Deadlines for filing petitions
 - Amortization period for capital improvements
 - Provision of services/materials in multiple languages
 - Substantial rehabilitation exemption provisions
 - Owner occupancy requirements for duplexes and triplexes
- Proposed revisions to Just Cause regulations pursuant to Measure JJ
- Board trainings (December and May)
- Discussion of Ghost Ship fire
- Discussion related to reviving the Policy Committee

FY 2017-18 (including July 2018):

- Policy discussions were held on the following topics:
 - Developed regulations Just Cause for Eviction owner-occupancy exemptions for duplexes and triplexes
 - Discussed draft amendments to the substantial rehab exemption within Rent Adjustment Ordinance
 - Discussed regulations for the Tenant Protection Ordinance
 - Discussed Board procedures
- Election of the Board chair was conducted.
- **Board Training:** A Board training was held at the June 14, 2018 Board meeting. City Attorney staff led this training and covered the following areas:
 - Substantive law for rent increases
 - Types of petitions
 - Exemptions from Rent Ordinance
 - Requirement for owners to file petitions for rent increases
 - Processing of petitions, including time limitations for filing
 - Owner and tenant requirements for filing and responding to petitions
 - Just cause for eviction ordinance
 - Appeal procedures and process
 - Board procedures, including Robert's Rules
 - The role of the Board in determining if the Hearing Decision is supported by substantial evidence

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- **New Board Member Orientation:** Staff provided a New Board Member Orientation on July 20, 2018. This session focused on the administrative processes of RAP, the opportunity for mediation, the hearing process, and the role of the Board as an appeal board, but not a trial court. The orientation also

described the various grounds for approval of a rent increase and the ability of tenants to claim restitution for habitability complaints.

Board Composition, Attendance, and Hearings Activity Overview: FY 2017-18

During FY 2017-18 and since, RAP staff has been monitoring the Rent Board meeting schedule and Board member attendance.

Table 10 depicts the current composition of the Board, including their terms, vacancies and upcoming appointments.

Table 10. Rent Board Roster

Position	# Per Ordinance	Name	Term
Tenant - Regular Member	2	T. Hall	2/12/17-2/11/20
		D. Mesaros*	2/12/16-2/11/19
Tenant - Alternate	2	Vacant**	
		Vacant	
Owner - Regular Member	2	K. Friedman	2/12/18-2/11/21
		T. Williams	2/12/17-2/11/20
Owner - Alternate	2	B. Scott*	2/12/16-2/11/19
		Vacant***	
Neutral - Regular Member	3	J. Warner	2/12/17-2/11/20
		R. Stone	2/12/18-2/11/21
		M. Cook****	2/12/16-2/11/19
Neutral - Alternate	2	K. Blackburn*****	2/12/16-2/11/19
		E. Lai	2/12/17-2/11/20
TOTAL	13		

* Position held-over at present. The "hold over" provision in the Rent Adjustment Ordinance states that a board member can serve for up to one year after their term expired or a replacement is appointed, whichever is earlier.

** There is an applicant pending for appointment to Tenant/Alternate position; City Council action will be scheduled for March 2019

*** There is an applicant pending for appointment to Owner/Alternate position; City Council action will be scheduled for March 2019

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**** M. Cook is not seeking re-appointment
***** There is an applicant pending for appointment to replace K. Blackburn & City Council action will be scheduled for March 2019

Board Attendance: Eight meetings were cancelled between July 1, 2017 and June 30, 2018 due to a lack of a quorum. As noted above, cancellations became less frequent toward the end of FY 2017-18 and into FY 2018-19. Most Board members are attending

between one-third to one-half of all planned Board and Panel meetings. There were two Board members who had not been attending meetings for a period of twelve months between FYs 2016-17 and 2017-18; both resigned from the Board in Fall 2018.

Hearings Activity:

- **Board meetings:** There were 16 full Board meetings held between July 1, 2017 and June 30, 2018. The Board heard 39 cases.
- **Appeal Panel meetings:** There were 20 Appeal Panel meetings held between July 1, 2017 and June 30, 2018. The Appeal Panels heard 45 cases.

6. Program Audit Response

The City Auditor's Office conducted an audit of RAP during FY 2015-16 and a report was released on June 27, 2016. The audit was conducted to ensure that appropriate controls were in place so that the program meets its goal under the Rent Ordinance.

There were 10 findings with recommendations on immediate challenges faced by the Program:

- Increased hearing and petition filings
- Backlog of appeal cases
- Upgrade of outreach strategies
- Budget management
- Upgrade to database and use of other pertinent technology
- Increase the Program Service Fee

Since that time, RAP staff has been updating the Auditor's Office on progress in addressing the findings and implementing the recommendations. In the Fall of 2018, a follow-up audit was conducted and resulted in the closing of three of the findings. The Auditor's Office also presented an outline of the actions needed to address the remaining seven open findings, along with a timetable for completion.

Attachment D is an update on RAP's progress in addressing audit findings.

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only other income to the program is from Ellis application fees and copying charges that have a minimal impact on the budget.

Table 12 shows the actual revenue and expenditures for each fiscal year during the reporting period.

Table 12. RAP Revenue and Expenditures 2014-15 Through 2017-18

	Actual 2014-15	Actual 2015-16	Actual 2016-17	Actual 2017-18
Beginning Fund Balance	\$ 2,185,133	\$ 1,460,955	\$ 354,431	\$ 1,126,916
REVENUE				
Investment interest	\$ 6,770	\$ 2,952	\$ 156	\$ 10,631
RAP Fees	\$ 2,137,433	\$ 2,330,527	\$ 4,585,184	\$ 5,192,841
Transfer	\$ 165		\$ (252)	\$ 391
Total Revenues	\$ 2,144,369	\$ 2,333,479	\$ 4,585,088	\$ 5,203,863
Total Available Financing (revenue + fund balance)	\$ 4,329,502	\$ 3,794,434	\$ 4,939,519	\$ 6,330,779
EXPENDITURES				
Personnel				
CAO	\$ 17,866*	\$ -	\$ -	\$ 74,646
Revenue	\$ 497,983	\$ 525,393	\$ 520,201	\$ 516,115
Finance	\$ 220	\$ -	\$ -	\$ -
City Attorney	\$ 549,561	\$ 808,226	\$ 809,001	\$ 910,163
HCD	\$ 1,439,184	\$ 1,799,086	\$ 2,148,480	\$ 2,446,155
O&M	\$ 222,670	\$ 256,457	\$ 285,947	\$ 341,066
Facilities	\$ 176,795	\$ 50,841	\$ 48,974	\$ 97,753
Total Expenditures	\$ 2,868,547	\$ 3,440,003	\$ 3,812,603	\$ 4,385,898
FUND BALANCE CALCULATION				
Net Gain/(Loss)	\$ (724,178)	\$ (1,106,524)	\$ 772,485	\$ 817,965
Beginning Fund Balance	\$ 2,185,133	\$ 1,460,955	\$ 354,431	\$ 1,126,916
Ending Fund Balance	1,460,955	354,431	1,126,916	1,944,881

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The current fund balance for FY 2017-18 is largely a function of the following two features:

- Central Service Overhead (CSO) was budgeted and should have been charged for non-RAP positions, but wasn't. As opposed to drawing it down retroactively, the balance will be retained by the RAP unit for uses described below.
- Vacancies throughout the past two years, including the Program Manager.

The fund balance of \$1,927,015 as of June 30, 2018 has been utilized since then to pay for limited duration positions needed to address specific audit findings and to begin the process of instituting material improvements to the performance of the program. Staff's proposal for a fee increase would facilitate these positions converting to permanent status (as well as cover additional positions). The fund balance will also be used to cover a non-personnel audit finding related to RAP hearing space (an excerpt from the audit outlining this finding is provided as **Attachment E**) and to facilitate the creation of work space for existing and new RAP positions.

In terms of hearing space, hearings are now held in conference rooms on the fifth floor of 250 Frank Ogawa Plaza, immediately adjacent to areas where staff are working which is disruptive to the city workforce and inappropriate considering the sensitivity and confidential nature of these cases. It involves staff having to walk parties to a hearing through these work spaces.

In terms of RAP work space, RAP staff currently occupy a corner of the fifth floor of 250 Frank Ogawa Plaza, with a few positions scattered in other locations on the floor. Any new staff would be further scattered on the fifth floor as well as possibly on the sixth floor. Additionally, there is insufficient storage space, forcing staff to toggle between floors to obtain files. Further exacerbating the space issues was the build out of Department of Transportation (DOT) workstations in areas previously designated for RAP, though not yet occupied.

In 2017, an architect was engaged to create a design for new office space configurations throughout 250 Frank Ogawa Plaza which had all HCD offices, including RAP's hearing rooms, occupying the sixth floor. While the plan to move the DOT to the fifth floor moved forward in 2018, any reconfiguration of HCD's space has not transpired.

HCD staff estimate that approximately half of the fund balance will be expended on the limited duration positions, as well as additional technology upgrades. Staff further believe that with an investment of the remaining funds, existing HCD space on the sixth floor that is currently underutilized can be reconfigured to create the type of hearing space recommended in the audit, as well as ensure that there are work stations for all RAP staff positions and file storage space, which will facilitate high functioning program performance.

8. Initiatives for 2018/19 and Beyond

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Staffing

The program is undergoing a transition from a passive complaint based model to an active enforcement model. RAP is growing its outreach capabilities and creating a mediation program and settlement conference procedures to assist with more efficient resolution of landlord-tenant conflicts. As such, HCD staff is looking to grow the program from 15 to 27 FTEs in an effort to more effectively deliver service to Oakland residents including ensuring timeliness and accuracy. The new staffing model will include the addition of administrative support for the hearings unit as well as the staff necessary to implement more robust outreach and enforcement activities.

Rent Board

We are currently devising a training curriculum for new and seasoned Board Members. Additionally, we will be exploring moving the Board to a paperless agenda and packet in the coming year.

Public Information and Outreach

Attachment F provides an overview of the planned public information and outreach plan.

Database

The program is set to launch a new client management system in 2019 which will allow for better case management, data collection, and quality control, enabling full and holistic delivery of client services and information. In addition, improvements to the current case file management system will also be embarked on.

Streamlining Procedures

A priority for the 2019-20 fiscal year will be on streamlining and revamping internal policies, processes, and procedures. This effort will examine the current regulatory structure to ensure that it promotes the most efficient adjudication of petitions and consistent application of the law.

PUBLIC OUTREACH/INTEREST

There was no public outreach conducted as part of the preparation of this report other than the Agenda posting on the City's website.

FISCAL IMPACT

This report is informational only and proposes no changes to the Rent Adjustment Program or its fees; notwithstanding that the City Council did approve a fee increase from \$30 per unit to \$68 per units during this reporting period. HCD staff are proposing

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a new fee increase at the March 19, 2019 Finance and Management Committee meeting which will facilitate the City's ability to carry out the initiatives described above.

COORDINATION

Staff produced this report in coordination with the Budget Bureau and the City Attorney's office.

SUSTAINABLE OPPORTUNITIES

Economic: The provision of legal services related to Oakland's Rent Adjustment and Tenant Protection Ordinances will protect tenants from exorbitant rent increases while encouraging owners to invest in the housing stock of the City. Stable rents and housing stability improve low income tenants' economic well-being.

Environmental: Improving tenants' knowledge of the Rent Adjustment Ordinance can mitigate adverse environmental impacts resulting from existing rental housing and encourage cohesion and vested interest of owners and tenants in established neighborhoods.

Social Equity: The landscape and climate of Oakland's neighborhoods is improved by encouraging long-term tenancies in rental housing. Housing stability can assist low and moderate income families to save money to become homeowners.

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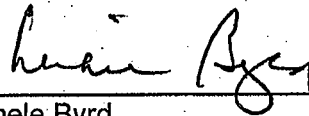
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ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council Receive the Rent Adjustment Annual Report for Fiscal Years 2014-15, 2015-16, 2016-17, and 2017-18.

For questions regarding this report, please contact Maryann Leshin, Deputy Director, Housing and Community Development Department at (510) 238-6225.

Respectfully submitted,



Michele Byrd
Director, Housing and Community Development
Department

Attachments (6):

- A: Section 8.22.050.A
- B: Outreach Activities
- C: Centro Legal de la Raza Performance 2014 - 2018
- D: Status of RAP Audit Findings
- E: Excerpt from Audit Regarding Hearing Space
- F: Public Information and Communication Plan

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8.22.250 - Administration, Reports, and Notices to Owners and Tenants.

- A. The City Administrator shall report annually on the status of the Rent Adjustment Program to the City Council or to such City Council Committee as the City Council may designate. Such reports shall include, but shall not be limited to the following:
1. Rent Board vacancies.
 2. Rent Board meeting cancellations.
 3. Statistics on the number and type of petitions filed and outcomes, including rent increases granted.
 4. The timeliness of petition hearings and appeals.
 5. Statistics on numbers and types of eviction notices filed pursuant to the Just Cause for Eviction Ordinance (Chapter 8, Article II, O.M.C. 822.300, et seq.)
 6. Number and types of rental units covered by this Chapter.
 7. Any other information the City Council or Committee may request.
- B. The City Administrator shall develop searchable data bases for ready public access to information on hearing decisions, appeals, and notices filed. To the extent consistent with state and City public records and sunshine laws, names and personal information shall not be included in the database or otherwise shall be redacted from release of filed notices.
- C. The City shall make available translation services in languages other than English, where requested in advance, to interpret and translate documents and procedures as needed related to Board Hearings and Appeals.
- D. Notices to Tenants and Owners.
1. The City shall annually provide notification to all Covered Units Information, including but not limited to, the amount of the annual CPI Rent Adjustment, Banking (as an allowable increase without landlord petitioning) and information on how to get information to challenge a rent increase, and other questions about rents and Rent Adjustment Program procedures.
 2. The City shall annually provide notification to all Owners with Covered Units, including but not limited to, the amount of the annual CPI Rent Adjustment, Banking (as an allowable increase without landlord petitioning), and information on how to get information to petition for a rent increase, and other questions about rents and Rent Adjustment Procedures.

Attachment B

RAP Staff Outreach Activities

2014 – 2015

- **July 2, 2014:** RAP staff did presentation to outreach workers for OCCUR and Martin Luther King Freedom Center.
 - **July 8, 2014:** RAP staff did presentation and distributed Rent Adjustment brochures at the Alameda County Law Library.
 - **July 16, 2014:** 1,500 RAP brochures and insert cards were given to outreach workers for OCCUR and Martin Luther King Freedom Center for door-to-door distribution.
 - **July 21, 2014:** 15,000 insert cards (announcing recent changes to the Rent Ordinance and Regulations) were mailed to all landlords listed in the Business Tax database.
 - **August 23 & 24, 2014:** RAP staff answered questions and distributed 500 Rent Adjustment brochures and insert cards at Chinatown Street Festival.
 - **October 22, 2014:** RAP staff answered regarding new Rent Adjustment Regulations on a panel at the annual East Bay Rental Housing Association Trade Expo.
 - **November 14, 2014:** Tenant Protection brochures were mailed to all landlords listed in the Business Tax Database (approximately 15,000).
 - **November 21, 2014:** 25,000 Tenant Protection Ordinance informational pamphlets distributed to approximately 350 outlets in Oakland (stores, laundromats, cafes, libraries, etc.).
 - **December 2, 2014:** RAP staff presented at the monthly Oakland.PATH Rehousing Initiative meeting.
 - **March 21, 2015:** RAP staff attended the District One Town Hall meeting, "Oakland Working for You," to distribute RAP and Tenant Protection brochures and answer questions at a table station.
- March 26, 2015:** Rent Adjustment and Tenant Protection brochures were distributed at a presentation at the Red Cross office.
- **May 14, 2015:** RAP staff did presentation, answered questions, and distributed Rent Adjustment and Tenant Protection brochures at Housing Assistance Center open house.

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RAP Staff Outreach Activities

2015-16

- **July 20 and 21, 2015:** Rent Adjustment brochures were distributed at Art and Soul Festival. by Housing Assistance Center Staff.
- **September 29 and 30, 2015:** RAP staff distributed Rent Adjustment, Tenant Protection Brochures, and General Packets at Chinatown Street Festival.
- **September 28, 2015:** RAP staff met with representatives from Nihonmachi Legal Services regarding greater outreach to Asian communities in Oakland.
- **October 1, 2015:** RAP staff attended the annual East Bay Rental Housing Expo.
- **October 6, 2015:** RAP attended the Fall Health Advocacy Decal at U.C. Berkeley for a presentation and question and answer session regarding the Rent Adjustment Program.
- **February 1, 2016:** RAP staff attended Plan Downtown event. Rent Adjustment Brochures and Tenant Protection Brochures were distributed.
- **May 2, 2016:** Direct mailing to 26,000 property owners of "Notice to Oakland Property Owners" regarding rent increase moratorium to all owners listed in Business Tax database.
- **May 11, 2016:** *One page advertisement in East Bay Times regarding rent moratorium and other rent protections.*
- **May 12, 2016:** One page advertisement in El Mundo regarding rent moratorium and other renter protections.
- **May 14, 2016:** One page advertisement in Sing Tao Daily regarding rent increase moratorium.
- **June 10, 2016:** Distribution of 25,000 "Know Your Rights" postcards to 350 outlets in Oakland, including stores, laundromats, libraries, cafes, and other Oakland business locations regarding rent moratorium and tenant rights.

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RAP Staff Outreach Activities

2016-17

- August 20 - 21, 2016, Art and Soul: RAP shared a table with the Mayor's office and City Administrator's Office and distributed approximately 1,000 RAP brochures and answered questions. Approximately 40,000 attended the two day festival.
- August 27 - 28, 2016, Chinatown Street Festival: Staff distributed approximately 1000 RAP brochures and answered questions (approximately 50,000 to 75,000 attended the two-day festival).
- September 28, 2016, EBRHA 2016 Expo: Staff distributed RAP brochures, informational material on changes in Ordinance, and answered questions. (300-400 property owners attend the annual expo.)
- September 29, 2016: Staff distributed approximately 50 brochures and answered questions at the Family Resource Center sponsored by Futures and Community United Education Elementary School.
- November 10, 2016: RAP Staff answered questions on a panel of the Asian Real Estate Association of America Housing Forum. (Approximately 30 members attended the forum.)
- November 30, 2016: RAP Manager discussed Ordinance changes at Owner event sponsored by the Law Offices of Fried and Williams. (Approximately 30 property owners attended.)
- March 10, 2017: Completed a direct mailing (using Business Tax Database) of approximately 40,000 notices to landlord and tenants of the recent changes to the Rent Ordinance and Regulations.
- March 30, 2017: RAP Staff conducted an informational workshop on recent changes to Rent Ordinance and Regulations for nonprofit, private organizations, and Property Management Companies that advise Oakland residential property owners and tenants. (Approximately 60 attended.)
- April 18, 2017: RAP staff attended Women's Auxilliary luncheon to discuss recent changes to Oakland's Rent and Eviction Control Ordinances (approximately 30 property owners attended).

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RAP Staff Outreach Activities

2017 - 18

- August 16 - 17, 2017- Art and Soul: Staff distributed brochures and answered questions. Festival was attended by approximately 40,000 people.
- August 25 and 26, 2017- Chinatown Street Fest- Staff distributed brochures and answered questions-festival was attended by approximately 50,000 people over two days
- August 23, 2017- RAP staff held a Landlord Workshop at City Hall in Hearing Room 1. This was a general plenary session with landlords.
- Sept. 27, 2017- RAP staff held a Landlord Workshop on Substantial Rehabilitation.
- October 25, 2017- RAP staff held a Landlord Workshop on Capital Improvements.
- September 17, 2017-Rockridge Stroll: Distributed brochures.
- October 2017- RAP staff attended the East Bay Rental Housing Association and distributed brochures and owner information guide; answered questions. This event was attended by approximately 500 people.
- October 29, 2017-Dia de Los Muertos: RAP staff distributed brochures and answered questions. This event was attended by over 20,000 people.

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Attachment C

Centro Legal de la Raza Performance 2014 - 2018

2014 – 2015

Activity	Contract Goal	Performance	Percent of Goal
Outreach	15,000	15,505	103%
Assessment	800	967	120%
Limited Scope Services	400	470	113%
Extensive Scope Services	60	95	116%
Legal Representation	50	60	116%
Appear at hearings	25	56	224%

2015 - 2016

Activity	Contract Goal	Performance	Percent of Goal
Outreach	10,000	15,460	155%
Assessment	800	1,071	134%
Limited Scope Services (153 were for TPO)	600	709	118%
Legal Representation	50	52	101%
Pro Per ¹ Small Claims Assist. (all were for TPO)	10	6	60%

2016 - 2017

Activity	Contract Goal	Performance	Percent of Goal
Outreach	10,000	22,867	229%
Assessment	800	1,188	149%
Limited Scope Services	600	756	126%
Legal Representation	50	63	126%
RAP Petitions/Appeals Prepared	50	57	114%
Pro Per Small Claims Assist.	10	10	100%

¹ Small Claims assistance is provided on a "pro per" basis, meaning the legal services assist tenants in representing themselves.

2017 – 2018

Activity	Contract Goal	Performance	Percent of Goal
Outreach	10,000	10,003	100%
Assessment	800	13,394	1674%
Limited Scope Services	600	677	113%
Legal Representation	50	54	108%
RAP Petitions/Appeals Prepared	50	103	206%
Pro Per Smalls Claims Assist.	10	4	40%

Attachment D: Status of RAP Audit Findings

	Audit Findings	Current Audit Standing and Action Plan	Fee Increase Impact
1	<ul style="list-style-type: none"> • Increase the number of Rent Board alternates to provide sufficient volunteer Board members. • Attendance records should be provided to the Mayor on a semiannual basis. 	Closed.	N/A
2	<p>Board Training:</p> <ul style="list-style-type: none"> • Develop a training program that extends over the course of a year, with sessions held during Board meetings. • Track progress and send information on attendance to Mayor 	<p>Open.</p> <p>The following, should be completed by May/June 2019:</p> <ul style="list-style-type: none"> • Board manual • Training modules and schedule • Re-establishment of Board Policy Committee 	Fee increase would fund staff positions to carry out these activities on an ongoing basis.
3	<p>Develop a Communication Strategy for accessing Rent Board materials online for differing users.</p> <ul style="list-style-type: none"> • Packets should be scanned and uploaded to website. • Provide interested parties with information in advance of the meeting. 	<p>Open.</p> <p>The scaling back of mailed packets by May/June 2019.</p> <p>Explore use of new technology (ie: tablets).</p>	Can take place with current fee.
4	Case & Appeal Decisions should be posted on website and/or electronic portal.	Closed.	

Attachment D: Status of RAP Audit Findings

	Audit Findings	Current Audit Standing and Action Plan	Fee Increase Impact
5	<p>Address resource needs through temporary staffing and planning for new permanent positions.</p> <ul style="list-style-type: none"> • Review workflow processes for efficiencies; update policies and procedures • Determine appropriate staffing levels • Implement a formal and routine quality assurance program. • Hearing Officers should not conduct onsite inspections or properties. • Work with City Attorney's Office to propose changes to RAP Ordinance to create efficiencies. 	<p>Open.</p> <p>The following should be pursued:</p> <ul style="list-style-type: none"> • Improved case management system • Streamlining procedures • Increase use of mediation • Analyze staffing needs and propose fee increase accordingly 	<p>Fee increase will cover the cost of enhanced case management system, staff to revise/update procedures, implement a robust mediation program.</p> <p>This Agenda Report presents the results of staff's analysis of staffing needs.</p>
6	<p>Improve case management system; track cases, store records electronically (to reduce paperwork), produce performance metrics and trend analysis, and facilitate regular reporting on RAP activities.</p>	<p>Open.</p> <p>Database improvements needed, including rent tracking.</p>	<p>Fee increase would cover ongoing database maintenance along with the staff time to set up and manage the systems that will facilitate smoother operations, reduction of paperwork, generation of performance metrics data/policy analyses, and regular and timely reporting.</p>

Attachment D: Status of RAP Audit Findings

	Audit Findings	Current Audit Standing and Action Plan	Fee Increase Impact
7	Formulate a public outreach and communication plan.	Open. Initiation of Communication and Outreach Plan and preparation of public information materials by March 2019.	Fee increase would cover staff time to create these materials, update them on an ongoing basis, and implement the Communication and Outreach Plan. It would also cover cost of printing and mailings.
8	Design dedicated, professional space for hearing and other public RAP business	Open. Implementation has been held up by lack of budget authority to carry out. Timing for addressing TBD.	Staff propose to use RAP fund balance of approximately \$1,000,000 to fund the implementation of space improvements called for in this audit funding.
9	Validate that all covered properties are being assessed.	Closed.	
10	Develop and monitor the RAP budget	Open. Preparation of Annual Report and RAP budget analysis by March 2019.	This is being carried out with current fee.

Attachment E

Excerpt from Performance Audit of the City of Oakland Rent Adjustment Program

June 27, 2016

Finding 8: The meeting facilities for the Public Hearings are inadequate

RAP hearings are public meetings as defined by the Brown Act,¹⁶ which allow for public attendance. However, there are few city dedicated spaces set aside for these meetings, unlike other City Board and community gatherings.

Many RAP hearings are arranged to take place in conference rooms as they are available on various floors of city offices. Some of these rooms are located within staff work areas so that attendees must be directed through office workspace to the hearing meeting.

Recommendations:

- Design a dedicated professional office space for hearings and other public business of RAP that is appropriate for the seriousness of the matters discussed. These spaces should be separate from staff work areas.
- Confirm that standard security measures for city offices used for public meetings are applied, including security cameras and locking doors to secure areas.

¹⁶ Brown Act - Government Code 54950-54963.



ATTACHMENT F

STAFF COMMUNICATION AND OUTREACH WORK PLAN 2019

GOAL: DEVELOP SOCIAL MEDIA STRATEGY, ENHANCE PUBLIC FACING MATERIALS, AND EXPONENTIALLY INCREASE OUTREACH

MEDIA	PURPOSE/DETAIL	DRAFT PRODUCTION PREPARATION START DATE	FINAL DUE DATE	PUBLICATION OR EVENT DATE
PRINT MEDIA				
Annual Report	Fiscal Year (FY) Budget and RAP Outcomes, mission, policy, services, standard format	Nov	March	April
Newsletter	Trends and policy, changes, services	July	September	October
Informational Postcards	Rent Increases (Landlords)	March	April	May
	Habitability (Tenants)	August	September	October
	Seismic Retrofit Ord (Landlords)			
	Guideto Rent Control	Rent Control and Eviction Protection Information	October	March
New Tenant Checklist	Checklist for New Tenants	March		May
Tenant Packet	Tenant Rights and Responsibilities	March		May
Landlord Packet	Landlord Rights and Responsibilities	March		May
Magnet	RAP Information	March		May
ELECTRONIC MEDIA				
Social Media	Create Program Facebook Page	July		September
CPII Posters	Post CPII on website	July		July
Press Releases	Issue Specific			
Info Sheets	Security Deposits	Jan		May
	RAI	Jan		May
	Eviction Process	Jan		May
	Just Causes for Evictions	Jan		May
	Subletting	Jan		May
	Guideto the Bills Act	Jan		May
	Owner Move In Evictions	Jan		May

MEDIA	PURPOSE/DETAIL	DRAFT PRODUCTION PREPARATION START DATE	FINAL DUE DATE	PUBLICATION OR EVENT DATE
	Uniform Relocation Ordinance	Jan		May
	Tenants Rights and Responsibilities	Jan		May
	Landlord Rights and Responsibilities	Jan		May
	Costs: How to State Law	Jan		May
	Move-In/Move-Out Checklist for Tenants and Landlords	Jan		May
	Measure A	Feb		March
	Notice of Rent Increase Template	Jan		May
	RAP Fee Pass (through information)	Jan		May
	Eviction	Jan		May
	Landlord and Tenant Resources	Jan		May
In House Seminars	Small Property Owners Seminar Owner Occupied Duplex/Triplex	Feb		March
	Landlord 101	March		April
	Tenants Rights	May		June
	Landlord and Tenant Rights and Responsibilities - Security Deposits	September		October
Workshops	Tenants Rights Workshop	April		May
	Small Property Owners Workshop	May		June
	Eviction in Oakland Workshop for Land and Property Owners	June		July
	Tenants Rights Workshop	August		September
	Small Property Owners Workshop	August		September
	Tenants Rights Workshop (Spanish)	September		October
Outreach Events	Chinatown Lunar New Year Bazaar			1/26/2019
	Bike to Work Day			5/10/2019
	Tennessal Street Fair			6/9/2019
	Juneenth Celebration			6/29/2019
	Oakland Art and Soul Festival			7/27/2019
	National Night Out			8/6/2019

CHRONOLOGICAL CASE REPORT

Case Nos.: L17-0241

Case Name: Faussner v. Tenants

Property Address: 1738 4th Ave., Oakland, CA

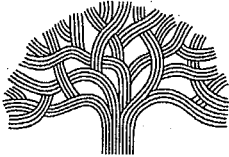
Parties: Ben Lewis (Agent for Owner)
Merkeb Teclé (Agent for Owner)
Joshua Palmer (Tenant)
Brendan Blandy (Tenant)
Kevin Alvarado (Tenant)
Clay Hayes (Tenant)
Christina White (Tenant)
Annabelle Fuentes (Tenant)
Maria D. Dominguez (Tenant Representative)

OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	November 7, 2017
Tenant Responses filed	January 18 th through January 31 st , 2018
Hearing Decision issued	July 3, 2018
Owner Appeal filed	July 23, 2018
Owner Attorney filed Supporting Argument Documentation	August 7, 2018

417-0241 RC/SK

RECEIVED
MAY 20 2007

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp: -7 PM 4:38
	<u>PROPERTY OWNER</u> <u>PETITION FOR</u> <u>APPROVAL OF RENT</u> <u>INCREASE</u>	

Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach copies of the documents that support your petition. Before completing this petition, please read the Rent Adjustment Ordinance (Oakland Municipal Code 8.22), sections 8.22.010 through 8.22.190, and the Rent Adjustment Program Regulations.

Your Name c/o Lapham Co Robert E Faussner	Complete Address (with zip code) 4844 Telegraph Ave Oakland CA 94609	Daytime Telephone: 510-594-7600 E-mail: Merkeb@laphamcompany.com
Your Representative's Name (if any) Lapham Company	Complete Address (with zip code) 4844 Telegraph Ave Oakland CA 94609	Daytime Telephone: 510-594-7600 E-mail: Merkeb@laphamcompany.com
Property Address (If the property has more than one address, list all addresses) 1738 4th Ave, Oakland CA 94606		

Total number of units on property: 24

Date on which you acquired the building: 3/26/2007

Type of units (circle one) House Condominium Apartment, Room, or Live-Work

Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to the tenants in each unit affected by the petition?	Yes	No
On what date was the RAP Notice first given?	Please see attached listing with RAP Notice Dates	
Have you paid your Oakland Business License? The property owner must have a current Oakland Business License. If it is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.)	Yes	No
Oakland Business License number.	00093227	

<p>Have you paid the Rent Adjustment Program Service Fee (\$68 per unit)? The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.) Note: If RAP fee is paid on time, the property owner may charge the tenant one-half of the \$68 per-unit RAP Service fee (\$34).</p>	Yes	No
<p>Use the table on the next page to list each tenant who is affected by this petition.</p>		

REASON(S) FOR PETITION.

Note: Justifications for Rent Increases other than the annual allowable rate are discussed in the Rent Adjustment Program Regulations – Appendix A, Sec. 10.

You must attach organized documentation clearly showing the rent increase justification(s) and detailing the calculations to which the documentation pertains. All documents submitted to the Rent Adjustment Program become permanent additions to the file. (Regs. 8.22.090.C)

I (We) petition for approval of one or more rent increases on the grounds that the increase(es) is/are justified by (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Banking (Reg. App. 10.5) | <input type="checkbox"/> Increased Housing Service Costs (Reg. App. 10.1) |
| <input checked="" type="checkbox"/> Capital Improvements (Reg. App. 10.2) | <input type="checkbox"/> Uninsured Repair Costs (Reg. App. 10.3) |
| <input type="checkbox"/> Fair return (Reg. App. 10.6) | |

Have you ever filed a petition for this property?

- Yes
 No

List case number(s) of all Petition(s) you have ever filed for this property and all other relevant Petitions:

N/A

List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
1738 4th Ave, Oakland CA 94606	101	Brain Ko	415-926-0620	byko1209@gmail.com	\$1,502.67
1738 4th Ave, Oakland CA 94606	103	Kendra Brennan	773-807-6125	kendra.A.brennan@gmail.com	\$1,895.00
1738 4th Ave, Oakland CA 94606	104	Clay Hays	925-330-3545	clayhays1123@yahoo.com	\$1,220.89
1738 4th Ave, Oakland CA 94606	106	Tyler Hopps	510-734-9587	Thopps@yahoo.com	\$1,171.11
1738 4th Ave, Oakland CA 94606	107	John Gillham	707-799-4082	marathon1981@gmail.com	\$1,085.44
1738 4th Ave, Oakland CA 94606	108	Aynalm Zegeye	510-499-7389	n/a	\$1,296.21
1738 4th Ave, Oakland CA 94606	201	Lauren Richard Valeria Richard	216-533-0171	Lau28ren@gmail.com	\$1,495.00

List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
1738 4th Ave, Oakland CA 94606	202	Kevin Alvarado Marcelino Martinez	917-951-7896	kalvarado9109@gmail.com	\$1,173.41
1738 4th Ave, Oakland CA 94606	203	Lani Shotwell	925-984-3086	lanishotwell@yahoo.com	\$1,203.19
1738 4th Ave, Oakland CA 94606	204	Jackelyn Kelley Shawn Kelley	724-544-3437	jack.rae.kelley@gmail.com	\$1,503.03
1738 4th Ave, Oakland CA 94606	206	Brendan Blandy	541-729-7605	n/a	\$1,322.20
1738 4th Ave, Oakland CA 94606	208	Jessica Steele Joseph Blasher	808-464-2676	steelejessica2@gmail.com	\$1,950.00
1738 4th Ave, Oakland CA 94606	301	Shane Caldwell Anna Smylie	773-960-9447	caldwell.shane@gmail.com	\$1,950.00
1738 4th Ave, Oakland CA 94606	302	Bahij Austin	650-725-2973	bahijaustin@gmail.com	\$1,348.64

List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
1738 4th Ave, Oakland CA 94606	303	Lindsay Shuman Shawn Rusich	714-287-6455	elleshuman@gmail.com	\$1,349.64
1738 4th Ave, Oakland CA 94606	304	Christina White	925-784-5846	c.white0415@gmail.com	\$1,398.60
1738 4th Ave, Oakland CA 94606	307	Annabelle Fuentes Joshua Palmer	415-572-9965 415-806-2467	annabelle.fuentes@gmail.com	\$1,145.75
1738 4th Ave, Oakland CA 94606	308	Eric Johnson	n/a	ejohnla@yahoo.com	\$1,490.73

Address: 1738 4th Ave, Oakland CA 94606

Unit #	Tenant Name(s)	Phone	Email	Current Rent	RAP Notice Date
101	Brain Ko	415-926-0620	byko1209@gmail.com	\$1,502.67	3/1/2014
103	Kendra Brennan	773-807-6125	kendra.A.brennan@gmail.com	\$1,895.00	9/1/2016
104	Clay Hays	925-330-3545	clayhays1123@yahoo.com	\$1,220.89	6/16/2009
106	Tyler Hopps	510-734-9587	Thopps@yahoo.com	\$1,171.11	1/10/2012
107	John Gillham	707-799-4082	marathon1981@gmail.com	\$1,085.44	3/17/2011
108	Aynalm Zegeye	510-499-7389	n/a	\$1,296.21	6/16/2017
201	Lauren & Valeria Richard	216-533-0171	Lau28ren@gmail.com	\$1,495.00	5/23/2014
202	Kevin Alvarado & Marcelino Martinez	917-951-7896	kalvarado9109@gmail.com	\$1,173.41	5/1/2012
203	Lani Shotwell	925-984-3086	lanishotwell@yahoo.com	\$1,203.19	12/1/2011
204	Jackelyn & Shawn Kelley	724-544-3437	jack.rae.kelley@gmail.com	\$1,503.03	4/16/2014
206	Brendan Blandy	541-729-7605	n/a	\$1,322.20	11/1/2014
208	Jessica Steele & Joseph Blasher	808-464-2676	steelejessica2@gmail.com	\$1,950.00	7/11/2016
301	Shane Caldwell & Anna Smylie	773-960-9447	caldwell.shane@gmail.com	\$1,950.00	7/1/2015
302	Bahij Austin	650-725-2973	bahijaustin@gmail.com	\$1,348.64	11/1/2012
303	Lindsay Shuman & Shawn Rusich	n/a	elleshuman@gmail.com	\$1,349.64	6/16/2009
304	Christina White	925-784-5846	c.white0415@gmail.com	\$1,398.60	6/11/2013
307	Annabelle Fuentes & Joshua Palmer	415-572-9965	annabelle.fuentes@gmail.com	\$1,145.75	3/1/2010
308	Eric Johnson	n/a	ejohnla@yahoo.com	\$1,490.73	6/16/2009

Uninsured Repair Costs: Uninsured repair costs are casualty losses that are not reimbursed to the property owner. See Regulations for details. An increase for uninsured repairs is calculated the same way as an increase for capital improvements.

Increased Housing Service Costs: Housing Service Costs are expenses for services provided by the property owner. The costs are related to the use of a rental unit and also known as "operating expenses". The most recent two years of operating expenses are compared to determine if a rent increase greater than the CPI is justified. The calculation in both years must provide a reasonable comparison of all expenses. Evidence is required to prove each of the claimed expenses.

Fair Return: A property owner may submit evidence to show that without the requested rent increase he or she is being denied a fair return on the investment. A fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year (2014), subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

Banking: "Banking" refers to deferred allowed annual rent increases. These annual rent increases are known as CPI increases. CPI rent increases that were not given, or were not given in full, can be carried forward to future years. Subject to certain limitations, property owners may defer giving CPI increases up to ten years. CPI increases that were not imposed within ten years expire. No banked increase can exceed three times the then current CPI allowable increase. If your petition includes a request for a banked increase, **attach a rent history for the current tenant(s) in each affected unit.**

You do not need to petition the Rent Adjustment Program for approval to increase rent based on banking. Rents can be increased for banked CPI rent increases by giving the Tenant a rent increase notice. (Note that the Tenant can file a petition contesting the increase if the Tenant believes the banking is incorrect or unjustified.) If you do choose to petition for approval of a banked rent increase, provide the documentation and calculations as required by this petition.

Capital Improvements: Capital improvements increases may be taken to reimburse the property owner for property improvements. Reimbursement is limited to 70% of the cost of the improvement spread out over an amortization period as set forth in the Amortization Schedule below. The property owner must show the costs incurred were to improve the property and benefit the tenants. Property owners must also show that these costs were paid. Examples include: copies of receipts, invoices, bid contracts or other documentation.

- If your petition contains capital improvements for which permits are first issued on or after February 1, 2017, capital improvements will be amortized according to an amortization schedule (attached at the end of this form).
- If the petition includes only work where permits were issued before February 1, 2017, improvements will be amortized over five years unless the increase causes a rent increase over 10 percent in one year or 30 percent in five years, in which case the amortization period will be extended until the rent increase is smaller than 10 percent in one year or 30 percent in five years.

Building-Wide Capital Improvements CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR
Structural/ Exterior Wall	\$296,460.42	02/3/2017	Please see attached sheet
Painting	\$2,500.00	5/13/2016	Please see attached sheet
Stucco	\$13,562.77	10/10/2016	Please see attached sheet
SUBTOTAL:	\$312,523.19	2/3/2017	Please see attached

Unit-Specific Capital Improvements CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR	AFFECTED UNITS
SUBTOTAL:				

Verification (Each petitioner must sign this section):

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition and attaches pages is true and that all of the documents attached to the petition are originals or are true and correct copies of the originals.

Robert E. Farnmer, TRUSTEE

Owner's Signature

11-7-2017

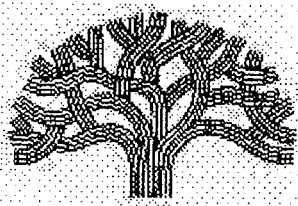
Date

[Signature] - Agent of Owner

Owner's Signature

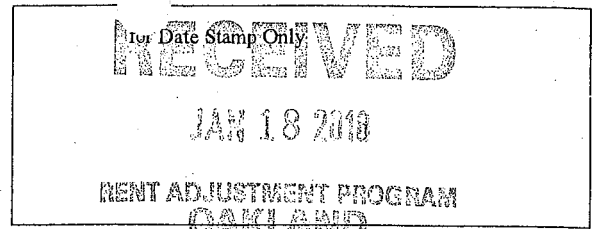
11-7-2017

Date



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721



CASE NUMBER L17-0241

Tenant Response Contesting Rent Increase

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Anna M Zegeye</i>	Complete Address (with Zip Code) <i>1738 Uth Avenue #108. Oakland CA 94606</i>	Telephone Day <i>510-499-73-89</i> Evening _____
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes No

Number of Units in this Building: 24

Rental History

Date you entered into the Rental Agreement for this unit: Feb, 2001

Date you moved into this unit: Feb, 2001

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?
 Yes No

Initial Rent: \$ 1368 Initial rent included (please check all that apply) () Gas
 () Electricity () Water () Garbage () Parking () Storage () Cable TV () Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit?
 Yes No

Please list the date you first received the Notice to Tenants 01/05/2018

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contested Justification(s) for Rent Increase

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking		Debt Service	
Capital Improvement		Uninsured Repair Costs	
Increased Housing Service Costs		Constitutional Fair Return	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

The property owner has the burden of proving the contested rent increase is justified.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

Caroline Zogopoulos
 Tenant's Signature

1-12-18
 Date

 Tenant's Signature

 Date

Important Information

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a Hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal Hearing before a Rent Adjustment Hearing Officer the same day.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

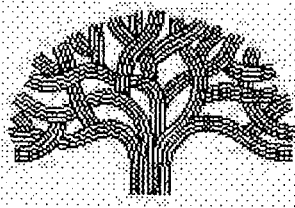
I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

[Handwritten Signature]
Tenant's Signature (for Mediation Request)

1-12-18
Date

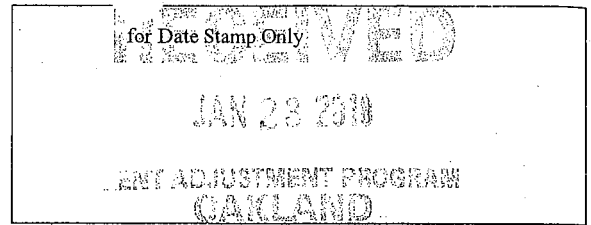
Tenant's Signature (for Mediation Request)

Date



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721



CASE NUMBER L17-0241

Tenant Response Contesting Rent Increase

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Christina White</i>	Complete Address (with Zip Code) <i>11738 14th Ave. #304 Oakland CA. 94606</i>	Telephone Day <i>925-784-5816</i> Evening _____
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes No

Number of Units in this Building: 1 24

Rental History

Date you entered into the Rental Agreement for this unit: Oct 11, 2013

Date you moved into this unit: Oct 11, 2013

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?
Yes No

Initial Rent: \$ 1350 + parking Initial rent included (please check all that apply) () Gas
() Electricity (X) Water (X) Garbage () Parking () Storage () Cable TV () Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes No

Please list the date you first received the Notice to Tenants _____

* List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
11/1/15	11/1/15	\$ 1350	\$ 1398.60	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contested Justification(s) for Rent Increase

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking		Debt Service	
Capital Improvement		Uninsured Repair Costs	
Increased Housing Service Costs		Constitutional Fair Return	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

The property owner has the burden of proving the contested rent increase is justified.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

² <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

Christine Wilk

Tenant's Signature

11/18/2015

Date

Tenant's Signature

Date

Important Information

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a Hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal Hearing before a Rent Adjustment Hearing Officer the same day.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

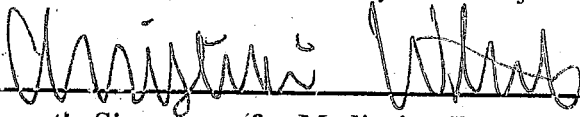
You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

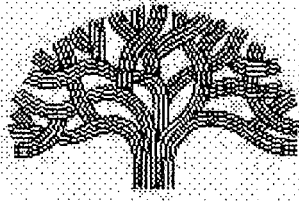
I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).


Tenant's Signature (for Mediation Request)

1/18/2018
Date

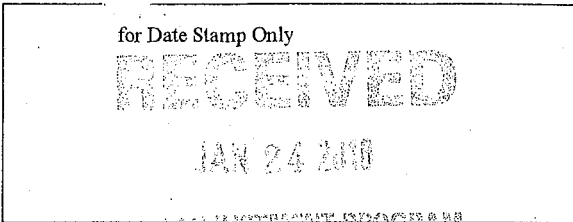
Tenant's Signature (for Mediation Request)

Date



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721



CASE NUMBER L17-0241

Tenant Response Contesting Rent Increase

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Brandon Blandy</i>	Complete Address (with Zip Code) <i>1739 4th west 206 Oakland, CA, 94606</i>	Telephone Day <i>541-729-7605</i> Evening <i>541-729-7605</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes No

Number of Units in this Building: 24

Rental History

Date you entered into the Rental Agreement for this unit: 10/12

Date you moved into this unit: 10/22/12

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?
Yes No

Initial Rent: \$ 21300 Initial rent included (please check all that apply) () Gas
() Electricity (x) Water (x) Garbage (x) Parking () Storage () Cable TV () Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes No

Please list the date you first received the Notice to Tenants _____

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
	11/1/13	\$ 1300	\$ 1365	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	11/1/14	\$ 1365	\$ 1415	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	11/1/15	\$ 1415	\$ 1465 ⁰⁰	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contested Justification(s) for Rent Increase

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking		Debt Service	
Capital Improvement		Uninsured Repair Costs	
Increased Housing Service Costs		Constitutional Fair Return	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

The property owner has the burden of proving the contested rent increase is justified.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

 Tenant's Signature

1/18/18

 Date

 Tenant's Signature

 Date

Important Information

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You cannot get an extension of time to file your Response by telephone.

File Review

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Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

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You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).


The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).



Tenant's Signature (for Mediation Request)



Date

Tenant's Signature (for Mediation Request)

Date

Hello –

I do not consent or agree to any proposed increase.

I have had two rent increases during my tenancy already; the first was effective 11/1/13 and the most recent was effective 11/1/15. In addition, there is a capital improvement pass-through charge of \$52.55/month effective 11/1/14 through 10/31/19. Costs continue to rise but incomes do not, and any increase would create an undue hardship.

In regard to the listed capital improvements, they were the result of needing to repair damage to the building from neglect. There was a mold and dry rot issue that required the building to have new walls put in. As a result of these repairs they had to repaint. Not our fault, nor a capital improvement.

Furthermore, repairs to my own unit have yet to be completed weeks after having been requested. Neglect to the upstairs pipes resulted in my apartment being flooded. The ceiling has been repaired, but no one will address repairs to my floor or to my personal property.

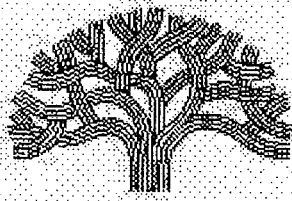
Again, given the history of increases and the issues I have raised above, I do not agree to any increase.

Brendan Blandy

1/19/18

1738 4th ave #206, Oakland, CA, 94606

000128



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

for Date Stamp Only
2010 JAN 25 PM 3:26

CASE NUMBER L17-0241

Tenant Response Contesting Rent Increase

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Clay Flays</i>	Complete Address (with Zip Code) <i>1735 4th Avenue Apt. #104, Oakland 94606</i>	Telephone Day <i>510 315 6954</i> Evening <i>925 330 3545</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes No

Number of Units in this Building: 24

Rental History

Date you entered into the Rental Agreement for this unit: 2/11/08

Date you moved into this unit: 2/08

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?
Yes No

Initial Rent: \$ 1200 Initial rent included (please check all that apply) () Gas
() Electricity Water Garbage () Parking () Storage () Cable TV () Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit?
Yes No

Please list the date you first received the Notice to Tenants 2/14/08

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
7/25/11	9/1/11	\$ 1025	\$ 1045.50	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
7/26/12	9/1/12	\$ 1045.50	\$ 1120.80	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7/26/13	9/1/13	\$ 1120.80	\$ 1178.47	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9/26/14	11/1/14	\$ 1178.47	\$ 1231.02	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
9/27/15	11/1/15	\$ 1231.02	\$ 1273.44	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contested Justification(s) for Rent Increase

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking	X	Debt Service	
Capital Improvement		Uninsured Repair Costs	
Increased Housing Service Costs		Constitutional Fair Return	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

The property owner has the burden of proving the contested rent increase is justified.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification


I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.



 Tenant's Signature

11/25/18

 Date



 Tenant's Signature

11/25/18

 Date

Important Information

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You cannot get an extension of time to file your Response by telephone.

File Review

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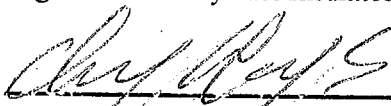
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Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).


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If you want to schedule your case for mediation, sign below.

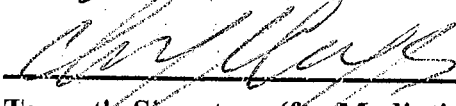
I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).



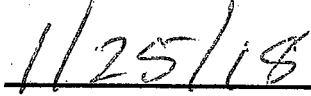
Tenant's Signature (for Mediation Request)



Date



Tenant's Signature (for Mediation Request)



Date

Case Number L17-0241

Clay Hays

1738 4th Avenue, Apartment #104

Oakland, CA 94606

TO WHOM IT CONCERN

This letter is in connection with the Tenant Response Contesting Rent Increase form, specifically regarding Contested Justification(s) for Rent Increase subsection Capital Improvement.

While it is true that the owner has recently done structural work to the building whether one may call it a capital improvement is for discussion.

First the work took approximately nine months during which time there was significant noise, inconvenience, exposure to the elements, dirt, security issues, often and repeated entry into residents by workmen and inspectors and darkness (mine and several other apartments had their windows covered by a tarp for the entire duration of the work making are apartments dark and significantly less inviting). The noise from constant use of very loud power tools, conversation of the workers and a radio brought by the work crew was significant and constant Monday through Friday from 9:00 a.m. to approximately 6:00 p.m. with occasional work on Saturdays. Also, for most of the work all of the insulation was removed from half of my and several other residents' exterior walls, making these residents very hot in the summer and very cold in the winter. This exposure resulted in a significant increase in tenants' energy bills, especially during the winter months in attempts to keep warm. The lack of light made the residents dark and gloomy for the entire time of the work since they covered half of all of the exterior windows for the length of the work and no natural light could get into the these apartments. Additionally, there was a scaffold up for the entire time of the work which made access to the windows of these apartments significantly easier raising significant security concerns on nights, weekends and holidays. There was a locked gate, but this could easily have been climbed which would have given anyone possible access to several apartments. No security was ever provided or introduced. Additionally, repeated twenty-four hour notices were put up on individual residents for workers and Lapham Staff to enter the premises. While these notices were not always followed through on, they provided an additional inconvenience and disturbance to the people living in these residents. Finally, the work that was done in conjunction with the exposure of an exterior wall made the residents dirty from dust and construction debris and required constant cleaning by the inhabitants.

Second, since the completion of these "capital improvements," problems have arisen in regards to the interior of the apartments and to quality of life. Many of the residents where the work was done now have many and significant cracks in the walls where the work was done. This brings for the resident a sense of anxiety, embarrassment and shame to their residents whenever they think about inviting anyone over and/or hosting any type of event. This may be capital, but not necessarily an improvement. In my apartment specifically there is mold on the bathroom walls due to the exposure to the elements

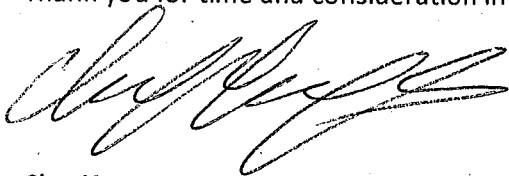
000132

for an extended period of time. I have made several written request as well as spoke to the personnel for Lapham Company who does an annual inspection of 1738 4th Avenue in Oakland, with absolutely no work done to correct the issue, no one contacting me about the issue or any response to my inquiries. Additionally, there is the cosmetic work that was promised to be done once the work was completed. I have yet to see this work done in my apartment. I still have discolored paint as well as bulging and chipping paint that was supposed to be correct after the work was done. A twenty-four hour notice was taped to my door as notice that this work was to be done, but no one arrived and the work has not been done as of the writing of this letter. All of this is a constant reminder of the time when our apartments were in a constant state noise, dirt and ugliness, as well as that the work has yet to be completed to a state where a tenant may feel respected, let alone comfortable in the building.

Third, the work that was done may have done as solution to a problem. That problem may even be corrected. Unfortunately the work has not been completed. Because of this how could this be called a capital improvement, or any improvement at all. With this being the case how can an increase to rent be contemplated if, as it has been shown, is still in progress?

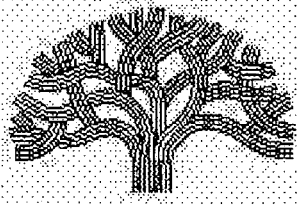
Finally, please note that in the documents from the owners' petition received by the Rent Adjustment Program to increase the rent for 2018 beyond the current C.P.I. it was stated that there has not been an increase in the rent due to capital improvements. This is not true. In November of 2014 the owners at the time submitted, and were granted, a petition to increase the rent by \$52.55 due to capital improvements. Additionally, a petition for a rent increase beyond the current C.P.I. was submitted and granted in September of 2012 for "Banked Rent" and the rent was increase by 9%. Here are two examples of beyond C.P.I. rent increases in three years. If the current beyond C.P.I. rent increase is granted this would be the third one in six years (Please see attached). If this many beyond C.P.I. rent increases are allowed is the C.P.I. a device for the protection of tenants of a floor for owners to use as a starting point to increase rent?

Thank you for time and consideration in this manner.



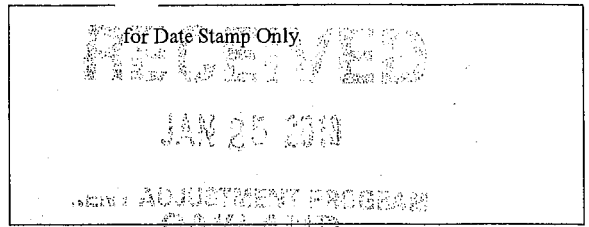
Clay Hays

400 00133 11 05 12



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721



CASE NUMBER L17-0241

Tenant Response Contesting Rent Increase

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

Your Name KENDRA BRENNAN	Complete Address (with Zip Code) 1738 4TH AVE #103 OAKLAND, CA 94606	Telephone Day (973) 807-0125 Evening " "
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes No

Number of Units in this Building: 24

Rental History

Date you entered into the Rental Agreement for this unit: 9.1.16

Date you moved into this unit: 9.1.16

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?
Yes No

Initial Rent: \$ 1925.00 Initial rent included (please check all that apply) () Gas
() Electricity Water Garbage () Parking () Storage () Cable TV () Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes No

Please list the date you first received the Notice to Tenants 03/17

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contested Justification(s) for Rent Increase

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking		Debt Service	
Capital Improvement	✓	Uninsured Repair Costs	
Increased Housing Service Costs		Constitutional Fair Return	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

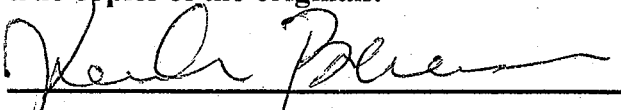
The property owner has the burden of proving the contested rent increase is justified.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

² <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.



 Tenant's Signature

01.24.18

 Date

 Tenant's Signature

 Date

January 20, 2018

Deborah Griffin
Oakland Rent Adjustment Program

Dear Miss Griffin,

I am writing to contest the proposed rate increased by the owner of the property at 1738 4th Avenue, Oakland, CA 94606. The Capital Improvements that they are claiming to be justifiable for the rate increase do not meet the qualifications laid out in City of Oakland Code of Ordinances, **Title 8: Health and Safety, Chapter 8.22 Residential Rent Adjustments and Evictions**. The Chapter specifically states that admissible Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving").

As I see it, the **Structural/Exterior Wall** repairs were necessary due to "deferred maintenance" of the building. The extensive dry rot they discovered in the entire east side of the building seemed to stem from negligence on the owner's part over a much longer period of time. I see no reason why this construction should fall on the responsibility of the tenant's who lived here during the time the repairs took place. Furthermore, the **Painting** costs they have included in the petition are cosmetic and would appear to fall under "improvements that are greater in character or quality than existing improvements." During the time the painting took place I was not a tenant in the building.

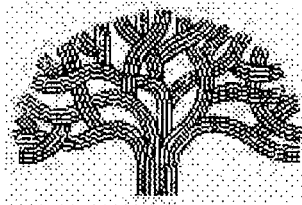
The construction itself took much longer than the original time line and resulted in the compromised safety of the tenants. The construction crew left dangerous equipment unattended around the property, as well as employing unsafe practices while making the actual repairs. Additionally, I have serious cracks in my walls as a result of the construction on the exterior wall, which still have yet to be inspected by the property management company.

Thank you for your time and attention to this matter.

Sincerely,

Kendra Brennan
17438 4th Avenue #103
Oakland, CA 94606

000136



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

for Date Stamp Only:
RECEIVED
JAN 20 2010
RENT ADJUSTMENT PROGRAM
CITY OF OAKLAND

CASE NUMBER L17-0241

Tenant Response Contesting Rent Increase

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Lani Shotwell</i>	Complete Address (with Zip Code) <i>1738 4th Ave #203 Oakland, CA 94606</i>	Telephone Day <i>925 984 3086</i> Evening <i>SAME</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes No

Number of Units in this Building: *24*

Rental History

Date you entered into the Rental Agreement for this unit: *12/1/11*

Date you moved into this unit: *12/1/11*

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?
Yes No

Initial Rent: \$ *1125* Initial rent included (please check all that apply) () Gas
() Electricity Water Garbage () Parking () Storage () Cable TV () Other (please specify) ** Garage space became available within first year of tenancy, increasing rent to \$1200*

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes No

Please list the date you first received the Notice to Tenants *11/22/12*

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
11/22/12	1/1/13	\$1200	\$1236	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11/22/13	1/1/14	\$1236	\$1261.95	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12/23/14	2/1/15	\$1261.95	\$1314.50	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
1/22/16	3/1/16	\$1314.50	\$1335.95	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contested Justification(s) for Rent Increase

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking		Debt Service	
Capital Improvement	<input checked="" type="checkbox"/>	Uninsured Repair Costs	
Increased Housing Service Costs		Constitutional Fair Return	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.


The property owner has the burden of proving the contested rent increase is justified.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.



 Tenant's Signature

1/25/18

 Date

 Tenant's Signature

 Date

Important Information

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a Hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal Hearing before a Rent Adjustment Hearing Officer the same day.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

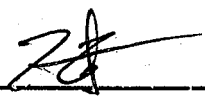
You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).


Tenant's Signature (for Mediation Request)

1/25/18
Date

Tenant's Signature (for Mediation Request)

Date

Lani Shotwell
1738 4th Ave, No. 203
Oakland, CA 94606

January 25, 2018

Deborah Griffin
CITY OF OAKLAND
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Rent Adjustment Program
P.O. Box 70243
Oakland, CA 94612-0243

Re: **Faussner v. Tenants**
Address: 1738 4th Avenue, Oakland
Case No: L17-0241

Dear Ms. Griffin:

This responds to the petition submitted by Robert Faussner (the Owner) for a rent increase at the above referenced property.

The Owner seeks a rent increase on the ground that work performed in 2016 and 2017 amounts to "Capital Improvements" to the property (Oakland Municipal Code §8.22.070(C)(1)(a); Reg. App. 10.2). I and the other tenants strongly disagree that the work in question amounts to "Capital Improvements," as defined in §8.22.020:

"Capital improvements" means those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner.... Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving")....

The work in question involved "repairs required because of deferred maintenance." It was discovered that windows along one wall of the building were leaking. In the course of replacing the leaking windows, mold and dry rot conditions were discovered within the wall assemblies. The damage was so extensive the repair contractor was required to erect structural stilts within the effected units to prevent the building from collapsing when outer wall support members were removed so they could be replaced. This required substantial work to remedy these conditions, following which the walls were re-stuccoed and painted.

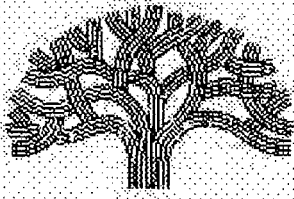
000140

Notably, this repair work actually downgraded the aesthetic quality of the building. The newly applied stucco was installed incorrectly, and has since been cracking. Also, the repair work caused substantial cracking to the interior sheetrock in many of the units bordering the exterior wall that was repaired.

Accordingly, we respectfully request that the petition be denied.

Very truly yours,

Lani Shotwell



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

for Date Stamp Only **RECEIVED**
JAN 30 2018
RENT ADJUSTMENT PROGRAM
OAKLAND

CASE NUMBER L17-0241

Tenant Response Contesting Rent Increase

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

Your Name <i>Shane Caldwell & Anna Caldwell</i>	Complete Address (with Zip Code) <i>1738 4th Ave #301 Oakland, CA 94606</i>	Telephone Day _____ Evening ⁷⁷³ <i>960-9447</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes No

Number of Units in this Building: 24

Rental History

Date you entered into the Rental Agreement for this unit: June 2015

Date you moved into this unit: June 2015

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?
Yes No

Initial Rent: \$ 1950 Initial rent included (please check all that apply) () Gas
() Electricity () Water () Garbage () Parking () Storage () Cable TV () Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit?
Yes No

Please list the date you first received the Notice to Tenants June 2015 (with lease)

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contested Justification(s) for Rent Increase

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking		Debt Service	
Capital Improvement	X	Uninsured Repair Costs	
Increased Housing Service Costs		Constitutional Fair Return	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

The property owner has the burden of proving the contested rent increase is justified.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

Anna Caldwell

Tenant's Signature

21 Jun 2018

Date

Anna Caldwell

Tenant's Signature

1/21/2018

Date

Important Information

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment.

For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a Hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal Hearing before a Rent Adjustment Hearing Officer the same day.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

Tenant's Signature (for Mediation Request)

Date

Tenant's Signature (for Mediation Request)

Date

Anna & Shane Caldwell

1738 4th Avenue
Apartment 301
Oakland, CA 94606
caldwell.shane@gmail.com
(773) 960-9447

21 January 2018

% Deborah Griffin

City of Oakland
Department of Housing and Community Development
Rent Adjustment Program
250 Frank H. Ogawa Plaza
Suite 5313
Oakland, CA 94612

File Name: Faussner v. Tenants
Property Address: 1738 4th Avenue, Oakland, CA 94606
Case Number: L17-0241

Dear Ms. Griffin,

We are writing in response to Robert E. Faussner's claim of exemption from the Rent Adjustment Program on grounds of Capital Improvements to the property (1738). Reading the text of the Rent Adjustment Ordinance, we find that Capital Improvements are defined as "those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the tenant rather than the owner."¹

The costs enumerated in Mr. Faussner's petition were incurred to fix a dry-rot problem in one of the outer walls of the building. Fixing the dry rot was a matter of maintenance and did not benefit us as tenants or change the value proposition of living at 1738 for us. The result of the project was only to restore the building to its original condition.

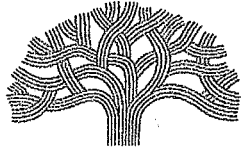
We have lived at 1738 since June 2015 and have always paid our rent on time. Apart from a long-standing problem with the phone wiring in the building, we are generally satisfied with the living situation. However the facts in this case do not appear to support a claim of exemption based on Capital Improvements as defined by the City.

Sincerely,



Anna & Shane Caldwell
Unit 301

¹ <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/agenda/oak050309.pdf>, page 3



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**
P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

For date stamp.

TENANT RESPONSE

CASE NUMBER: L17-0241

Please fill out this form as completely as you can. Failure to provide needed information may result in your response being rejected or delayed.

Your Name Annabelle Fuentes Joshua Palmer	Complete Address (with Zip Code) 1738 4th Ave. #307 Oakland, CA 94606	Telephone: 415-572-9965 (AF) / 510-693-1352 (JP)
		Email: annabelle.fuentes@gmail.com
Your Representative's Name	Complete Address (with Zip Code)	Telephone
		Email:

Are you current on your rent? Yes No

If you are not current on your rent, please explain. (If you are legally withholding rent state what, if any, habitability violations exist in your unit.)

What are your reasons for contesting the proposed rent increase or exemption? Attached additional sheets if necessary. If you are contesting a petition that includes a banking increase, you must complete rental history on the next page. For decreased housing services, you need to file a separate tenant petition.

See Attached Letter, and additional sheets p.1-21

Rental History

Date you moved into this unit: 3/01/2010

Initial rent: \$1,025.00

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?

Yes

No

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM (RAP Notice) at any time during your tenancy in this unit?

Yes

No

Please list the date you first received the RAP Notice. September 25, 2015

List all increases you received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased From	Rent Increased To
	11/01/2015	\$ 1,145.75	\$ 1,198.30
	11/01/2015	\$ 1,105.94	\$ 1,145.75
	11/01/2014	\$ 1,105.94	\$ 1,158.49
	6/01/2013	\$ 1,073.73	\$ 1,105.94
	6/01/2012	\$ 1,025.00	\$ 1,073.73
		\$	\$
		\$	\$

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

[Handwritten Signature]

Tenant's Signature

[Handwritten Signature]

Tenant's Signature

01/30/2018

Date

01.30.18

Date

Important Information

This form must be submitted to the Rent Adjustment Program within 35 days of the date that a copy of the Owner Petition was sent to you. (The date of mailing is shown on the Proof of Service attached to the Owner Petition and other response documents mailed to you.) If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open. You can deliver your Tenant Response in person to:

City of Oakland Housing Assistance Center, Rent Adjustment Program Office
250 Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612

You can date-stamp and drop your Response in the Rent Adjustment drop box at the Housing Assistance Center. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m.

You cannot get an extension of time to file your Response.

File Review

You should have received with this letter a copy of the landlord petition.

Copies of attachments to the petition will not be sent to you. However, you may review these in the Rent Program office. Files are available for review by appointment. For an appointment to review a file, call (510) 238-3721. When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files.

MEDIATION PROGRAM

Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a Hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal Hearing before a Rent Adjustment Hearing Officer the same day.

Mediation will be scheduled only if both parties agree (after both the owner's petition and your response have been filed with the Rent Adjustment Program).

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

Tenant's Signature (for Mediation Request) **Date**

Tenant's Signature (for Mediation Request) **Date**

January 30, 2018

I am writing to contest the proposed rate increased by the owner of the property at 1738 4th Avenue, Oakland, CA 94606.

1. Tenants have not received a rent increase notice from landlord with specific proposed rent increase amount.
2. The capital improvements in landlord's petition were not building-wide and are not unit specific to tenants in Unit #307. The improvements noted by landlord in their petition do not primarily benefit us the tenants of Unit #307. Moreover, the improvements noted by landlord in their petition provide no benefit to us the tenants of Unit #307.
 - a. The improvements noted by landlord in their petition were improvements to part of the building, not to the entire building, and not in or near Unit #307. Please reference the attached four (4) pictures. (See 10.2.)
 - b. The stucco work was done to a specific part of the building and not to the entire building.
 - c. The painting work was done to a specific part of the building and not to the entire building.
 - d. The structural/exterior wall work was done to a specific part of the building and not to the entire building.
3. The landlord must show evidence of costs paid and furnish receipts, invoices, bid contracts, or other documentation, but has not provided such evidence to tenants in landlord's petition.
4. Not all units have been included in the landlord's petition.
5. If a unit is occupied by an agent of the landlord, that unit must be included when determining the average cost per unit. The landlord did not include the unit that is occupied by an agent of the landlord in their petition, Unit #102. (See 10.2.3.)
6. The Capital Improvements that they are claiming to be justifiable for the rate increase do not meet the qualifications laid out in City of Oakland Code of Ordinances, Title 8: Health and Safety, Chapter 8.22 Residential Rent Adjustments and Evictions. The Chapter specifically states that admissible Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving").
 - a. The Structural/Exterior Wall repairs were necessary due to "deferred maintenance" of the building. The extensive dry rot they discovered in the entire east side of the building seemed to stem from negligence on the owner's part over a much longer period of time. I see no reason why this construction should fall on the responsibility of the tenant's who lived here during the time the repairs took place. Furthermore, the Painting costs they have included in the petition are cosmetic and would appear to fall under "improvements that are greater in character or quality than existing improvements"
7. The construction itself took much longer than the original time line and resulted in the compromised safety of the tenants. The construction crew left dangerous equipment unattended around the property, as well as employing unsafe practices while making the actual repairs. Additionally, tenants have cracks on the walls that are a result of the construction on the exterior wall, which still have yet to be inspected by the property management company.

Thank you for your time and attention to this matter.

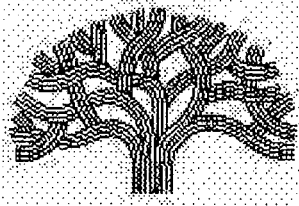
Sincerely,

Annabelle Fuentes and Joshua Palmer

1738 4th Ave. #307

Oakland, CA 94606

000149



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

for Date Stamp Only

2019 JUN 01 PM 12:12

CASE NUMBER L17-0241

Tenant Response Contesting Rent Increase

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

Your Name Kevin Alvarado Marcelino Martinez	Complete Address (with Zip Code) 1738 4th ave #202 Oakland, CA. 94606	Telephone 925 719 5270 Day 209 323 0269 Evening _____
Your Representative's Name	Complete Address (with Zip Code)	Telephone Day _____ Evening _____

Are you current on your rent? Yes No

Number of Units in this Building: 24

Rental History

Date you entered into the Rental Agreement for this unit: 05/01/2012

Date you moved into this unit: 05/01/2012

Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?
Yes No

Initial Rent: \$ 1180.00 Initial rent included (please check all that apply) () Gas
 () Electricity Water Garbage () Parking Storage () Cable TV () Other (please specify)

Did you receive the City of Oakland's NOTICE TO TENANTS OF RESIDENTIAL ADJUSTMENT PROGRAM at any time during your tenancy in this unit? Yes No

Please list the date you first received the Notice to Tenants —

List all increases your received. Begin with the most recent and work backwards. Attach most recent rent increase notice. If you need additional space please attach another sheet.

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?
		From	To	
01/06/15	04/23/15	\$1240.92	\$1264.50	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
03/24/14	05/01/14	\$1215.40	\$1240.92	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
03/22/13	05/01/13	\$1180.00	\$1215.40	<input type="checkbox"/> Yes <input type="checkbox"/> No
/		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

Contested Justification(s) for Rent Increase

Please attach a brief statement explaining why the owner is not entitled to the proposed increase. The legal justifications are Banking, Capital Improvements, Increased Housing Service Costs, Debt Service, Uninsured Repair Costs, and Necessary to Meet Constitutional Fair Return requirements.

Banking		Debt Service	
Capital Improvement	X	Uninsured Repair Costs	
Increased Housing Service Costs		Constitutional Fair Return	

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site.

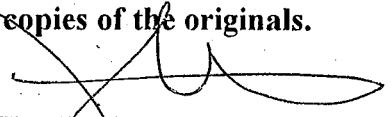
The property owner has the burden of proving the contested rent increase is justified.

¹ <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

¹ <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

Verification

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.



Tenant's Signature



Tenant's Signature

1-30-18

Date

1-30-19

Date

Important Information

This form must be received at the following address within the time limits prescribed by Oakland Municipal Code, Chapter 8.22. City of Oakland, Housing Residential Rent Relocation Board, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. For more information, please call: 510-238-3721.

You cannot get an extension of time to file your Response by telephone.

File Review

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For an appointment to review a file call (510) 238-3721.

MEDIATION PROGRAM

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Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

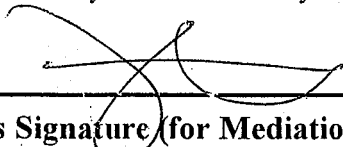
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Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program).

The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

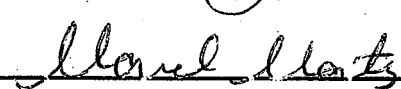
I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).



Tenant's Signature (for Mediation Request)

1-30-18

Date



Tenant's Signature (for Mediation Request)

1-30-18

Date

The following is in response to the rent increase proposed by Robert Fausner and Lapham property management for Capital Improvements. We as tenants do not own property in this building, we are only renters. However, for the owner of the building, the structural improvement will increase the longevity of the building and his ability to collect rent payments from tenants. The overall benefit from the improvements made to the building and income from tenants paying rent will only benefit the owner in the long-run. We feel this does not affect us directly and is more of a home improvement that tenants should not be responsible for absorbing the cost for the building owner.

Kind regards,

Marcelino Martinez & Kevin Alvarado

Case Number L17-0241



250 FRANK OGAWA PLAZA, OAKLAND, CA 94612 CITY OF OAKLAND

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBER: L17-0241, Faussner v. Tenants
PROPERTY ADDRESS: 1738 - 4th Ave., Oakland, CA
DATE OF HEARING: May 3, 2018
DATE OF DECISION: July 2, 2018
APPEARANCES: Ben Lewis (Agent for Owner)
Merkeb Tecele (Agent for Owner)
Joshua Palmer (Tenant)
Brendan Blandy (Tenant)
Kevin Alvarado (Tenant)
Clay Hayes (Tenant)
Christina White (Tenant)
Annabelle Fuentes (Tenant)
Maria D. Dominguez (Tenant Representative)

SUMMARY OF DECISION

The owner's petition is denied.

CONTENTIONS OF THE PARTIES

The owner filed a petition on November 7, 2017, for approval of rent increases for tenants in the subject 24-unit building on the ground of Capital Improvements. Numerous tenants filed responses to the owner's petition, in which they contest the owner's right to rent increases.

THE ISSUE

Are rent increases based upon Capital Improvements justified and, if so in what amounts?

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EVIDENCE

Scope of the Project: The owner's agents at first testified that the work was a "seismic upgrade," replacement of windows, and associated work. They further testified that they are employed by Lapham Co., a property management firm, and all payments were made by Lapham Company on behalf of the owner.

Owner Exhibits: Prior to the Hearing, the owner submitted a number of documents, which were marked Exhibits 1 through 101.¹ Following the Hearing, as ordered by this Hearing Officer, the owner submitted a corrected rent roll, which documents have been marked Exhibit Nos. 102 through 106. These documents state the following current monthly rents for tenants in the building, as follows:

Unit No. 101: Brian Ko - \$1,502.67
Unit No. 102 (Engelbrect) - \$1,116.67
Unit No. 103 (Brennan) - \$1,925
Unit No. 104 (Hayes) - \$1,73.44
Unit No. 105 (Dominic & Colin) - \$1,895 (moved in 3-10-17)
Unit No. 106 (Hopps) - \$1,348.66
Unit No. 107 (Fuentes & Plummer) - \$1,850
Unit No. 108 (Zegeye) - \$1,348.76
Unit No. 201 (Richard) - \$1,642.55
Unit No. 202 (Alvarado & Marcelino) - \$1,264.50
Unit No. 203 (Shotwell) - \$1,335.95
Unit No. 204 (Kelley) - \$1,598.03
Unit No. 205 (Brown) - \$1,895 (moved in 9-16-17)
Unit No. 206 (Blandy) - \$1,464.66
Unit No. 207 (Spadaro) - \$1,895 (moved in 10-1-17)
Unit No. 208 (Steele & Blasher) - \$1,950
Unit No. 301 (Caldwell & Smylie) - \$2,050
Unit No. 302 (Austin) - \$1,489.25
Unit No. 303 (Shuman & Rusich) - \$1,430.33
Unit No. 304 (White) - \$1,539.21
Unit No. 305 (Pearman & Jacuinde) - \$1,925 (moved in 10-1-17)
Unit No. 306 (Johnson) - \$2,250 (moved in 9-16-17)
Unit No. 307 (Fuentes & Palmer) - \$1,198.30
Unit No. 308 (Johnson) - \$1,608.36

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¹ At the Hearing, the tenants objected to these documents being admitted into evidence because they had not had an opportunity to review them. The documents had been submitted more than 7 days before the Hearing, as specified in the Notice of Hearing. Therefore, the tenants had an opportunity to review and/or obtain a copy of the file, and the objection was therefore overruled and the documents were admitted into evidence.

Exhibits Submitted by the Owner:

Building Permit: A City Building Permit was issued on May 4, 2016, and “finaled” on January 27, 2017.² The description of the work is “Dry rot repair / investigation for 4 story building (24 units building) stucco finish to match existing only.” On the first page is a handwritten note: “5-19-16 Dry rot + 9 windows.” It is unknown who wrote these words. However, there is no further formal documentation regarding a building permit for installation of windows. The owners also submitted a photograph of the exterior of a building with hand writing regarding replacement of windows and an invoice for windows.³

Fixit Construction, Inc Contract: A contract for work not to exceed the cost of \$325, 632.90. The scope of the contract is for “Repair and replacement of dry rotten framing members and related stucco. Replacement as necessary of related windows, tub surrounds, electrical, sheetrock, plaster and paint.” The contract also states: “What this proposal does not include: Structural engineering and plans.”⁴ The contract was signed by the parties on May 6 and 7, 2016.

Fixit Invoices: Invoices in the total amount of \$308,725.⁵ The most recent invoice is dated February 9, 2017.

Payments to Fixit: Checks in the total amount of \$386,340.⁶ The last of these payments was made on March 27, 2017.

Testimony of Owner’s Agents: The owner’s agents testified that the initial work was removal of stucco in order to find which, if any, structural members needed replacement. Fixit Co. replaced a number of wooden structural members. As part of the work, several windows were also replaced. The agents testified that they did not know if these windows had been leaking or why they had been replaced. On questioning by tenants, the agents testified that they did not know what the original plan was. They further testified that they believed that the owner had hired a structural engineer in connection with this work, but they did not know his or her identity nor did they know if a structural engineer had prepared a report.

The owner’s agents further testified that the Lapham Company conducts annual inspections of buildings that it manages, after which reports of the inspections are prepared. The agents testified that they did not have any reports for the subject building, nor did they know if any reports commented on the condition of windows in the building.

Exhibit No. 24, a Fixit invoice states, in part: “Cut and remove buckling stucco carefully . . .” The owner’s agents testified that they did not know how long the stucco had been buckling, or if this condition had ever been noticed and reported by the Lapham Co. The Fixit invoices reflect a

² Exhibit Nos. 11 through 14

³ Exhibit Nos. 15 & 16

⁴ Exhibit Nos. 17 through 21

⁵ Exhibit Nos. 23 through 72; 75, & 76. The amounts in invoices and payments are rounded to the nearest dollar.

⁶ Exhibit Nos. 22, and 77 through 101

significant project, involving the replacement of much structural lumber, at a cost of more than \$300,000.

Tenant Testimony: Tenant Fuentes testified that several times she had reported to building management that windows in her unit leaked when it rained, but nothing was done. Tenant Hayes testified that in the year 2015 he told the building manager that two windows in his unit leaked. The manager inspected the windows and said that they needed replacement. However, nothing was done before the construction discussed in this case. Tenant Palmer testified that his windows began to leak in the year 2014, and he reported this problem to the property manager several times between 2014 and 2016. Nothing was done before the subject construction project.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Rent Adjustment Ordinance: A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.⁷ Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.⁸

Items defined as capital improvements will be given a useful life period of 5 years or more and the total costs shall be amortized over that time period unless the rent increase using this amortization would exceed 10% of the existing rent. Whenever a capital improvement rent increase alone or with any other rent increases would exceed 10% or 30% in 5 years, the excess can only be recovered by extending the amortization period in yearly increments sufficient to cover the excess.

The dollar amount of the capital improvement rent increase shall be removed from the rent in the sixty-first month or at the end of an extended amortization period.⁹ A maximum of 70% of the total cost for the capital improvement may be passed through to the tenant.¹⁰

In order to be considered a capital improvement, the improvement has to be “completed.” (Regulations Appendix, Section 10.2.1). The Oakland Building Code provides that “all construction work for which a permit is required shall be subject to inspection by the Building Official.” (O.M.C. Section 15.08.140). Without a permit, the work cannot be said to have been “completed.”

The Board has held that if a construction project required a permit, then a capital improvement rent increase cannot be granted for costs expended on that project for which there was no permit. See Falcom v. Bostrum, Case No. T13-0279 & Ludwig v. Tenants, Case No. L16-0038.

Section 105 of the California Building Code, which has been incorporated into the Oakland Building Codes, lists the types of work for which no permit is required. Installation of windows

⁷ O.M.C. Section 8.22.070(C)

⁸ Regulations Appendix, Section 10.2.2(5)

⁹ Regulations Appendix, Section 10.2.3(2)

¹⁰ Regulations Appendix, Section 10.2.3(3)

is not one of the listed items. Therefore, a Building Permit was required for the installation of the subject windows.

The following may not be considered as capital improvements:

- a. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.
 - i. Among the factors that may be considered in determining if the landlord knew or reasonably should have known of the problem that caused the damage:
 - (a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?
 - (b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?
 - (c) Did the landlord conduct routine inspections of the property?
 - (d) Did the tenant permit the landlord to inspect the interior of the unit?
 - ii. Examples:
 - (a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.
 - (b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition and tenant complaints.
 - iii. Burden of Proof
 - (a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.
 - (b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.¹¹

¹¹ Regulations Appendix, Section 10.2.2(4)

Discussion: The California Evidence Code states: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."¹² Although there was testimony that Lapham Co. conducts annual inspections and then prepares reports, no reports were introduced by the owner's agents. The agents further testified that they believed that the owner had hired a structural engineer, but there was neither testimony nor a report from this person. Therefore, the only substantial evidence regarding the construction project was the testimony of several tenants, the Fixit contract for more than \$300,000, and the quoted language in the Fixit invoice: "buckling stucco."

It is found that several tenants reported that their windows leaked as early as 2014, yet a Building Permit was not issued until May 2016. There is no doubt that the stucco buckled because water from leaking windows eventually damaged wooden structural members, which then buckled the stucco. The Fixit employees obviously inspected the building, noted the buckling stucco, and anticipated how extensive the underlying damage would be. Presumably, an inspection by the owner or his agents would have revealed buckling stucco some time earlier, at which time the damage would not have been as extensive.

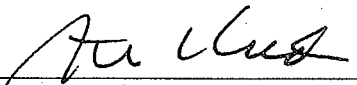
Applying the language in the Regulations cited above, it is clear that the owner knew or reasonably should have known that there was a problem with water entry in 2014, if not earlier. Therefore, the burden has shifted to the owner to prove that reasonable diligence was exercised.

The owner did not act diligently and, has not sustained his burden of proof. Therefore, the owner's petition is denied. Further, since there is no evidence that there was a building permit for installation of the windows, and the invoices do not apportion the cost of these windows and their installation, the cost of these windows is not allowed. Therefore, the owner's petition is denied.

ORDER

1. Petition L17-0241 is denied.
2. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: July 2, 2018



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

¹² Evidence Code, Section 412

PROOF OF SERVICE
Case Number L17-0241

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included
Hearing Decision

Owner

Robert E. Faussner c/o Lapham Co.
4844 Telegraph Ave
Oakland, CA 94609

Owner Representative

The Lapham Company
4844 Telegraph Ave
Oakland, CA 94609

Tenants

Annabelle Fuentes & Joshua Palmer
1738 4th Ave #307
Oakland, CA 94606

Aynaim Zegeye
1738 4th Ave #108
Oakland, CA 94606

Bahij Austin
1738 4th Ave #302
Oakland, CA 94606

Brendan Blandy
1738 4th Ave #206
Oakland, CA 94606

Brian Ko
1738 4th Ave #101
Oakland, CA 94606

Christina White
1738 4th Ave #304
Oakland, CA 94606

Clay Hays
1738 4th Ave #104
Oakland, CA 94606

Eric Johnson
1738 4th Ave #308
Oakland, CA 94606

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Jackelyn & Shawn Kelley
1738 4th Ave #204
Oakland, CA 94606

Jessica Steele & Joseph Blasher
1738 4th Ave #208
Oakland, CA 94606

John Gillham
1738 4th Ave #107
Oakland, CA 94606

Kendra Brennan
1738 4th Ave #103
Oakland, CA 94606

Kevin Alvarado & Marcelino Martinez
1738 4th Ave #202
Oakland, CA 94606

Lani Shotwell
1738 4th Ave #203
Oakland, CA 94606

Lauren & Valeria Richard
1738 4th Ave #201
Oakland, CA 94606

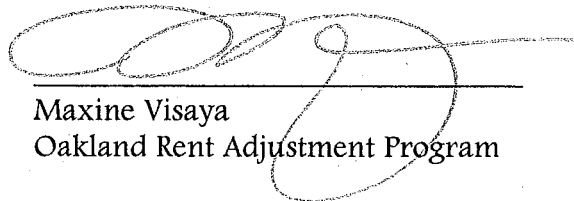
Lindsay Shuman & Shawn Rusich
1738 4th Ave #303
Oakland, CA 94606

Shane Caldwell & Anna Smylie
1738 4th Ave #301
Oakland, CA 94606

Tyler Hopps
1738 4th Ave #106
Oakland, CA 94606

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 03, 2018 in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program

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CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
 250 Frank Ogawa Plaza, Suite 5313
 Oakland, CA 94612
 (510) 238-3721

For date stamp.

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APPEAL

Appellant's Name Robert Faussner c/o Lapham Company		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 1738 4th Avenue, Oakland, CA 94606 Units 101, 103, 104, 106, 107, 108, 201, 202, 203, 204, 206, 208, 301, 302, 303, 304, 307 & 308			
Appellant's Mailing Address (For receipt of notices) 4844 Telegraph Avenue Oakland, CA 94609		Case Number L17-0241	Date of Decision appealed July 2nd, 2018
Name of Representative (if any) Clifford Fried, Esq. Fried & Williams, LLP		Representative's Mailing Address (For notices) 1901 Harrison St., 14th floor Oakland, CA 94612	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
 - a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
 - b) The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
 - c) The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
 - d) The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
 - e) The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.

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- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)


Submissions to the Board must not exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: 2

A Supporting Brief will be provided prior to August 7th, 2018

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •

I declare under penalty of perjury under the laws of the State of California that on July 23, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows: **See the attached list of parties served.**

<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	07/23/2018
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SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

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IMPORTANT INFORMATION:

This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- The Board will not consider new claims. All claims, except jurisdiction issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

For more information phone (510) 238-3721.

City of Oakland Rent Adjustment Program, Case No. L17-0241

Appeal of Owner Robert Faussner

Date of Hearing Decision: July 2, 2018

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EXPLANATION OF GROUNDS FOR APPEALING THE DECISION

2)a) The Decision Is Inconsistent With the Oakland Municipal Code, RAP Regulations, or Prior Decisions of the RAP Board.

Oakland Municipal Code, Section 8.22.070(C) permits a rent increase in excess of the CPI based on capital improvement costs. Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. RAP Regulations, Appendix, Section 10.2.2. Appellant's capital improvement project qualifies for a passthrough under these laws.

There have been cases at the RAP where a capital improvement project did not have a specific permit for window repairs or replacement and yet the requested capital improvement passthrough was permitted by the RAP. Neither *Falcom v. Bostrum*, Case No. T13-0279, nor *Ludwig v. Tenants*, Case. No. L16-0038, are precedent cases which must or should be followed.

2)b) The Decision Is Inconsistent With Decisions Issued By Other Hearing Officers.

There have been cases at the RAP where a capital improvement project did not have a specific permit for window repairs or replacement and yet the requested capital improvement passthrough was permitted by the RAP. Neither *Falcom v. Bostrum*, Case No. T13-0279, nor *Ludwig v. Tenants*, Case. No. L16-0038, are precedent cases which must or should be followed.

2)c) The Decision Raises New Policy Issues That Have Not Been Decided By the Board.

There are several questions presented by the case which raise policy issues not previously addressed by the Board, including but not limited to:

1. What permits are required for a capital improvement passthrough.
2. Whether California Evidence Code Section 412 is applicable at the RAP.
3. Whether a Hearing Officer without the necessary expertise or background can make a finding as to the cause of conditions in need of repair (in this case, buckling stucco and damaged wooden because of window leaks.

4. Whether an inspection by Owner or his agents would reveal conditions that could only be discovered by a trained professional contractor.

5. Whether alleged complaints from tenants about window leaks is sufficient to put an owner on notice of actual structural damage.

6. Whether a visual inspection by the Owner or his agents gives an Owner notice of any kind that there was extensive underlying structural damage to the Property.

7. Whether a delay in repairs automatically leads to underlying structural damage.

2)d) The Decision Violates Federal, State, or Local Law.

Oakland Municipal Code, Section 8.22.070(C) permits a rent increase in excess of the CPI based on capital improvement costs. Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. RAP Regulations, Appendix, Section 10.2.2. Appellant's capital improvement project qualifies for a passthrough under these laws. Thus, the Decision is in violation of Oakland's Municipal Code.

2)e) The Decision Is Not Supported By Substantial Evidence.

There is no evidence in the record that

1. A separate permit is required for the window repairs and or replacements.
2. Owner failed to obtain a permit for the window repairs and or replacements.
3. That the alleged delay in investigating and acting diligently caused the extensive underlying damage to the Property.
4. That an inspection by Owner or his agents would have revealed conditions in immediate need of repair or that there was extensive underlying structural damage to the Property.
5. That the alleged complaints from tenants about window leaks was sufficient to put the Owner or his agents on notice of actual structural damage.
6. The alleged delay in repairs caused the extensive underlying structural damage to the Property.

2)f) Appellant Was Denied A Sufficient Opportunity to Present His Claim.

Appellant was permitted to submit Tenant Repair Requests since 2014 and none evidenced window leaks. This evidence was submitted, yet the Decision ignores this evidence. It appears that Appellant's evidence was not considered by the Hearing Officer.

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Opposing parties served with Appeal petition for L17-0241

Brian Ko 1738 4 th Avenue, #101 Oakland, CA 94606	Jackelyn & Shawn Kelley 1738 4 th Avenue, #204 Oakland, CA 94606
Kendra Brennan 1738 4 th Avenue, #103 Oakland, CA 94606	Brendan Blandy 1738 4 th Avenue, #206 Oakland, CA 94606
Clay Hays 1738 4 th Avenue, #104 Oakland, CA 94606	Jessica Steele Joseph Blasher 1738 4 th Avenue, #208 Oakland, CA 94606
Tyler Hopps 1738 4 th Avenue, #106 Oakland, CA 94606	Shane Caldwell Anna Smylie 1738 4 th Avenue, #301 Oakland, CA 94606
John Gillham 1738 4 th Avenue, #107 Oakland, CA 94606	Bahij Austin 1738 4 th Avenue, #302 Oakland, CA 94606
Anaim Zegeye 1738 4 th Avenue, #108 Oakland, CA 94606	Lindsay Shuman Shawn Rusish 1738 4 th Avenue, #303 Oakland, CA 94606
Lauren & Valeria Richard 1738 4 th Avenue, #201 Oakland, CA 94606	Christin White 1738 4 th Avenue, #304 Oakland, CA 94606
Kevin Alvarado Marcelino Martinez 1738 4 th Avenue, #202 Oakland, CA 94606	Annabelle Fuentes Joshua Palmer 1738 4 th Avenue, #307 Oakland, CA 94606
Lani Shotwell 1738 4 th Avenue, #203 Oakland, CA 94606	Eric Johnson 1738 4 th Avenue, #308 Oakland, CA 94606

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Clifford E. Fried, Esq. SBN 118288
Fried & Williams LLP
1901 Harrison Street, 14th Floor
Oakland, CA 94612
Telephone: 510-625-0100
Email: cfried@friedwilliams.com

Representative for Owner and Appellant
Robert E. Faussner

City of Oakland
Rent Adjustment Program

Case No. L17-0241
Appeal of Owner
Robert E. Faussner

In re 1738 4th Avenue, Oakland

**APPELLANT'S SUPPORTING ARGUMENT AND DOCUMENTATION TO BE
CONSIDERED BY THE BOARD ON APPEAL**

Owner and Appellant Robert Faussner hereby submits the following supporting argument and documentation, pursuant to RAP Regulations, Sec.8.22.120A.2, in support of the Appeal he filed on July 23, 2018.

INTRODUCTION

Appellant filed a petition for a capital improvement passthrough based on seismic upgrades, window upgrades, and associate work. Hearing Decision at page 2. All payments were made by Appellant's property management company on behalf of

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the Appellant as the owner. Hearing Decision at page 2. Capital improvement expenses claimed by Appellant's petition is \$312,523.19 while evidence was presented at the hearing of \$386,340 in expenses. Hearing Decision at page 2 and Exhibits 22 and 77-101; Petition at page 5.

Appellant's petition was ostensibly denied because the Hearing Officer found that (1) Appellant lacked a window permit, (2) Appellant could have avoided the capital improvement work by inspecting sooner than he did, and (3) several tenants reported their windows leaked as early as 2014 which led to more extensive structural wood rot.

ARGUMENTS

A. APPELLANT HAS A WINDOW PERMIT.

Appellant met his burden of proof by a preponderance of the evidence. Appellant introduced into evidence a permit that incorporates the 9 windows that were part of this capital improvement project. See Evidence Exhibits 11 – 14 per Footnote 2 at Hearing Decision page 3. Appellant also introduced into evidence a Xerox of a photograph of the building exterior with hand writing regarding replacement of windows. See Evidence Exhibits 15 – 16 per Footnote 3 at Hearing Decision page 3. However, while not noted by the Hearing Officer in the Decision, Evidence Exhibits 15 – 16 also include a dated and signed 'APPROVED' stamp from the City of Oakland Planning and Zoning department. Another copy of this document is attached hereto as Exhibit A.

It doesn't matter if words are handwritten on the permit or who may have written the notes. The handwritten information is all part of the permit. The City approved the window replacement and would only do so if a permit was issued. Had Appellant been given advanced notice that the window permit would be questioned, he could have brought in witnesses from the City of Oakland's Building Department, including Neil Gray who signed off on the window work. But it wasn't necessary for Appellant to introduce more evidence concerning the window permit. He introduced enough evidence to meet his burden of proof where the standard is preponderance of the evidence. In other words, it was more likely than not that a permit was pulled for the window upgrades. In the event there is really a question about whether there are permits for the windows, the RAP can take judicial notice of the Building Department's Acela Online Permit Records. Copies are attached hereto as Exhibit B.

During the Hearing, there was *no* testimony or evidence that the permit was not authentic or finalized by the City of Oakland. The Tenants certainly didn't provide testimony or introduce evidence that a window permit was lacking. Nor did the

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Hearing Officer challenge or even elicit any testimony about a permit for the windows. In fact, at no point during the Hearing was there any mention made about the permit for windows. Despite being unable to substantiate the lack of a window permit, the Hearing Decision improperly concludes that Appellant lacks a window permit. The Permit submitted by the Appellant at the hearing, a copy of which is attached hereto as Exhibit C is real and should not have been ignored by the Hearing Officer simply because he didn't believe it.

After the contractor removed stucco from the building and determined the true extent of the construction work necessary, he returned to the City of Oakland and sought approval of City of Oakland to obtain its approval for the extent of the structural and dry rot work on the building – including the replacement of windows. Building Officials approved the installation of the windows at the building. There is no actual controversy about the windows being installed without a permit.

B. THE CAPITAL IMPROVEMENT WORK WAS DONE NOT BECAUSE OF LEAKING WINDOWS, BUT BECAUSE OF A BULGE IN THE STUCCO AT THE SOUTHWEST CORNER OF THE BUILDING.

The Hearing Officer mistakenly concludes that leaking windows from certain tenants' units caused or possibly exacerbated a dry rot problem.

First, the tenants who testified that they complained about leaks from their windows reside in units quite a distance away from the structural and dry rot work was done. Exhibit D attached to this brief is a drawing showing that the tenants who testified about alleged leaks in their windows reside in the same "stack" as Unit 307, nowhere near the capital improvement work. Even if they did complain about window leaks, which they didn't, their windows are at the opposite end of the building where the work was done.

Second, Appellant submitted written maintenance requests from the tenants in units who testified about leaking windows and none of the requests mentioned window leaks. If the Tenants really complained about window leaks, the complaints would appear in the written maintenance requests. The Tenants fabricated their complaints knowing that the Hearing Officer was use their testimony to deny the Petition.

Third, windows eventually wear out. Appellant's new windows are new, energy efficient and work nicer. Since windows needed to be removed to do new framing and put back, it was a small cost compared to the overall capital improvement project. The extra new windows added at most 2-3% of the overall project. Exhibit A shows the cost of the 9 windows.

Fourth, the Hearing Officer is not qualified to supply evidence as to cause and effect of leaking windows. It is entirely possible that the alleged window leaks in the 307 Stack caused no structural or dry rot problems whatsoever. Had Appellant been given fair warning that leaking windows from this Stack would be an issue, he would have brought the correct percipient and expert witnesses to the Hearing, including but not limited to the contractor, the City Planning Official, the City Building Official and the Owner himself. However, neither the Tenants' Responses to the Petition nor the Rules and Regulations of the RAP provided notice and a fair opportunity to be heard on the issue. And so, two agents of the property manager appeared at the Hearing and were blindsided.

C. APPELLANT PULLED A PERMIT TO INVESTIGATE WHAT WORK MIGHT BE NECESSARY.

While the Hearing Officer is confident as to the cause of the buckling stucco, the owner and his highly paid licensed professionals were not. To determine why the stucco was buckling at one part of the building, Appellant pulled a permit to "investigate". See Permit Inspection Record; Exhibits 11-14.

No person has x-ray eyes that can see and know what damage there is and the extent of any dry rot. That is the nature of water intrusion and dry rot. There is absolutely no evidence supporting the conclusion that the Fixit employees had any certainty as to cause or extent of dry rot damage prior to taking off the stucco - it could have been a \$ 10,000 job or a \$ 1,000,000 job.

Had Appellant been given an adequate opportunity, he would have had an expert opine that the leaks around windows in the building could not have caused the type and extent of damage that was present. Stucco is a cementitious material that, like sidewalks, develops cracks and leaks, frequently right after it is installed. At most, the hearing officer had evidence that only one of the nine windows that was replaced in the area of the capital improvement work was leaking - but no evidence of how long, or what type of leak (e.g., around the windows, on the sills, through the window, below the window, above the window).

D. THE HEARING OFFICER'S OPINIONS AS TO CAUSATION OF DRY ROT AND DAMAGE ARE MERELY LAY OPINIONS THAT SHOULD NOT HAVE BEEN THE BASIS FOR THE HEARING DECISION.

The Hearing Decision at page 6 states that "There is no doubt that the stucco buckled because water from leaking windows eventually damaged wooden structural members, which then buckled the stucco." How did the Hearing Officer ever come up with this conclusion! There was nothing in the evidence to support the conclusion.

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The Decision further states "The Fixit employees obviously inspected the building noted the buckling stucco and anticipated how extensive the underlying damage would be." Again, there was nothing in the evidence to support this conclusion.

The Hearing Officer is not qualified to give these opinions. The Hearing Officer is not a building inspector or a licensed General Contractor and has never even been present at the building. It is difficult enough for real dry rot and construction experts to make these conclusions let alone a lay person with no experience in the building trades.

At one point the Hearing Officer contradicts his findings by stating that "The owner's agents testified that the initial work was removal of stucco to find which, if any structural members needed replacement." It is unclear why the Hearing Officer chose to ignore this testimony and instead base the Hearing Decision on his fictional, lay opinions.

The type of damage repaired by Appellant at the building happened decades ago (over \$ 300K of damage did not occur in one to two years from a few window leaks). In one or two years you would just have wet wood, probably with minor damage that did not have to be replaced. Most of the damage found by Appellant was dry, indicating no active leaking. This kind and extent of damage could not have occurred in the one or two years prior to the work, the time period the tenants testified to.

E. The Decision Raises New Policy Issues That Have Not Been Decided By the Board.

There are several questions presented by the case which raise policy issues not previously addressed by the Board. Given the lack of notice to the Appellant of the issues that would be raised at the Hearing and in the Hearing Decision, it isn't wise to apply strict burdens of proof or rules of evidence.

Nor is it wise to allow a Hearing Officer to substitute his expert opinions without any technical or factual basis. Allowing such latitude opens the door for all kinds of mischief based on sympathy for tenants and biases against landlords.

F. APPELLANT WAS DENIED A SUFFICIENT OPPORTUNITY TO PRESENT HIS CLAIM.

Appellant was blindsided by the evidence presented by the Tenants and the Hearing Decision. Without notice being given by the Tenants in their Responses, the Tenants then gave uncorroborated testimony during the Hearing that they had complained to the landlord about leaking windows. See Hearing Decision at page 4. Because the Tenant Responses did not disclose any evidence, notice of

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complaints or argument about leaking windows, Appellant was not prepared at the hearing to provide testimony or documentation concerning the absence of complaints from Tenants about leaking windows. Nor was Appellant prepared with an expert witness to give testimony about how leaking windows on one side of the building would not have put the Appellant on notice of a potential rot issue on another side of the building.

For the parties to have real notice of the issues to be raised at the hearing, both landlord and tenant must file petitions and responses with enough detail to put the other on notice of what documents to provide to the RAP and what witnesses to bring to the Hearing. **NONE of the Tenants' Responses provide any claim of leaking windows that should have put the owner on notice of substantial deferred maintenance or that he lacked a window permit.** The RAP Form Response says, "Please attach a brief statement explaining why the owner is not entitled to the proposed increase." There was *no* attached statement. It was therefore reasonable for Appellant to appear at the hearing without anticipating a claim of window leaks and lack of permits.

The Hearing Decision is based entirely on the unsubstantiated complaints about window leaks on the wrong side of the building. Appellant did not have a fair and adequate opportunity to reply to the conclusions in the Hearing Decision. Had Appellant been given a fair and reasonable opportunity to respond and reply to the testimony of the Tenants and the conclusion of the Hearing Officer, ample evidence could have been presented by the Appellant to support the petition.

When a landlord prepares for a RAP hearing, it is impossible to anticipate all testimony that will be raised at the hearing. One would hope that the testimony would at least fall within the scope of the Tenant Responses to the Landlord Petition. But that does not always happen. And it did not happen here.

Because Appellant was not given enough opportunity to provide rebuttal documentation and testimony in response to the Tenants' surprise testimony and the surprising conclusions of the Hearing Officer, this case must be remanded back for further hearings on the issues of (1) notice of leaks to the Appellant, and (2) expert testimony on causation of building rot.

Appellant was permitted to submit Tenant Repair Requests since 2014 and none evidenced window leaks. The Decision ignores this evidence. It appears that Appellant's evidence was not considered by the Hearing Officer. On remand, the Hearing Officer should consider the absence of written complaints from tenants and how that affects the truth of self-serving statements made at the RAP and overall credibility of the Tenants' testimony.

CONCLUSION

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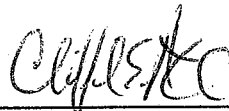
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Appellant respectfully requests that the Hearing Decision be reversed for the reasons set forth above and the Petition granted. If the Board is inclined to not grant the petition, it is requested that the matter be remanded back to the Hearing Officer to take expert testimony regarding the cause, nature and effects of the dry rot and any connected window leaks, and to allow percipient testimony from witnesses about Appellant's possession of a window permit.

A great injustice was done here because the outcome of the case was pre-determined and Appellant's evidence was ignored. The Hearing Decision is completely wrong and should not be rubber-stamped on appeal.

Date: August 07, 2018

Fried & William LLP



Clifford E. Fried,
Designated Representative for
Owner and Appellant Robert E.
Faussner

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APR 14 1986

Replacement of 9
aluminium windows
w/ rail on vinyl
windows ok per
zoning. NG X3878

APPROVED

City of Oakhurst Planning & Zoning

Signature: *Neil Gray* Date: 5/19/86

NOTICE
This is to advise you that the
City of Oakhurst Planning & Zoning
Department has received an application
for a permit to install a new window
unit in the above described property.
If you have any objections to this
application, please contact the
Department at 1234 Main Street,
Oakhurst, CA 95626, or call
530-835-1234.

NOTICE
This is to advise you that the
City of Oakhurst Planning & Zoning
Department has received an application
for a permit to install a new window
unit in the above described property.
If you have any objections to this
application, please contact the
Department at 1234 Main Street,
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unit in the above described property.
If you have any objections to this
application, please contact the
Department at 1234 Main Street,
Oakhurst, CA 95626, or call
530-835-1234.

Economy Lumber Co. - Jacki Lewis
 750 High Street
 Oakland, CA 94601
 Phone: (510) 437-1196

JELD WEN
 WINDOW & DOOR

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QUOTE BY: Jacki Lewis
 SOLD TO: lapham

QUOTE #: JJL100614
 SHIP TO:

PO#:

PROJECT NAME:

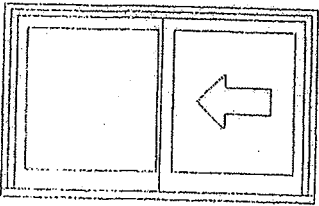
REFERENCE:

Ship Via: Ground/Next Truck

LINE NO.	LOCATION SIZE INFO	BOOK CODE DESCRIPTION	NET UNIT PRICE	QTY	EXTENDED PRICE
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Line-1

Rough Opening: 39 X 25



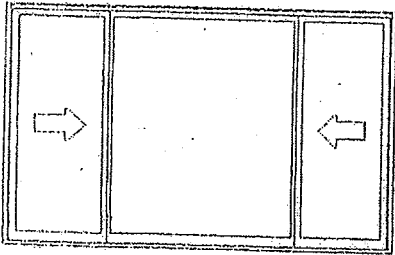
Viewed from Exterior. Scale: 1/2" = 1'

Frame Size: 38 1/2 x 24 1/2
 Actual Size: 38 1/2 -in X 24 1/2 -in
 Premium Vinyl Sliding Window With Even Sight Line, Nail Fin (1 1/4" setback), White Ext/White Int , OX (RH) Vent Width = 19 1/2., CA Title 24, Low-E 366 Obscure Tempered , Argon 1/8 in - 1/8 out , 0 - 3500 feet
 Standard Screen with Fiberglass Mesh,
 White Int Hardware, Mag-Lock(s), 1 Lock, *Does Not Meet Egress*,
 US National-AAMA PG35, DP+35/-35,
 PEV 2016.1.2.1483/POV 6.388 (05/05/16) WO

\$281.78 3 \$845.34

Line-2

Rough Opening: 96 X 62



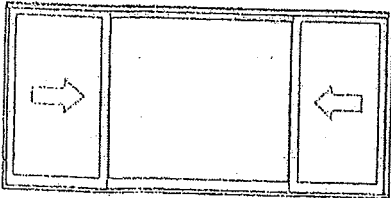
Viewed from Exterior. Scale: 1/4" = 1'

Frame Size: 95 1/2 x 61 1/2
 Actual Size: 95 1/2 -in X 61 1/2 -in
 Premium Vinyl Sliding Window 3 Panel, With Even Sight Line, Nail Fin (1 1/4" setback), White Ext/White Int , XOX (1/4 Vent) Vent Width = 24 , CA Title 24, Low-E 366 Clear Argon 0 - 3500 feet
 Standard Screen with Fiberglass Mesh,
 White Int Hardware, Mag-Lock(s), 2 Locks, *Meets 5.7 sqft Egress (All Floors)*,
 US National-AAMA PG35, DP+35/-35,
 PEV 2016.1.2.1483/POV 6.388 (05/05/16) WO

\$571.40 3 \$1,714.20

Line-3

Rough Opening: 96 X 48



Viewed from Exterior. Scale: 1/4" = 1'

PRVSL39648
 Frame Size: 95 1/2 x 47 1/2
 Actual Size: 95 1/2 -in X 47 1/2 -in
 Premium Vinyl Sliding Window 3 Panel, With Even Sight Line, Nail Fin (1 1/4" setback), White Ext/White Int , XOX (1/4 Vent) Vent Width = 24 , CA Title 24, Low-E 366 Clear Argon 0 - 3500 feet
 Standard Screen with Fiberglass Mesh,
 White Int Hardware, Mag-Lock(s), 2 Locks, *Meets 5.7 sqft Egress (All Floors)*,
 US National-AAMA PG35, DP+35/-35,
 PEV 2016.1.2.1483/POV 6.388 (05/05/16) WO

\$468.36 3 \$1,405.08

QQ-2.20.900.1693 cust-013663

Quote Date: 5/16/2016

Page 1 of 2(Prices are subject to change.)

Drawings are for visual reference only and may not be to exact scale. All orders are subject to review by JELD-WEN

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Last Modified: 5/16/2016

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<input type="checkbox"/>	File Date	Status	Record Number	Record Type	Address	Description	Action
<input type="checkbox"/>	10/13/2016	Void	DS160500	Small Project DR	1738 4TH AVE, Oakland CA 94606	Antenna swap of 3 antennas (6409) behind frp	
<input type="checkbox"/>	10/13/2016	Approved	DS160501	Small Project DR	1738 4TH AVE, Oakland CA 94606	Antenna swap of 3 antennas (6409) behind frp	
X <input type="checkbox"/>	05/19/2016	Approved	DRX160836	DR Exemption	1738 4TH AVE, Oakland CA 94606	Replacement of 9 aluminum windows with vinyl nail on windows as part of dry rot repair.	X
<input type="checkbox"/>	03/11/2016	Approved	DS160114	Small Project DR	1738 4TH AVE, Oakland CA 94606	Add 3 additional antennas to 6 existing within a rooftop penthouse.	
<input type="checkbox"/>	02/04/2015	Approved	ZC150321	Zoning Clearance	1738 4TH AVE, Oakland CA 94606	Home business for music lessons (unit #105)	
<input type="checkbox"/>	07/09/2012	Approved	DS120187	Planning/Applications /Counter/Small Project DR	1738 4TH AVE, OAKLAND CA	DS to replace 6 antennas with 6 new antennas located within an existing screened enclosure of rooftop	
<input type="checkbox"/>	01/20/2010	Approved	ZC100134	Planning/Applications /Counter/Zoning Clearance	1738 4TH AVE, 203, OAKLAND CA	Home office for an arts consulting business.	
<input type="checkbox"/>	11/14/2017	Application Inactive	P1703305	Non-Residential Plumbing - Alteration	1738 4TH AVE, Oakland CA 94606	Installation of earthquake shut-off valves for 24 unit apartment building	
<input type="checkbox"/>	10/26/2016	Final	B1605173	Non-Residential Building - Alteration	1738 4TH AVE, Oakland CA 94606	Antenna swap of 3 antennas (6409) behind frp at apartment building for T-Mobile.	
<input type="checkbox"/>	09/21/2016	Final	E1603501	Non-Residential Electrical - Alteration	1738 4TH AVE, Oakland CA 94606	Upgrade existing 60 AMP breaker/feeder to 100 AMP for existing BTS cabinet related to T-Mobile cell site modification; add 3 additional antennas to 6 existing within a rooftop penthouse. DS160114	
X <input type="checkbox"/>	05/04/2016	Final	B1602022	Non-Residential Building - Repair	1738 4TH AVE, Oakland CA 94606	Dry rot repair/investigation for 4 story building (24 units building) stucco finish to match existing only. 5/19/16: Remove dryrot, repair; replace 9 windows.	X
<input type="checkbox"/>	03/31/2016	Final	B1601364	Non-Residential Building - Alteration	1738 4TH AVE, Oakland CA 94606	T-Mobile cell site modification; add 3 additional antennas to 6 existing within a rooftop penthouse. DS160114	
<input type="checkbox"/>	05/13/2014	Final	CGS1400092	Curb, Gutter, Sidewalk	1738 4TH AVE, Oakland CA 94606	Repair sidewalk to City Standards (minimum 2% slope) Permit valid 30 days. Call PWA INSPECTION prior to start: 510-238-3651. 4th FLOOR	
<input type="checkbox"/>	04/24/2014	Expired	B1400585	Non-Residential Building - Alteration	1738 4TH AVE, Oakland CA 94606	Soft story retrofit. Provide steel moment frames w/ new partial foundations, at moment frame locations only.	
<input type="checkbox"/>	06/06/2013	Final	B1302095	Building/Non-Residential /Building/Alteration	1738 4TH AVE, OAKLAND CA	T-Mobile proposal to replace	

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[View an Application](#) [Search Planning Records](#)

Application Number DRX160836:

Exemption

Application Status: Approved

Record Info Custom Component

Processing Status

Application Intake

Due on 05/20/2016, assigned to TBD
Marked as Approved on 05/19/2016 by NG

Zoning Review

Due on 05/26/2016, assigned to TBD
Marked as Approved on 05/19/2016 by NG



For best results, use one of the following browsers: Internet Explorer 11, Google Chrome 42, Mozilla Firefox 37, or Safari 8.

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Home Building **Planning** Enforcement Fire

Create an Application Search Planning Records

Planning Number DRX160836:

Exemption

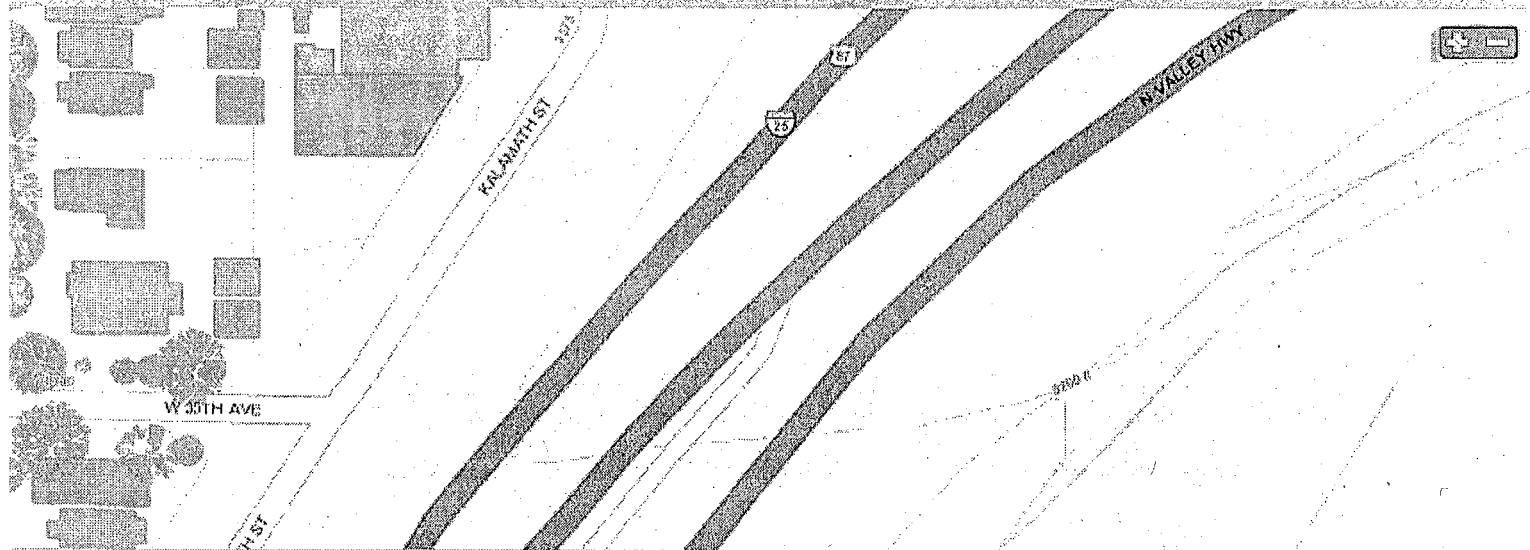
Record Status: Approved

Record Info

Custom Component

Project Location

738 4TH AVE
Oakland CA 94606



Project Details

Licant:

Individual
Elix Sanchez
324 E 17th St #8
OAKLAND, CA, 94606

Project Description:

Replacement of 9 aluminum windows with vinyl nail on windows
Replacement of 9 aluminum windows with vinyl nail on windows as part of dry rot repair.

Owner:

4TH AT 17TH OAKLAND LLC & DRAKE INVESTORS LLC
ETAL
860 URBANO DR
SAN FRANCISCO CA 941272835

More Details

Record B1602022:
Non-Residential Building - Repair
Record Status: Final

Record Info

Processing Status

- Application Intake
- Plan Routing
- Plan Check Review
- Zoning Review
- Zoning Inspection Unit Review
- Fire Marshal Review
- Constr. Recycling Review
- CP Permit Compliance Review
- Final Check
- Permit Issuance

Marked as Issued on 05/04/2016 by CB

Inspection

Marked as Final - CO Not Required on 01/30/2017 by DV

Certificate of Occupancy

Post Construction Monitoring

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 BUILDING SERVICES
 250 Ogawa Plaza · 2nd Floor · Oakland, CA 94612
 telephone (510) 238-3444 · facsimile (510) 238-7287 · www.oaklandnet.com

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PERMIT INSPECTION RECORD

Commercial and Multiple-Unit Residential
 California Building, Electrical, Plumbing, Mechanical, Energy, and Green Building Codes
 Oakland Building, Planning, Sustainability, Fire, and Municipal Codes

Address: 2738 4TH AVE, Oakland, CA 94606 ST Suite: APN: 021 022201300

Description: Dry rot repair/investigation for 4 story building (24 units building) stucco finish to match existing only
 Owner: 4th At 17th Oakland Llc & Drake Investors Llc Etal
 Contractor: FIXIT CONSTRUCTION INC CRAIG STEPHEN TURNER
 Issued: 05/04/2016
 Type: Non-Residential Building Repair
 Sprinklers: No

Spec Insp:
 Permits: B1602022

Pre-paid Inspections 6

General Notes	
1a	This Inspection Record Card and the Approved Plans and Approved Construction Management Plan must be readily available at the job site for all inspections. Protect all documents from the weather.
1b	All construction must remain readily visible for inspection until the "OK TO COVER" box on this Inspection Record Card has been signed and dated by the City Inspector.
1c	Noise levels and Hours of Construction shall conform with the Zoning Conditions of Approval and Oakland Municipal Code regulations.
1d	Follow all hazardous material testing, worker protection, remediation, and disposal regulations (lead-based paint, asbestos, etc.).
1e	Toilet facilities must be provided on-site for construction workers.
Permit Expiration & Refunds	
2a	A permit may be extended (fee required) for a total of one year from the date of issuance only if no inspections have been performed.
2b	Each permit will expire separately unless each of the Major Inspections (Foundation, First Floor, Frame, Final) is approved by the City Inspector every 6 months (or sooner). An expired permit cannot be reinstated if an inspection has been performed.
2c	A Refund Request must be filed for all refunds. Up to 80% of inspection fees may be refunded if no inspections have been performed. No fees may be refunded more than 180 days after a permit has expired.
Site Maintenance	
3a	"Best Management Practices" must be used daily for dust control and to protect storm water drainage systems (C6).
3b	Jobsite must be cleaned daily of trash and debris and maintained free of graffiti. Construction materials must be neatly stockpiled on-site. Vehicles and equipment must be parked on-site (see 5a below).
Inspections	
4a	To avoid being charged for an inspection, a cancellation must be called-in before 10:00 am on the morning of the scheduled inspection.
4b	For Building (B), Electrical (E), Plumbing (P), Mechanical (M), Grading (GR), Solar (SE, SP), Zoning, and Infrastructure (PX, PZ) inspections, call (510) 238-3444 week days 8:00 am to 4:00 pm, Wednesdays 9:30 am to 4:00 pm well in advance. Each permit must be scheduled separately.
4c	For Fire inspections, call (510) 238-3851. For Public Works inspections, call (510) 238-3651. For EBMUD sewer lateral certification inspections, call (510) XXX-XXXX.
4d	When a permit is Greenpoint or LEED energy rated, third-party inspections by a pre-Certified Rater must be also be completed.
Additional Permits	
5a	Separate permits (OB) are required to reserve curbside parking or to obstruct the sidewalk or street in any way (scaffolding, pedestrian canopy, construction fencing, material stock piles, debris dumpsters, traffic lane closure, etc.).
5b	Separate Fire Prevention Bureau permits are required for fire sprinkler and fire alarm systems.
5c	Separate permits (X, SL, CGS) are required for excavation and repair work in the Public Right-of-Way (sidewalk, curb, gutter, driveway approach, sewer lateral, water and gas piping, storm drain, etc.).

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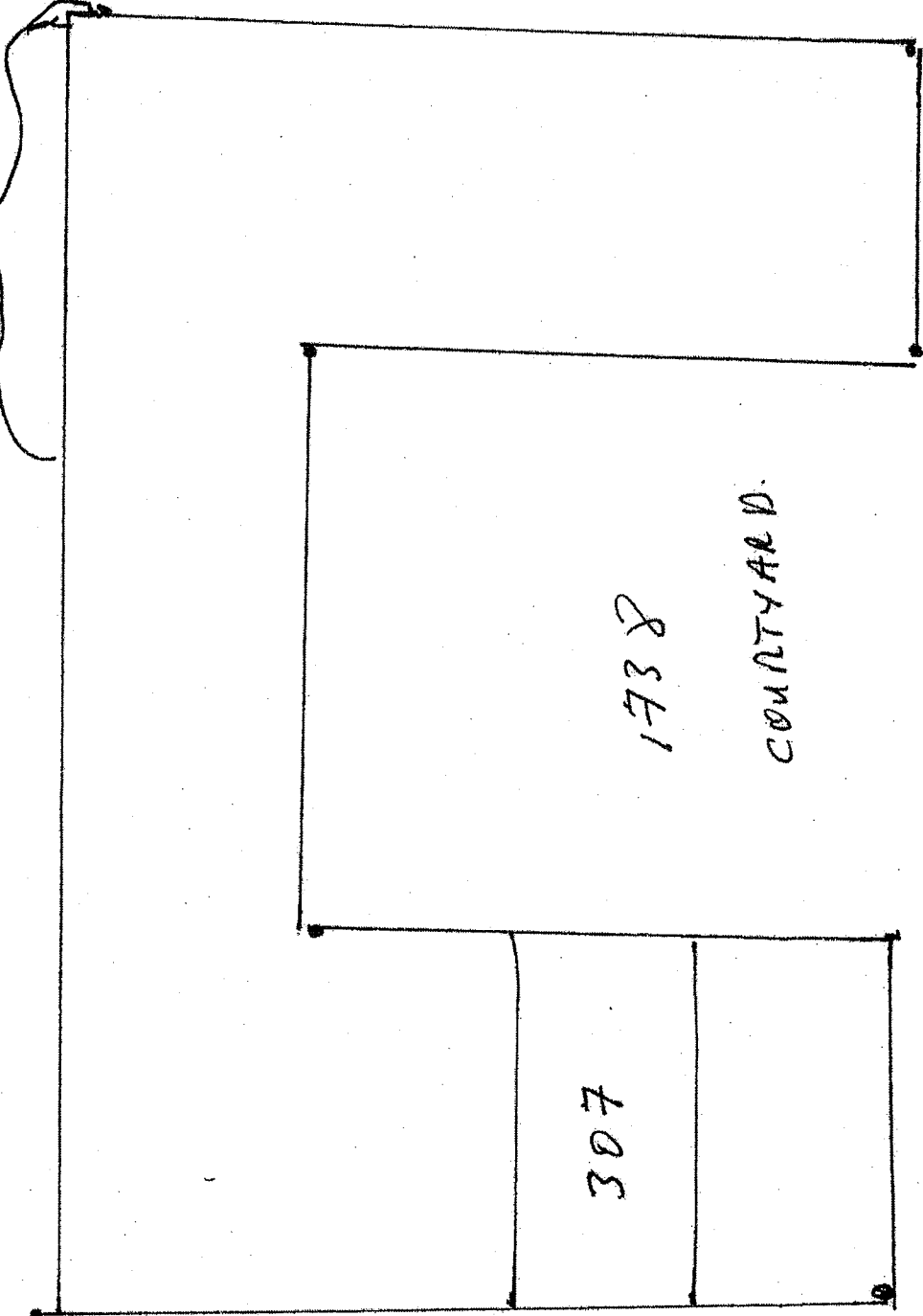
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17th STREET

NEXT DOOR BUILDING

AREA OF DRY ROT/
STRUCTURAL REPAIR



4TH AVENUE

PROOF OF SERVICE BY FIRST-CLASS MAIL

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I declare that I am a resident of or employed in the County of Alameda, State of California. I am over the age of eighteen years and am not a party this action. My residence or business address is 1901 Harrison Street, 14th Floor, Oakland, CA 94612.

On the date below, I served the attached:

**APPELANT'S SUPPORTING ARGUMENT AND DOCUMENTATION TO
BE CONSIDERED BY THE BOARD ON APPEAL**

on the parties herein in said action, by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelope was addressed, sealed and placed for collection and mailing, following this business' ordinary business practices, from Oakland, California, as follows:

See attached service list

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed on August 7, 2018, at Oakland, California.

Fabienne Lopez

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SERVICE LIST

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Annabelle Fuentes Joshua Palmer 1738 4 th Avenue #307 Oakland, CA 94606	Aynaim Zegeye 1738 4 th Avenue #108 Oakland, CA 94606
Bahji Austin 1738 4 th Avenue #302 Oakland, CA 94606	Brendan Blandy 1738 4 th Avenue #206 Oakland, CA 94606
Brian Ko 1738 4 th Avenue #101 Oakland, CA 94606	Christina White 1738 4 th Avenue #304 Oakland, CA 94606
Clay Hays 1738 4 th Avenue #104 Oakland, CA 94606	Eric Johnson 1738 4 th Avenue #308 Oakland, CA 94606
Jackelyn Kelley Shawn Kelley 1738 4 th Avenue #204 Oakland, CA 94606	Jessica Steele Joseph Blasher 1738 4 th Avenue #208 Oakland, CA 94606
John Gillham 1738 4 th Avenue #107 Oakland, CA 94606	Kendra Brennan 1738 4 th Avenue #103 Oakland, CA 94606
Kevin Alvarado Marcelino Martinez 1738 4 th Avenue #202 Oakland, CA 94606	Lani Shotwell 1738 4 th Avenue #203 Oakland, CA 94606
Lauren Richard Valeria Richard 1738 4 th Avenue #201 Oakland, CA 94606	Lindsay Shuman Shawn Rusich 1738 4 th Avenue #303 Oakland, CA 94606
Shane Caldwell Anna Smylie 1738 4 th Avenue #301 Oakland, CA 94606	Tyler Hopps 1738 4 th Avenue #106 Oakland, CA 94606

CHRONOLOGICAL CASE REPORT

Case No.: T18-0012
Case Name: Edwards v Bay Apt. Advisors
Property Address: 261 Fairmount Ave., #20, Oakland, CA
Parties: John Edwards (Tenant)
No appearance by Owner

TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	November 22, 2017
Owner Response filed	March 20, 2018
Site inspection conducted	May 22, 2018
Hearing Decision issued	August 10, 2018
Tenant Appeal filed	August 17, 2018

2017 NOV 22 AM 10:15

T18-0012 R/LM

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp.</p>
---	------------------------

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

<p>Your Name JOHN R. EDWARDS</p>	<p>Rental Address (with zip code) 261 FAIRMOUNT AVE APT. 20 OAKLAND, CA 94611</p>	<p>Telephone 415-513-7531 (H) 510-213-9284 (W)</p>
<p>Your Representative's Name</p>	<p>Mailing Address (with zip code)</p>	<p>Telephone</p>
<p>Property Owner(s) name(s) BAY APT ADVISORS/ THE OWNER'S AGENT</p>	<p>Mailing Address (with zip code) 201 19th ST OAKLAND, CA 94612</p>	<p>Telephone 510-879-7200</p>

Number of units on the property: 32

<p>Type of unit you rent (circle one)</p>	<p>House</p>	<p>Condominium</p>	<p><u>Apartment</u> Room, or Live-Work</p>
<p>Are you current on your rent? (circle one)</p>	<p><u>Yes</u></p>	<p>No</p>	<p>Legally Withholding Rent. You must attach an explanation and citation of code violation.</p>

I. GROUNDS FOR PETITION: Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We) contest one or more rent increases on one or more of the following grounds:**

<input type="checkbox"/>	<p>(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.</p>
<input type="checkbox"/>	<p>(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.</p>
<input type="checkbox"/>	<p>(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).</p>
<input type="checkbox"/>	<p>(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)</p>
<input type="checkbox"/>	<p>(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.</p>
<input checked="" type="checkbox"/>	<p>(f) The housing services I am being provided have decreased. (Complete Section III on following page)</p>
<input type="checkbox"/>	<p>(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u></p>
<input type="checkbox"/>	<p>(g) The contested increase is the second rent increase in a 12-month period.</p>
<input type="checkbox"/>	<p>(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.</p>
<input type="checkbox"/>	<p>(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.</p>
<input type="checkbox"/>	<p>(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).</p>
<input type="checkbox"/>	<p>(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)</p>

II. RENTAL HISTORY: (You must complete this section)

Date you moved into the Unit: 11-6-2012 Initial Rent: \$ 995.00 /month

When did the owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)? Date: 11-6-2012. If never provided, enter "Never."

- Is your rent subsidized or controlled by any government agency, including HUD (Section 8)? Yes No

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
8/24/2017	10/1/2017	\$ 1017.48	\$ 1040.88	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

* You have 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: NONE

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.

- Are you being charged for services originally paid by the owner? Yes No
- Have you lost services originally provided by the owner or have the conditions changed? Yes No
- Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

If you answered "Yes" to any of the above, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include at least the following: 1) a list of the lost housing service(s) or serious problem(s); 2) the date the loss(es) began or the date you began paying for the service(s); and 3) how you calculate the dollar value of lost problem(s) or service(s). Please attach documentary evidence if available.

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, CA 94612. Phone: (510) 238-3381

IV. VERIFICATION: The tenant must sign:

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

John Edwards
Tenant's Signature

10-11-17
Date

V. MEDIATION AVAILABLE: Mediation is an entirely voluntary process to assist you in reaching an agreement with the owner. If both parties agree, you have the option to mediate your complaints before a hearing is held. If the parties do not reach an agreement in mediation, your case will go to a formal hearing before a Rent Adjustment Program Hearing Officer the same day.

You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). **The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition.** Rent Board Regulation 8.22.100.A.

If you want to schedule your case for mediation, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer (no charge).

John Edwards
Tenant's Signature

10-11-17
Date

VI. IMPORTANT INFORMATION:

Time to File This form must be received at the offices of the City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612 within the time limit for filing a petition set out in the Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22. Board Staff cannot grant an extension of time to file your petition by phone. For more information, please call: (510) 238-3721.

File Review

The owner is required to file a Response to this petition within 35 days of notification by the Rent Adjustment Program. You will be mailed a copy of the Landlord's Response form. Copies of documents attached to the Response form will not be sent to you. However, you may review these in the Rent Program office by appointment. For an appointment to review a file call (510) 238-3721; please allow six weeks from the date of filing before scheduling a file review.

VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Other (describe): _____



EMAIL: NO. 1

John Edwards <johnredwards1@gmail.com>

RE: 261-269 Fairmount Ave

John Edwards <johnredwards1@gmail.com>

Sun, Oct 23, 2016 at 12:01 PM

To: BAA Property Management <management@bayaptadvisors.com>, jkelly@bayaptadvisors.com

Hello Tyler:

Thanks for your response to my email and thanks for letting me know that you work as a team at Bay Apartment Advisors. I am however, quite alarmed and dismayed at some of your responses. I have again included Mr. Kelly in my reply because I want to be quite clear that the answers you provided he is aware of and in complete agreement with which is reflective of Bay Apartment Advisors' vision of managing the property and not that of a "wayward" staff person as is often the case claimed by senior management when systemic issues are exposed in the future.

Tyler's response: **(PARKING)**

<<If there are any vehicles parked in the red zones of the complex that pose a safety issue please feel free to contact myself or Bay Apartment Advisors and we will deal with the situation. Parking is never going to be perfect in apartment living. We share so much of the same space in our community and one would like to think there is trust amongst neighbors, but that is not always the case. People are going to break the rules and we will respond when they do. Having someone towed, while sometimes merited, is not going to be our first response. My advice would be for you to be concerned with the parking spot associated with your lease and leave any other parking issues to me. In the short time we have managed the building five spots have been released and people may try to take advantage of those transitions. Once again, if it is a safety issue, please let us know. We will check with the owner to see if he would like to have the lines repainted.>>

In other words Bay Apartment Advisors is electing not to enforce its own rules that are clearly displayed with the 5 tenant only parking signs. This is not the first "open parking" property where I lived. It is the first property where management chooses not to enforce the parking rules despite continued problems. At what point do you actually start to enforce the rules? Since Bay Apartment Advisors has decided not to enforce the parking rules I will hold Bay Apartment Advisors liable for all future professional and personal disruptions including lost wages and lost value of entertainment tickets bought that were not used because I was blocked in. Additionally, if I arrive and someone has either parked in my spot or is blocking egress to my spot I will simply park anywhere and expect nothing will happen except may be a note on my car if that.

Tyler's response:

<<I was unaware of the walkway light near your apartment, when I looked the bright flood light was on so I didn't notice the non-functioning light. I will take a look and create a work order.>>

Unclear how you missed these but I have attached photos outside of units 20 and 18 1/2.

Tyler's response

<<I didn't see a photo of the storm drain in your email, but I will look into that. >>

000193

A simple walk along the storm drain will reveal how clogged it is. Is this not part of your job?

Tyler's response:

<<The window slats to Unit 18 were replaced on Friday. We offered to replace them the day of the attempted break-in, Friday 10.14.16, but needed permission to enter and did not hear back from the tenant. One of our maintenance staff did what he could to secure the window that day. After not hearing back or being granted permission to enter for a week our guy found a way to replace the slats from the outside of the unit to address the safety concern.>>

So again I feel that this is really outside of what I need to be involved in. My intention was simply to draw attention to how that unit "looks" and hence the probability of attracting opportunistic criminals onto the property since this side of building is exposed to those taking the public stairs down towards Richmond Blvd and 30th and the homeless folks who frequent the City owned property with the brush and trees. Additionally, the louver was missing prior to the attempted break in and my theory as I stated was removed by the tenant as a way to have his cats go in and out of this unit. Again folks are free to live as they see fit within the parameters of their lease.

Tyler's response:

<<Concerning you picking up trash, we agree, and don't want you, Deb, or anyone else picking up garbage that is not their own.>>

<<*Vetting and selecting appropriate vendors takes time. We want to hire a good value for the owner but also a company that will do a great job for the tenants and property. We have a contract in place with a vendor to clean the property and they have already been scheduled to start work.* Thank you for letting us know about the chair, I will see about scheduling a junk pickup. As for the other trash, once again this is a community. I would love to believe that our tenants or neighbors wouldn't litter in and on their own home, but it happens. I will request that our landscapers pay extra attention to litter. >>

To be quite clear, you are stating that it is not your direct responsibility to clean the property that is, you do not pick up any litter that may be in the parking lot, under the stairs on the east side of 261, empty the trash and recycle containers in the laundry room etc. and that a company has been hired to do this with an undisclosed start date. Did I get this correct? If yes, I would like to request that a notification be sent to all tenants informing them that as property manager you do not clean so that expectations of your job as manager are clear. The tenants that I have spoken to are all under the impression that cleaning the property is part of your direct responsibility but apparently we are mistaken.

Tyler's response:

<<I called waste management some time ago to get the pickup dates for the compost bin and was told it is emptied on Thursdays, not Wednesdays. If I roll it out and then have a long day at work, it may remain on the sidewalk until I return. If tenants need to use it during that time it is still accessible and easy to find. If it makes it any easier to accept, just know that on Thursdays the compost bin will be near the front of the property.>>

I am confused by this response. You were told that pick was on Thursdays for the food scraps container but still put the scraps container out on Wednesday morning because why? Be clear that my complaint is that the food scraps container was on the side walk for 48 hours not just 10 or so hours. I will not accept 48 hours as reasonable or acceptable. And with a property that already has litter issues you actually expect that tenants will walk out to the sidewalk to use the container that has been on the sidewalk for 48 hours? How can this possibly be your answer and a good idea?

No other property on the block as food scrap container issues. So again your response makes absolutely no sense to me.

Tyler's response:

<<The spill in the laundry room was not ignored. It was dry laundry soap and yes, I walked through it, which allowed me to ascertain that it was not a slip hazard. The room was cleaned as soon as the proper cleaning supplies were acquired.>>

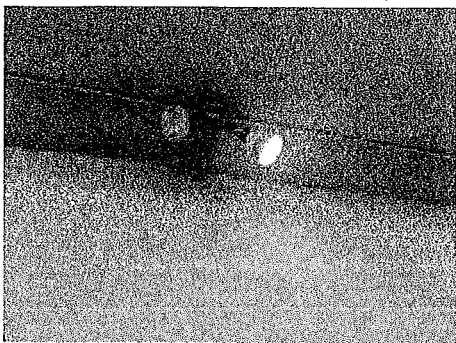
I am flummoxed at this response. If I am to understand your response, slipping and falling is a priority but cleanliness not so much. Be advised that the standard is not "Did Tyler not slip and fall" but is the situation to the common person reasonable. I am going with having a spill for 8 days is not reasonable. Additionally, am I to believe that a broom, dust pan, paper towels and water were not available for 8 days? Really? Deb or I could have easily cleaned that spill up with a broom, a dust pan, paper towels and water. It was laundry detergent. You know the thing that dissolves in water that you put in the washing machine to clean clothing that people then wear after drying. I am going to go with no special process needed. You can't possibly be serious and if you are may the gods help us the tenants here at 261-269 Fairmount Ave.

So there are few things that I can do:

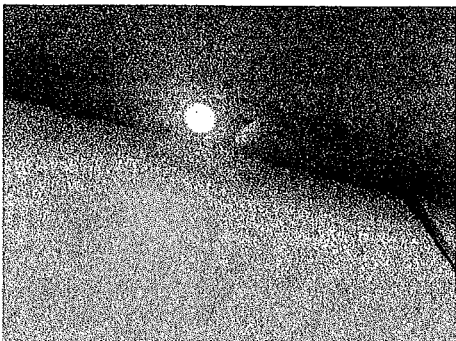
- 1) Regulate my own emotional response to living in filth as guided by the owner and Bay Apartment Advisors.
- 2) Continue my own plans of getting the heck out of here
- 3) While living here continue to bring these issues to your attention in ways that garner effective, reasonable responses and actions up to and including emails to yourself, to Mr. Kelly, complaints to the City of Oakland and Council Woman Lynette Gibson McElhaney, the media and social media such as Yelp.

[Quoted text hidden]

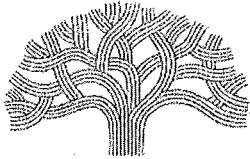
2 attachments



IMG_1143.JPG
1349K



IMG_1142.JPG
1396K



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

For date stamp.

2018 MAR 20 PM 12:11

**PROPERTY OWNER
RESPONSE**

Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your response being rejected or delayed.

CASE NUMBER T 18-0012

Your Name <i>The DaSilva Family Trust</i>	Complete Address (with zip code) ██████████ ██████████ <i>201 19th Street Suite 200 Oakland, CA 94612</i>	Telephone: <i>924.0399</i> <i>510.██████████</i>
		Email:
Your Representative's Name (if any) <i>Tyler Kellner</i>	Complete Address (with zip code) <i>261 Fairmount Avenue Unit 28 Oakland, CA 94612</i>	Telephone: <i>510.924.0399</i>
		Email: <i>tkellner@bayaptadvisors.com</i>
Tenant(s) Name(s) <i>John Edwards</i>	Complete Address (with zip code) <i>261 Fairmount Avenue Unit 20 Oakland, CA 94612</i>	COPY
Property Address (If the property has more than one address, list all addresses) <i>261-269 Fairmount Avenue, Oakland, CA 94612</i>	Total number of units on property <i>33</i>	

Have you paid for your Oakland Business License? Yes No Lic. Number: 00060561
The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes No APN: 010-0806-002-02
The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. **Please provide proof of payment.**

Date on which you acquired the building: 02/09/2004

Is there more than one street address on the parcel? Yes No

Type of unit (Circle One): House / Condominium / Apartment room, or live-work

I. JUSTIFICATION FOR RENT INCREASE You must check the appropriate justification(s) box for each increase greater than the Annual CPI adjustment contested in the tenant(s) petition. For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent

Board Regulations. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

You must prove the contested rent increase is justified. For each justification checked on the following table, you must attach organized documentary evidence demonstrating your entitlement to the increase. This documentation may include cancelled checks, receipts, and invoices. Undocumented expenses, except certain maintenance, repair, legal, accounting and management expenses, will not usually be allowed.

<u>Date of Contested Increase</u>	<u>Banking (deferred annual increases)</u>	<u>Increased Housing Service Costs</u>	<u>Capital Improvements</u>	<u>Uninsured Repair Costs</u>	<u>Debt Service</u>	<u>Fair Return CPI</u>
10/01/17	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you are justifying additional contested increases, please attach a separate sheet.

→ Only CPI.

II. RENT HISTORY If you contest the Rent History stated on the Tenant Petition, state the correct information in this section. If you leave this section blank, the rent history on the tenant's petition will be considered correct

The tenant moved into the rental unit on Nov. 6th 2012.

The tenant's initial rent including all services provided was: \$ 995.00 + 75.00 = \$ 1,070.00 month.

Have you (or a previous Owner) given the City of Oakland's form entitled "NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") to all of the petitioning tenants?

Yes No I don't know

If yes, on what date was the Notice first given? Nov. 6th 2012

Is the tenant current on the rent? Yes No

Begin with the most recent rent and work backwards. If you need more space please attach another sheet.

<u>Date Notice Given (mo./day/year)</u>	<u>Date Increase Effective</u>	<u>Rent Increased</u>		<u>Did you provide the "RAP NOTICE" with the notice of rent increase?</u>
		<u>From</u>	<u>To</u>	
08/24/2017	10/01/2017	\$ 1,017.48	\$ 1,040.88	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

III. EXEMPTION

If you claim that your property is exempt from Rent Adjustment (Oakland Municipal Code Chapter 8.22), please check one or more of the grounds:

The unit is a single family residence or condominium exempted by the **Costa Hawkins Rental Housing Act** (California Civil Code 1954.50, et seq.). **If claiming exemption under Costa-Hawkins, please answer the following questions on a separate sheet:**

- 1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
- 2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
- 3. Was the prior tenant evicted for cause?
- 4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
- 5. Is the unit a single family dwelling or condominium that can be sold separately?
- 6. Did the petitioning tenant have roommates when he/she moved in?
- 7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?

The rent for the unit is **controlled, regulated or subsidized** by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.

The unit was **newly constructed** and a certificate of occupancy was issued for it on or after January 1, 1983.

On the day the petition was filed, the tenant petitioner was a resident of a **motel, hotel, or boarding house** less than 30 days.

The subject unit is in a building that was **rehabilitated** at a cost of 50% or more of the average basic cost of new construction.

The unit is an accommodation in a **hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory** owned and operated by an educational institution.

The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

IV. DECREASED HOUSING SERVICES

If the petition filed by your tenant claims **Decreased Housing Services**, state your position regarding the tenant's claim(s) of decreased housing services. If you need more space attach a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

V. VERIFICATION

I declare under penalty of perjury pursuant to the laws of the State of California that all statements made in this Response are true and that all of the documents attached hereto are true copies of the originals.

Property Owner's Signature

Date 3/15/18

IMPORTANT INFORMATION:

Time to File

This form **must be received** by the Rent Adjustment Program (RAP), P.O. Box 70243, Oakland, CA 94612-0243, within 35 days after a copy of the tenant petition was mailed to you. Timely mailing as shown by a postmark does not suffice. The date of mailing is shown on the Proof of Service attached to the response documents mailed to you. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open.

You can date-stamp and drop your Response in the Rent Adjustment drop box at the Housing Assistance Center.. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m.

File Review

You should have received a copy of the petition (and claim of decreased housing services) filed by your tenant. When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

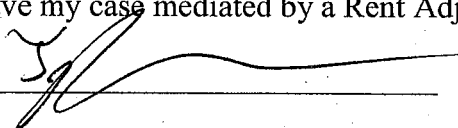
Mediation Program

Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. In mediation, the parties discuss the situation with someone not involved in the dispute, discuss the relative strengths and weaknesses of the parties' case, and consider their needs in the situation. Your tenant may have agreed to mediate his/her complaints by signing the mediation section in the copy of the petition mailed to you. If the tenant signed for mediation and if you also agree to mediation, a mediation session will be scheduled before the hearing with a RAP staff member trained in mediation.

If the tenant did not sign for mediation, you may want to discuss that option with them. You and your tenant may agree to have your case mediated at any time before the hearing by submitted a written request signed by both of you. If you and the tenant agree to a non-staff mediator, please call (510) 238-3721 to make arrangements. Any fees charged by a non-staff mediator are the responsibility of the parties that participate. You may bring a friend, representative or attorney to the mediation session. Mediation will be scheduled only if both parties agree and after your response has been filed with the RAP.

If you want to schedule your case for mediation and the tenant has already agreed to mediation on their petition, sign below.

I agree to have my case mediated by a Rent Adjustment Program Staff member at no charge.



Property Owner's Signature

3/15/18

Date

For more information phone (510)-238-3721.



BAY APARTMENT
ADVISORS

Brokerage and Management

City of Oakland
Rent Adjustment Program
P.O. BOX 70243
Oakland, CA 94612

March 15, 2018

Re: Property Owner Response, Case No. T18-0012.

Dear Rent Adjustment Program and Mr. Robert Costa,

Please see our responses below to Mr. Edward's petition from November 22, 2017, and proof of payment for this year's Business License Renewal and RAP fees.

1. Re: General upkeep of the property.

While we appreciate when Mr. Edwards lets us know about burnt out lightbulbs or his thoughts on the property, they do not qualify him as a "defacto resident manager". There is a lot that goes on that Mr. Edwards does not see, and for every lightbulb or citing of trash he brings up, there are far more that he never knows about. In fact, several of his complaints were about the city-owned empty lot that abuts the property (and is in fact close to his unit) and the sidewalk area near the entrance to the property, which is public property. We want those areas to look nice and be clean as well, but they are not part of the property we manage and are cleaned according to the City of Oakland's schedule. In regards to the leaves and trash that blows onto the property, we doubled the frequency of service from our landscaper starting in October of 2017, so the property has been looking much better and the requests for a better maintained property from tenants did not go unheard.

2. Re: Laundry room hours.

A sign was posted to satisfy the request of a tenant who lives near the laundry room because tenants were using the machines at late hours, making it difficult for them to sleep. The night of the day that Mr. Edwards notified us about the sign we amended it to include a footnote on the operating hours that state "unless otherwise noted in your lease." Which means Mr. Edwards is not subject to decreases in service. This was not about a restriction or loss of service; it was about trying to get people to stop using the laundry room at late hours. As mentioned, it was changed the night that he emailed us about it, so it is quite possible he wasn't effected at all.



3. Re: Parking

This complaint is largely based on older issues about the parking space that was previously assigned to Mr. Edwards. It was a space that was often blocked by tenants or their guests stopping by quickly to grab something or unload groceries, etc. We do address these issues when able, but they often happen so quickly the tenant moves their car before we can find out to whom it belongs. However, we offered to allow Mr. Edwards to change parking spaces to a spot that is not commonly blocked or its access interrupted...and at the same rate he was previously paying, \$75.00, which is \$25.00 under market. In our opinion this is more of an increase in services because he received a better spot for the same amount of money. The parking lines are indeed faded, however they are still quite visible and there is no question where one space ends and another begins. This is just a cosmetic issue, we agree it's time for a repainting, but don't believe it justifies a decrease in service. The lighting in the parking lot currently comes from the building exterior lights, about two-dozen of them, which do a fairly good job of illumination. We know there used to be power to three light poles in the center of the parking lot that no longer function. We've looked into it extensively and it would require cutting into the concrete and installing underground pipe to run new wiring. This would be a substantial project which would require permits, temporary loss of access to the parking spaces, and an overall nuisance to the tenants, so the owner has elected to not restore power to those three lights. As Mr. Edwards mentioned, this change was made over five years ago, so we it may not be relevant to the most recent increase. This winter, two additional lights were added to the exterior near the pedestrian walkway, and the light at the entrance to the property was repaired, so all in all, the lighting has actually improved.

4. Re: Dollar value of lost problem(s) or service(s).

Once again we would like to say that we do appreciate mindful tenants like Mr. Edwards who want the property to look it's best. We do as well, and work towards that goal as much as we can, with the owner's permission, and in a timely manner. There is often a disconnect between tenants and property managers with the expectation of the timing of things. Even little changes like getting a new landscaper to improve services can take months by the time we acquire 2-3 bids, have one approved by the owner, and give a fair notice to the vendor we are terminating. The property is 6 years older than when Mr. Edwards moved in, this is true, but we feel like we are doing well managing the property and don't believe his petition justifies the cancellation of his standard CPI rent increase.



BAY APARTMENT
ADVISORS

Brokerage and Management

Thank you for your time,

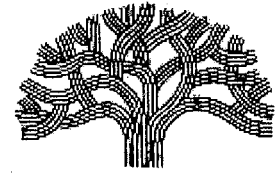
Tyler Kellner

-Bay Apartment Advisors

510.924.0399 | management@bayaptadvisors.com

Bay Apartment Advisors

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CALIFORNIA 94612

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

NOTICE OF SITE INSPECTION

File Number and Name: T18-0012, Edwards v. Bay Apartment Advisors
Property Address: 261-269 Fairmount Ave., Oakland, CA

After the Hearing in this matter, which was held on May 16, 2018, the Hearing Officer determined that she needs to inspect the property to adequately render a decision in this matter. The inspection will be limited to the outside common areas, laundry, and a parking lot.

The site inspection will take place on the following date and time:

Date: May 22, 2018
Time: 3:30 p.m.

No testimony is allowed at the inspection.

Request to Change Date. A request for a change in the date or time of the inspection must be made on a form provided by the Rent Adjustment Program. The party requesting the continuance must try to get an agreement for alternate dates with the opposing parties. If an agreement cannot be reached, check the appropriate box on the Request. A change will be granted only for good cause. A second request for a change of date will be granted only for exceptional circumstances.

Dated: May 16, 2018

A handwritten signature in black ink, appearing to read "L. Moroz".

Linda M. Moroz
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number T8-0012

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, California 94612.

Today, I served the attached **NOTICE OF SITE INSPECTION** by placing a true copy of it in a sealed envelope in City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, California, addressed to:

Tenant

John Edwards
261 Fairmount Ave., Unit #20
Oakland, CA 94612

Owner

The DaSilva Family Trust
201 19th St., Suite 200
Oakland, CA 94612

Owner Representative

Tyler Kellner
261 Fairmount Ave., Unit #28
Oakland, CA 94612

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **May 16, 2018**, in Oakland, California.



Linda M. Moroz
Hearing Officer
Oakland Rent Adjustment Program

000204



250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBER: T18-0012, Edwards v. Bay Apartment Advisors
PROPERTY ADDRESS: 261 Fairmount Ave., Unit #20, Oakland, CA
DATE OF HEARING: May 16, 2018
DATE OF INSPECTION: May 22, 2018
DATE OF DECISION: July 20, 2018
APPEARANCES: John Edwards, Tenant
No Appearance by Owner

SUMMARY OF DECISION

The Tenant Petition is denied.

CONTENTIONS OF THE PARTIES

On November 22, 2017, the tenant filed a Tenant Petition, contesting a single rent increase and alleging decreased and loss of housing services.

On March 20, 2018, the owner filed a response, which alleged that the contested rent increase was for the CPI amount only and addressed each issue identified in tenant petition as decreased or loss of housing services. The owner did not appear at the hearing.

ISSUES

- (1) Is the contested rent increase valid?
- (2) Have the tenant's housing services decreased, and if so, by what amount?

000205

EVIDENCE

Background

The entire property consists of two residential buildings with a total of thirty-three (33) residential units. The tenant moved into his unit on November 6, 2012, at an initial monthly rent of \$995.00. The tenant's current rent prior to the contested rent increase was \$1,017.48.

Rent Increase

The tenant stated on his petition that on August 24, 2017, he was served a rent increase notice which proposed to increase the monthly rent from \$1,017.48 to \$1,040.88, effective October 1, 2017. The owner's response stated that the rent increase was for the CPI amount only. The tenant paid the increase and began paying \$1,040.88, effective October 1, 2017.

RAP Notice

The tenant stated on his petition that he received the first notice of the existence of the Rent Adjustment Program (RAP Notice) when he moved into the subject unit on November 6, 2012, and he also stated that he received the RAP Notice with the contested rent increase.

Decreased Housing Services/Serious Condition of the Rental Unit

With his petition, the tenant submitted a list of problems that the tenant identified as decreased housing services.¹ At the hearing the tenant testified to the following issues:

1. Lack of maintenance of common areas: The tenant testified that he is not happy with overall upkeep and maintenance of the property. He testified that the ground is not being cleaned, trash not being picked up, light bulbs not changed in walkways, and that the bushes need trimming, laundry room needs to be cleaned and the trash needs to be picked up.

2. Decrease of Laundry Room hours. The tenant testified that the reduction of hours in the laundry room would be reduction in service. Tenant's lease states laundry room hours from 7:00 a.m. to 10:00 p.m. The new notice in the laundry room states hours from 8:00 a.m. to 8:00 p.m. but includes a footnote which states "unless otherwise noted in your lease."

3. Parking: The tenant testified that this issue resolved because he was assigned better parking space. Therefore, this issue will not be addressed in this Hearing Decision because it is moot.

¹ Exhibit A

No Appearance by the Owner

On February 13, 2018, a Notice of Hearing was mailed to the parties identified on the tenant petition with a proof of service. The mail was not returned as non-delivered. The Notice of Hearing was properly served. On May 16, 2018, the Hearing Officer waited until 10:15 a.m. for the owner to appear and then proceeded with the hearing as scheduled. The owner did not appear and did not contact the office.

Site Inspection

On May 22, 2018, at 3:00 p.m., the Hearing Officer conducted a site inspection of the outside common areas and observed the following:

- the laundry room was clean, the floors were mopped and the machines looked clean
- the lines dividing the parking stalls and letters identifying the stalls were slightly faded but still clearly visible
- there was no trash around the property; the trash cans were neatly stacked against the retaining wall at the back of the parking lot; there was no garbage outside the trash bins
- there was no trash on the outside staircases located on the sides of the building and underneath the outside staircases; there were some leaves blown in and trapped underneath the staircase but it did not look like they were there because these spaces were not regularly maintained
- green bushes above the fence located on top of the retaining wall were hanging over the fence from the neighbors' property but the bushes are about 30 feet above the ground, leaning over the fence but does not obstruct anything

Overall, the common areas of the entire property looked like it is regularly cleaned and maintained

FINDINGS OF FACT AND CONCLUSIONS OF LAW

CPI Rent Increase is Valid

An owner may impose CPI Rent Adjustment on or after July 1, 2002. CPI and Banking Rent Adjustments are not subject to petition.²

The allowable CPI for the year of July 1, 2017 to June 30, 2018 is 2.3%, which is \$23.40 of \$1,017.48, the tenant's rent prior to the proposed rent increase. The new rent with the CPI totals \$1,040.88. The CPI was properly calculated and the new proposed rent increase is valid. Because the tenant paid the increased amount, there is no rent underpayment.

² O.M.C. §8.22.070B

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered an increase in rent³ and may be corrected by a rent adjustment.⁴ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or a service that was provided and is no longer being provided or one that is required to be provided in a contract between the parties. "Living with lack of painting, water leaks and defective Venetian blinds may be unpleasant, aesthetically unsatisfying, but does not come with the category of habitability. Such things will not be considered in diminution of the rent."⁵ The tenant has the burden of proving decreased housing services by a preponderance of the evidence.

In a decreased services case, the tenant must establish he has given the owner notice of the problems and the opportunity to fix the problems before he is entitled to relief.

Lack of Outside Maintenance: There was no evidence that the common outside areas at the property are not being regularly cleaned and maintained. Dissatisfaction with the property management regarding the level of cleaning does not warrant a reduction in rent. Therefore, this claim is denied.

Decrease Laundry Room Hours: The tenant's hours when he can do the laundry did not decrease because the new sign clearly states "unless otherwise noted in your lease". This means that the tenant's hours remain the same as when he first moved in. Therefore, there was no decrease in housing service and this claim is denied.

Parking: Because the tenant was assigned better parking spot, this issue resolved. Therefore, this claim is denied.

ORDER

1. The Tenant Petition T18-0012 is denied.
2. Effective October 1, 2017, the tenant's new base rent is \$1,040.88 per month.
3. The claim for decreased housing services is denied.

Right to Appeal: **This decision is the final decision of the Rent Adjustment Program.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of the decision. The date of service is shown on

³ O.M.C. §8.22.070(F)

⁴ O.M.C. §8.22.110(E)

⁵ *Green v. Superior Court* (1974) 10 Cal. 3d 616 at p. 637

the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: July 20, 2018



Linda M. Moroz
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T18-0012

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included
Hearing Decision

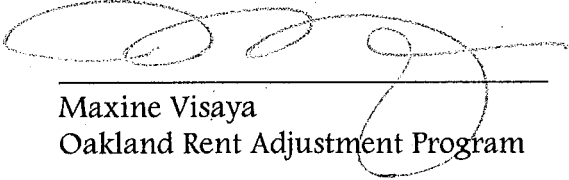
Owner
The DaSilva Family Group
201 19th Street Ste. 200
Oakland, CA 94612

Owner Representative
Tyler Kellner
261 Fairmount Avenue Unit 28
Oakland, CA 94612

Tenant
John R. Edwards
261 Fairmount Avenue #20
Oakland, CA 94611

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.


I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
Executed on August 10, 2018 in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program

000210

2018 AUG 17 PM 1:56

 <p>CITY OF OAKLAND</p>	<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721</p>	<p>For date stamp.</p> <p style="text-align: right;"><u>APPEAL</u></p>
--	---	---

Appellant's Name JOHN EDWARDS		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
Property Address (Include Unit Number) 261 FAIRMOUNT AVE APT 20 OAKLAND, CA 94611		
Appellant's Mailing Address (For receipt of notices) 261 FAIRMOUNT AVE APT 20 OAKLAND, CA 94611	Case Number T18-0012	
		Date of Decision appealed 8-14-18
Name of Representative (if any)	Representative's Mailing Address (For notices)	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
 - a) The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
 - b) The decision is inconsistent with decisions issued by other Hearing Officers. *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
 - c) The decision raises a new policy issue that has not been decided by the Board. *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
 - d) The decision violates federal, state or local law. *(In your explanation, you must provide a detailed statement as to what law is violated.)*
 - e) The decision is not supported by substantial evidence. *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.

- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: _____.

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •

I declare under penalty of perjury under the laws of the State of California that on 8-16-17, 2018, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	TYLER KELLNER OWNER REPRESENTATIVE
Address	261 FAIRMOUNT AVENUE UNIT 28
City, State Zip	OAKLAND, CA 94612
Name	THE DaSILVA FAMILY GROUP
Address	201 19 th ST SUITE 200
City, State Zip	OAKLAND, CA 94612

John Edwards	8/14/18
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

August 16th, 2018

City of Oakland
Rent Adjustment Program
250 Frank Ogawa Plaza Suite 5313
Oakland, CA 94612

RE: Appeal Hearing Decision Case # T18-0012 Edwards v. Bay Apartment Advisors

I am appealing the hearing officer's decision to deny my petition based on the following:

Grounds 2(e)

The decision is not supported by substantial evidence.

1. The hearing officer has made a procedural error and has based her decision on evidence that she observed during a site visit on May 22, 2018 as documented in the hearing decision. The notification for the site inspection is dated May 18, 2018 giving Bay Apartment Advisors at least 48 hours making any corrections or cleanings.

The hearing officer did not consider the emails submitted into evidence with my original petition demonstrating multiple conversations between myself and Bay Apartment Advisors. These emails demonstrate a consistent pattern for over one year of me complaining about the resident manager's poor job performance and what is to be expected of the resident manager. Implicit in the rental agreement is that the resident manager will address issues of cleanliness, habitability and safety on the property to include peaceful and quiet enjoyment. It is quite clear in the emails that for more than one year the resident manager viewed these type of issues not to be his responsibility. In addition at no point in time did the Bay Apartment Advisors disagree with issues that I complained about i.e. issues were not occurring. In every single issue that I brought up was eventually addressed. It is not my job as a tenant to consistently bring up issues when there is a resident manager on the property.

The emails also clearly demonstrate my continuous effort to get the resident manager to do his job. The emails clearly indicate that changes only started to occur after I started to include Joel Kelly the president of Bay Apartment Advisors in the email exchanges. Email #2 clearly shows an ongoing effort for over one year to have issues addressed that continued to be problematic that needed to be have addressed by the resident manager and not I as the tenant. Email #4 clearly outlines all the things that I did as a tenant to get the resident manager to do his job.

All of the issues that the hearing officer noted that were not problematic on her May 22, 2018 site visit were a direct result of my ongoing and consistent effort to get the resident manager to do his job.

The entire property and all of the tenants have benefitted from my efforts of constantly taking pictures and emailing Bay Apartment Advisors of tasks that were clearly the resident manager's job to complete.

It is because of my efforts that:

- trash is more or less routinely cleaned up and cleaning company that actually cleans is now cleaning the property. The resident manager were perfectly content to pay for sloppy work. I am paying rent the rent increase goes to maintenance of the property why should I pay an increase when I have been the person ensuring that the property has been well

000213

maintained which is the resident manager's job and which he clearly did not do for over one year.

- The trees were trimmed
- The laundry room is routinely cleaned
- The current laundry room sign is a direct result of me emailing Bay Apartment Advisors that the original sign which arbitrarily changed the laundry hours represented a reduction in services based on my lease and I would need a reduction in rent if the laundry hours were being changed. It was my actions that resulted in the new laundry sign with the asterisk indicating "unless otherwise indicated in your lease"

My petition is based on:

The above issues are the responsibility of the resident manager not I as a tenant. I did significant part of the resident manager's job for at least one year in maintaining the cleanliness and addressing safety issues on the property. It is these past occurrences that my petition is based on as outlined in the emails submitted with my original petition. The current status of the property is not in dispute although I did take recent photos as continued evidence of my complaints as there seems to be slippage occurring.

None of the content of my emails submitted with my original petition was mentioned in the hearing officer's decision and as such I can only assume that the content was not considered in the hearing officer's decision.

While it may seem that these things may be viewed as "light" they directly impact my safety and security. In email number 4, I clearly state that my unit was broken into. There have been 3 fires on the property one of which occurred less than 10 feet away from my unit. I pay my city and state taxes and I pay my rent on time every month. These issues impact the perception of the property and the perception of opportunistic criminals who view an unkempt property as a target because no one cares.

2. Grounds 2(h)
Other

Bay Apartment Advisors did not appear for the hearing. As a result I was denied the opportunity to question Bay Apartment Advisors response to my petition and I was never sent a copy of Bay Apartment Advisors' response denying me the opportunity to rebut their response at the hearing.

Sincerely,



John R. Edwards
261 Fairmount Ave
Apt. 20
Oakland, CA 94611

000214

7018 1130 0000 9952 2606

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com™.

OFFICIAL USE

Certified Mail Fee	\$3.45
	\$2.75
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$0.71
Total Postage and Fees	\$8.91



Sent To: **TYLER WELNER**
 Street and Apt. No., or PO Box No. **261 FAIRMOUNT AVE APT 28**
 City, State, ZIP+4® **OAKLAND, CA 94611**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

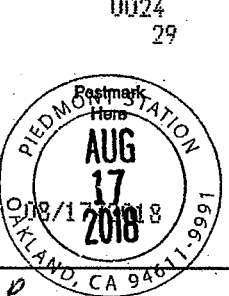
7018 1130 0000 9952 2615

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com™.

OFFICIAL USE

Certified Mail Fee	\$3.45
	\$2.75
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$0.71
Total Postage and Fees	\$8.91



Sent To: **THE DA SILVA FAMILY GROUP**
 Street and Apt. No., or PO Box No. **2019 W ST SUITE 200**
 City, State, ZIP+4® **OAKLAND, CA 94612**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

IMPORTANT INFORMATION:

This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- The Board will not consider new claims. All claims, except jurisdiction issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

For more information phone (510) 238-3721.

CHRONOLOGICAL CASE REPORT

Case No.: L17-0231

Case Name: Arms v. Tenants

Property Address: 362 Euclid Avenue, Oakland, CA

Parties: Lucky Stewart (Owner Representative)
Dina Batalova (Owner Representative)
Jeanne Robertson (Owner Representative)
No appearance by Tenants

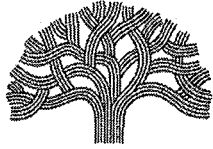
OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Owner Petition filed	October 20, 2017
No Tenant Responses filed	-----
Hearing Decision issued	July 5, 2018
Owner Appeal filed	July 18, 2018
Owner representative Supplement to Hearing filed	September 20, 2018

000217

L17-0231 RC/BC

RECEIVED
 OCT 20 PM 1:13

 CITY OF OAKLAND	CITY OF OAKLAND RENT ADJUSTMENT PROGRAM P.O. Box 70243 Oakland, CA 94612-0243 (510) 238-3721	For date stamp. PROPERTY OWNER PETITION FOR APPROVAL OF RENT INCREASE
--	--	---

Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach copies of the documents that support your petition. Before completing this petition, please read the Rent Adjustment Ordinance (Oakland Municipal Code 8.22), sections 8.22.010 through 8.22.190, and the Rent Adjustment Program Regulations.

Your Name Nick Arms, LP	Complete Address (with zip code) 362 Euclid Avenue, Oakland, CA 94610	Daytime Telephone: (510) 301-3767 E-mail:
Your Representative's Name (if any) Dina Batalova	Complete Address (with zip code) 1145 Bush Street, San Francisco, CA 94109	Daytime Telephone: (408) 905-8602 E-mail: dbatalova@gmail.com
Property Address (If the property has more than one address, list all addresses) 362 Euclid Avenue, Oakland, CA 94610		

Total number of units on property: 29

Date on which you acquired the building: 02.13.2015

Type of units (circle one)

House

Condominium

Apartment, Room, or Live-Work

Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to the tenants in each unit affected by the petition?	Yes	No
On what date was the RAP Notice first given?	02.25.2015	
Have you paid your Oakland Business License? The property owner must have a current Oakland Business License. If it is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.)	Yes	No
Oakland Business License number.	00171890	

<p>Have you paid the Rent Adjustment Program Service Fee (\$68 per unit)? The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.) Note: If RAP fee is paid on time, the property owner may charge the tenant one-half of the \$68 per-unit RAP Service fee (\$34).</p>	<p>Yes</p>	<p>No</p>
<p>Use the table on the next page to list each tenant who is affected by this petition.</p>		

REASON(S) FOR PETITION.

Note: Justifications for Rent Increases other than the annual allowable rate are discussed in the Rent Adjustment Program Regulations – Appendix A, Sec. 10.

You must attach organized documentation clearly showing the rent increase justification(s) and detailing the calculations to which the documentation pertains. All documents submitted to the Rent Adjustment Program become permanent additions to the file. (Regs. 8.22.090.C)

I (We) petition for approval of one or more rent increases on the grounds that the increase(es) is/are justified by (check all that apply):

- Banking (Reg. App. 10.5)
- Capital Improvements (Reg. App. 10.2)
- Fair return (Reg. App. 10.6)
- Increased Housing Service Costs (Reg. App. 10.1)
- Uninsured Repair Costs (Reg. App. 10.3)

Have you ever filed a petition for this property?

- Yes
- No

List case number(s) of all Petition(s) you have ever filed for this property and all other relevant Petitions:

List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
362 Euclid Avenue, Oakland, CA 94610	101	Harry Jubar			\$1,459.10
362 Euclid Avenue, Oakland, CA 94610	102	Anne Salassi			\$1,419.94
362 Euclid Avenue, Oakland, CA 94610	103	Zekeia Harrison & Clifton Harrison			\$1,583.96
362 Euclid Avenue, Oakland, CA 94610	105	Ken Love			\$1,150.60
362 Euclid Avenue, Oakland, CA 94610	106	Akio Satoh & Jennifer Meek			\$1,452.76
362 Euclid Avenue, Oakland, CA 94610	107	Katherine Brewer & Carl Mebane			\$1,423.08
362 Euclid Avenue, Oakland, CA 94610	108	Shauna Vance			\$1,447.41
362 Euclid Avenue, Oakland, CA 94610	202	Emmeline Angeles			\$1,261.10

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List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
362 Euclid Avenue, Oakland, CA 94610	203	Patrick Sheil			\$3,495.00
362 Euclid Avenue, Oakland, CA 94610	206	Jonathan Guzman & Van Hoang			\$1,488.02
362 Euclid Avenue, Oakland, CA 94610	207	Nyaradzo Kundidzora			\$1,271.60
362 Euclid Avenue, Oakland, CA 94610	208	Justin Sucharski			\$1,335.20
362 Euclid Avenue, Oakland, CA 94610	209	Carla De Lemos			\$1,294.57
362 Euclid Avenue, Oakland, CA 94610	301	Johannah Mae Kaplan			\$1,779.57
362 Euclid Avenue, Oakland, CA 94610	303	Douglas Cornwall			\$2,017.27
362 Euclid Avenue, Oakland, CA 94610	306	Chet Anderson			\$1,612.06

List each tenant and requested information for each unit affected by this petition. Increases based on increased housing service costs and fair return affect all of the units on the property. Attach additional sheets if necessary.

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
362 Euclid Avenue, Oakland, CA 94610	308	Dawn Harris			\$1,333.36
362 Euclid Avenue, Oakland, CA 94610	401	Mel Brewer & Bridget Smith			\$2,282.57
362 Euclid Avenue, Oakland, CA 94610	402	Ryan Kelly & Zach Wheeler			\$2,363.00

Uninsured Repair Costs: Uninsured repair costs are casualty losses that are not reimbursed to the property owner. See Regulations for details. An increase for uninsured repairs is calculated the same way as an increase for capital improvements.

Increased Housing Service Costs: Housing Service Costs are expenses for services provided by the property owner. The costs are related to the use of a rental unit and also known as "operating expenses". The most recent two years of operating expenses are compared to determine if a rent increase greater than the CPI is justified. The calculation in both years must provide a reasonable comparison of all expenses. Evidence is required to prove each of the claimed expenses.

Fair Return: A property owner may submit evidence to show that without the requested rent increase he or she is being denied a fair return on the investment. A fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year (2014), subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

Banking: "Banking" refers to deferred allowed annual rent increases. These annual rent increases are known as CPI increases. CPI rent increases that were not given, or were not given in full, can be carried forward to future years. Subject to certain limitations, property owners may defer giving CPI increases up to ten years. CPI increases that were not imposed within ten years expire. No banked increase can exceed three times the then current CPI allowable increase. If your petition includes a request for a banked increase, **attach a rent history for the current tenant(s) in each affected unit.**

You do not need to petition the Rent Adjustment Program for approval to increase rent based on banking. Rents can be increased for banked CPI rent increases by giving the Tenant a rent increase notice. (Note that the Tenant can file a petition contesting the increase if the Tenant believes the banking is incorrect or unjustified.) If you do choose to petition for approval of a banked rent increase, provide the documentation and calculations as required by this petition.

Capital Improvements: Capital improvements increases may be taken to reimburse the property owner for property improvements. Reimbursement is limited to 70% of the cost of the improvement spread out over an amortization period as set forth in the Amortization Schedule below. The property owner must show the costs incurred were to improve the property and benefit the tenants. Property owners must also show that these costs were paid. Examples include: copies of receipts, invoices, bid contracts or other documentation.

- If your petition contains capital improvements for which permits are first issued on or after February 1, 2017, capital improvements will be amortized according to an amortization schedule (attached at the end of this form).
- If the petition includes only work where permits were issued before February 1, 2017, improvements will be amortized over five years unless the increase causes a rent increase over 10 percent in one year or 30 percent in five years, in which case the amortization period will be extended until the rent increase is smaller than 10 percent in one year or 30 percent in five years.

Building-Wide Capital Improvements CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR
Exterior Paint & Water Proofing	\$45,835.00	04/10/2017	04/13/2017
SUBTOTAL:	\$45,835.00		

Unit-Specific Capital Improvements CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR	AFFECTED UNITS
SUBTOTAL:				

Capital Improvements: Capital improvements increases may be taken to reimburse the property owner for property improvements. Reimbursement is limited to 70% of the cost of the improvement spread out over an amortization period as set forth in the Amortization Schedule below. The property owner must show the costs incurred were to improve the property and benefit the tenants. Property owners must also show that these costs were paid. Examples include: copies of receipts, invoices, bid contracts or other documentation.

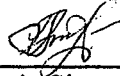
- If your petition contains capital improvements for which permits are first issued on or after February 1, 2017, capital improvements will be amortized according to an amortization schedule (attached at the end of this form).
- If the petition includes only work where permits were issued before February 1, 2017, improvements will be amortized over five years unless the increase causes a rent increase over 10 percent in one year or 30 percent in five years, in which case the amortization period will be extended until the rent increase is smaller than 10 percent in one year or 30 percent in five years.

Building-Wide Capital Improvements CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR
New Intercom	\$14,718.13	06/07/2016	07/15/2016
New Mailboxes	\$3,351.40	05/24/2016	07/15/2016
Dry Rot, Exterior work and Sliding Glass Doors, Sliding Door Pans, Sheet Metal and Flashing, Engineer and Drawings, Gutters, Downspouts	\$603,907.93	04/25/2017	05/08/2017
LED Emergency Lighting	\$747.02	08/02/2016	08/03/2016
Cameras	\$16,861.73	10/19/2016	10/20/2016
SUBTOTAL:	\$639,586.21		

Unit-Specific Capital Improvements CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR	AFFECTED UNITS
SUBTOTAL:				

Verification (Each petitioner must sign this section):

I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition and attaches pages is true and that all of the documents attached to the petition are originals or are true and correct copies of the originals.



Owner's Signature
Owner's Representative

10/20/2017

Date

Owner's Signature

Date



250 FRANK OGAWA PLAZA, SUITE 5313
OAKLAND, CA 94612

CITY OF OAKLAND

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

HEARING DECISION

CASE NUMBER: L17-0231, Arms v. Tenants
PROPERTY ADDRESS: 362 Euclid Ave, Oakland, CA
DATE OF HEARING: April 3, 2018
DATE OF DECISION: July 5, 2018
APPEARANCES: Lucky Stewart, Owner Representative
Dina Batalova, Owner Representative
Jeanne Robertson, Owner Representative

No tenants appeared at the Hearing

SUMMARY OF DECISION

The owner's petition is granted in part. The allowable rent increases are detailed in the Order below and the attached Decision Summary.

CONTENTIONS OF THE PARTIES

On October 20, 2017, the owner filed a petition for approval of rent increases based on capital improvement expenditures.

No tenants filed responses to the Owner Petition nor did any tenants appear at the Hearing.

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THE ISSUES

1. When, if ever, were the tenants served with the *Notice to Tenants of the Rent Program (RAP Notice)*?
2. Are permits required for capital improvement expenditures to be granted?
3. Can the owner increase the rent based on capital improvements and if yes, in what amount? Additionally, what rules apply to the work done by the owner?

EVIDENCE

History: Lucky Stewart testified that the subject building has 29 units. The building was purchased by the Nick Arms, LP in February of 2015.

The owner representative produced a list of tenants and their current rents as to those tenants for whom he was seeking a rent increase.¹ A rent increase was requested for the tenants in units 101, 102, 103, 105, 106, 107, 108, 202, 203, 206, 207, 208, 209, 301, 303, 306, 308, 401 and 402.

At the Hearing the owner representative testified that some tenants may have moved in after the work was done. He agreed to provide a list of all tenants and their move in dates. This document was provided to the RAP on April 3, 2018, and includes a list of all tenants, their move in dates, their rent, any charges for parking and any capital improvement pass through from a prior set of capital improvements. The owner documentation shows that the tenants in unit 107 moved in in January of 2018. All other tenants listed above moved in prior to the work being done on the unit.

On the *Owner Petition* the owner stated that it served the *RAP Notice* on every tenant in February of 2015.

Capital Improvements: Stewart testified that the owner is seeking a capital improvement pass-through for exterior painting; new intercom; new mailboxes; dry rot, exterior work, sliding glass doors, sliding door pans, sheet metal, flashing, engineer and drawings, gutters and downspouts; emergency lighting; and security cameras.

The building is a 1960's constructed wood frame building with sliding glass doors and exterior decks. When the building was purchased it was in worn condition.

Liam Moloney: The owner hired *Liam Moloney (Moloney)* in March of 2017, to paint the exterior of the building. The cost for the work was \$45,835, and the owner produced an invoice and proof of payment for the work.²

Reed Brothers: The owner hired *Reed Brothers Security* to install a phone entry system for \$14,718.13.³ *Reed* also installed new mailboxes at a cost of \$3,220⁴, and

¹ Exhibit 1. All exhibits referred to in this Hearing Decision were admitted into evidence without objection.

² Exhibit 1, pages 4-5

³ Exhibit 1, page 7

⁴ Exhibit 1, page 8a

provided an additional set of mailbox keys at a cost of \$131.40.⁵ Proof of payment was provided.⁶ The additional charge of \$131.40 was made for keys because the owner sought a third set of keys.⁷

The proposal from *Reed Brothers* for the phone entry system was provided showing a cost of \$13,905.13.⁸ An additional \$813 was added for a change order that states that “Reed Brothers will provide and install: conduit for wire run for garage to lobby door reader. Conduit for wire runs in laundry room. Plywood for mounting equipment in electrical room. RS232 9 pin plug and R5232 to USB for programming.”

P Jordan Builders: The owner representative testified that there was dry rot on the cantilever decks when the building was purchased. This dry rot was not visible to the naked eye. The prior ownership had addressed deck problems on an as needed basis but had not done a complete repair or investigation of all of the decks. Because the purchase of this property was around the time of a patio collapse in Berkeley, the ownership was aware of the danger associated with dry rotted decks and did an inspection.

The inspection determined that there were issues throughout the building related to design flaws in the decking system. There was no adequate drainage, the pitch of the decks was not correct, and these problems were causing the accumulation of moisture which was causing the joists to rot. Because of that, they had to redesign and rebuild all of the decks, install door pans out of metal, and install a system for the water to move away from the building.

P Jordan Builders was hired to do some of the dry rot work on this job as well as install new patio doors. The work started in May of 2016, and was completed in March of 2017.

Stewart testified that the owner did have permits for this work, but the permits were not originally provided. He was given 7 days after the Hearing to produce the finalized permits. The owner produced two permits from the *City of Oakland*. The first, dated August 5, 2016, was to “replace 29 patio doors with retrofit type for 29 apartments building.” This was finalized on June 21, 2017. The second permit, dated September 30, 2016, was to “repair dry rot on decks and replace stucco to match.”⁹ This was also finalized on June 21, 2017.

The work done by *Jordan* shows billings for work beginning in May of 2016, before the permits were taken out. The invoices provided show the following:

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⁵ Exhibit 1, page 8

⁶ Exhibit 1, pages 9-11

⁷ Exhibit 1, page 17

⁸ Exhibit 1, pp 12-13

⁹ Exhibit 3

Date	For	Amount	Exhibit 1, page numbers
May 1, 2016	Patio door and dry rot	\$94,601.15	Pages 25-29
June 15, 2016	Unspecified	\$12,718.62	Page 30
August 12, 2016	Door installation, dry rot removal	\$95,516.65	Pages 31-32
August 16, 2016	Door installation, dry rot removal	\$102,358.35	Pages 33-35
September 13, 2016	Window installation, dry rot removal	\$113,450.61	Pages 36-38
October 15, 2016	Subcontractors work and unidentified labor	\$51,941.11 ¹⁰	Page 39
December 28, 2016	Unspecified labor and subcontractors	\$22,058.63 ¹¹	Page 40
April 25, 2017	Unspecified labor and materials, including subcontractors work for decks and window patching	\$27,958.88 ¹²	Page 41

The *Jordan* invoices total \$520,604 and proof of payments was provided.¹³

Weathertight Waterproofing: Stewart testified that *Weathertight* provided the sliding door pan for the decks as a subcontractor for *Jordan*. The following invoices and proof of payment were provided:

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¹⁰ These charges include portaloos rentals of \$242.60, waste removal of \$354 and \$862.50 and \$718.75, and stucco charges of \$47,500. The other charges are unidentified labor and materials.

¹¹ These charges include a charge for waste removal for \$1,133.90, two charges for portaloos rentals totaling \$243.66. The other labor and material charges are unspecified.

¹² These charges included a charge from J Daly stucco for window patching for \$920, a charge from Mt. Diablo Floor for installation of a podium deck for \$21,659.10, and labor for the erection of a scaffold for \$500. The other charges are for unspecified labor and materials.

¹³ Exhibit 1, pp 25-50

Date	For	Amount	Exhibit 1, page number
May 23, 2016	Door pans: Fabricate and install sliding door pans on decks	\$703.98	Page 51
May 23, 2016	Sheet metal fabrication for "door pans, wall flashings and deck coatings @ exterior decks"	\$8,260.10	Page 52
June 24, 2016	Fabricated custom door pans	\$3,735	Page 54
July 7, 2016	Sheet metal and flashings	\$4,590	Page 55
August 12, 2016	Door pans	\$4,185	Page 56
October 10, 2016	Deck waterproofing	\$5,951.50	Page 57
November 6, 2016	Deck waterproofing	\$17,549.35	Page 58
December 12, 2016	Deck waterproofing	\$10,715	Page 59
December 14, 2016	Deck waterproofing	\$11,115	Page 60

Santos & Urrutia: Stewart testified that this company was the structural engineer on the deck project. The following bills were produced:

Date	For	Amount	Exhibit 1, page number
July 8, 2016	Engineering Services	\$3,000	Page 69
September 16, 2016	Engineering Services	\$1,400	Page 70
September 23, 2016	Engineering Services	\$1,600	Page 71

Proof of payment was also provided.

Rain Defense: Stewart testified that *Rain Defense* replaced and rerouted downspouts. The work was done in January-February of 2017, at a cost of \$10,500. An invoice and proof of payment was provided.¹⁴

Habitech Electrical: Stewart testified that this company installed emergency LED lights in the stairwell in July of 2016 at a cost of \$747.02. Invoice and proof of payment was provided.¹⁵ This company also responded to a problem with the fire alarm. The owner is not seeking a pass through for that cost.

The invoice for the stairwell lights states: "Provide and install four LED emergency lights in stairwell in place of faulty existing lights."¹⁶ Stewart testified that this is a

¹⁴ Exhibit 1, pages 75-79

¹⁵ Exhibit 1, pages 80-83

¹⁶ Exhibit 1, page 80

capital improvement rather than repair and maintenance because the LED lights are an improvement over what was there in the past.

Tech Hospitality: Stewart testified that this company installed security cameras throughout the building. An invoice, dated September 19, 2016, for \$15,661.73, was provided.¹⁷ No proof of payment for this invoice was provided. Instead, the owner produced a check to *Habitat Electrical* dated August 3, 2016, for \$2,200.52.¹⁸

Mendez-Ortiz Construction: Stewart testified that this company was hired to fix the walls after the installation of the cameras. An invoice, dated October 19, 2016, for \$1,200 was provided, along with proof of payment.¹⁹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

When, if ever, were the tenants first served with the *RAP Notice*?

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve the *RAP Notice* at the start of a tenancy²⁰ and together with any notice of rent increase or change in the terms of a tenancy.²¹ When an owner petitions for a rent increase for capital improvements he or she must establish that the *RAP Notice* was served.²²

The owner stated in its petition that it served the *RAP Notice* on all tenants in February of 2015. No contrary evidence was provided. It is found that the tenants listed on this petition were served with the *RAP Notice* in February of 2015.

Are permits required for a capital improvement expenditure to be granted?

In order to be considered a capital improvement, the improvement has to be "completed." Regulations Appendix § 10.2.1. The Oakland Building Code provides that "all construction or work for which a permit is required shall be subject to inspection by the Building Official in accordance with and in the manner provided by this Code and the Oakland Building Construction Code...." O.M.C. § 15.08.140. Without a permit, the work cannot be said to be "completed." This is particularly true because where the proper permits were not issued, the City can demand that the work be redone and inspected.

The *Housing, Residential, Rent and Relocation Board (HRRRB)* has held that if a particular project required a permit, then a capital improvement rent increase cannot be granted for the costs expended on that project unless the owner produced evidence that permits were taken out for the work, and then the permits were finalized. See *Falcom v.*

¹⁷ Exhibit 1, page 84

¹⁸ Exhibit 1, page 89 (This is a duplicate of the check on page 83.)

¹⁹ Exhibit 1, page 86 and 88. The proof of payment is for more than the invoice because it also included a payment for work done on an additional invoice (Page 87) for which the owner is not seeking a pass-through.

²⁰ O.M.C. § 8.22.060(A)

²¹ O.M.C. § 8.22.070(H)(1)(A)

²² O.M.C. § 8.22.090(B)(1)(c)

Bostrom, T13-0279 and *Ludwig v. Tenants, L16-0038*. Here, for some of the work done the owner had no permits (for example, the replacement of windows.) Additionally, some of the work was done before the permits were taken out.

In this case there was no ambiguity that the kind of work being done required permits. Therefore, work that was done before the permits were taken out, cannot be considered. (See discussion in *Jordan* section, below.)

In each requested category below, a discussion of permit status is included.

Can the owner increase the rent based on capital improvements and if yes, in what amount?

A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.²³ Capital improvement costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.²⁴ In order for a capital improvement to be allowed, the improvement must primarily benefit the tenant rather than the owner.²⁵

In 2016, the Oakland City Council passed an Ordinance amending the Rent Adjustment Ordinance and changing the way capital improvement costs were passed on to tenants. The prior Ordinance required that as long as the capital improvement pass-through does not exceed 10% of the rent, the costs are to be amortized over a period of five years, divided equally among the units which benefit from the improvement.²⁶ Where a 5 year amortization period would result in a rent increase greater than 10%, the owner is entitled to a longer amortization period.²⁷ The Ordinance change in 2016, stated that:

“The revised amortization period for Capital improvements as set forth in amended section 8.22.020 shall be effective for all Capital improvements for which permits are first issued on or after February 1, 2017.”

See Oakland City Council Ordinance Number 13391.

In this case, all the work other than the exterior paint job, started before February of 2017; therefore, the old rules as to the amortization periods apply. However, the painting began in February of 2017; therefore, the new rules apply to the painting work.

Additionally, for work which was started after September 20, 2016, the owner is also entitled to imputed financing for the cost of the capital improvements.²⁸

²³ O.M.C. § 8.22.070(C)

²⁴ Regulations Appendix, § 10.2.2(4)(e)

²⁵ Regulations Appendix § 10.2.2(1)

²⁶ Oakland City Council Ordinance # 13391, Section 4.

²⁷ Regulations Appendix § 10.2.3 (2)

²⁸ Regulations § 8.22.020

The owner is entitled to seek 70% of the costs expended.²⁹ The reimbursement of capital expense must be discontinued at the end of the amortization period.

An owner has discretion to make such improvements, and does not need the consent or approval of tenants. Additionally, the improvements must have been completed and paid for within 24 months prior to the date the owner files a petition.³⁰ An owner has the burden of proving every element of his/her case by a preponderance of the evidence.

Costs Allowed and Disallowed: An owner has the burden of proving that a rent increase is justified. The applicable rules of evidence in an administrative hearing are stated in Government Code Section 11513:³¹ "Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs . . ." To prove a capital improvement cost, both an invoice and proof of payment are necessary. Therefore, the following costs are allowed and disallowed:

Exterior Paint (Liam Moloney): The paint job did not require a permit, was an improvement, and is an allowable expense. The cost of \$45,835 is an allowable pass through with imputed interest because it was done after September 20, 2016. See Capital Improvement Chart attached as Exhibit A.

Intercom (Reed Brothers): The intercom did not require a permit and is an allowable expense. However, the additional \$813 charged for the conduit wire run from the garage to the lobby door did require an electrical permit, which was not provided. Therefore, this cost is not allowed. The owner is allowed a pass-through of \$13,905.13 for this work. Because this work was done before February 1, 2017, it is subject to a 5 year amortization period. See chart attached.

Mailboxes (Reed Brothers): The mailboxes are an allowable expense. However, the extra set of mailbox keys, when two sets are already provided with the mailboxes, is for the owner's convenience and is not a benefit to the tenants. Therefore, only the cost of \$3,220 is allowed. Because this work was done before February 1, 2017, it is subject to a 5 year amortization period. See chart.

P Jordan Builders (Sliding glass doors and dry rot deck work): There are a variety of issues with the *P. Jordan Builders* invoices. First, all the work done by *Jordan* required permits, yet no permits were taken out until August of 2016, (to replace the patio doors) and September of 2016 (to repair the dry rot on the deck.) All work done before those permits were pulled is not allowed. Additionally, the invoices show that in addition to work done on the patio doors and the decks, *Jordan* replaced the windows and did dry rot repair associated with the windows. No permit was taken out for windows and window replacements require permits. Therefore, the costs associated with the window replacement cannot be passed on to the tenants.

²⁹ Regulations Appendix § 10.2.3(3)(a)

³⁰ Regulations Appendix, § 10.2.1

³¹ Regulations, Section 8.22.110(E)(4)

Finally, on some of the invoices it is impossible to tell what the charges were for. Since no permits were pulled for windows, any work done to the windows, including stucco work, is not an allowable expense. *Jordan's* invoices included charges from other subcontractors for which no back up documentation was provided. For example, *JD* was paid for "stucco work" on the October 15, 2016, invoice. Since there is no way to know whether this work was related to the doors, windows or decking, the charges are not allowed. The same is true for the hauling charges on that same invoice. The portaloos charges are allowed, as work was being done on the premises for which a portaloos would have been necessary.

As to the dry rot repair, there is a question as to whether or not this work constituted deferred maintenance. However, the owner representative was convincing that the dry rot was not visible to the naked eye prior to purchase, and that it was not clear that there was a problem until after the inspections were done. Therefore, the work does not amount to unreasonably deferred maintenance and, for that work that was done with permits, is an allowable pass through.

The chart below shows the allowable costs for the *Jordan* billings, and why different portions were not allowed.

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Date	Total Amount	Allowable Amount	Reason Removed
May 1, 2016	\$94,601.15	0	All work before permits
June 15, 2016	\$12,718.62	0	All work before permits
August 12, 2016	\$95,516.65	\$89,772.81	All work done before August 5, 2016, (\$5,743.84) taken off because permits taken out on that date.
August 16, 2016	\$102,358.35	\$102,358.35	
September 13, 2016	\$113,450.61	0	Bill for windows, no window permit
October 15, 2016	\$51,941.11 ³²	\$243.68	All charges other than the portaloo charges are unidentified as to whether it was for permitted work or unpermitted work.
December 28, 2016	\$22,058.63 ³³	\$243.66	All charges other than the portaloo charges are unidentified as to whether it was for permitted work or unpermitted work.
April 25, 2017	\$27,958.88 ³⁴	\$22,159.10	The J Daly stucco charges relate to windows and are not allowed. All other charges other than the GACO system and Scaffold costs are unidentified, so cannot be passed on.
Total allowable costs		\$214,777.60	

The spreadsheet includes \$214,777.60 for the sliding glass doors and dry rot deck work done by *Jordan*.

Waterproofing (Weathertight Waterproofing): Again, some of this work was done before any permits were taken out and included charges to fabricate and install the door pans on the decks. All charges prior to the permits for the doors, which was taken out on August 5, 2016, cannot be passed on to the tenants.

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³² These charges include portaloo rentals of \$242.60, waste removal of \$354 and \$862.50 and \$718.75, and stucco charges of \$47,500. The other charges are unidentified labor and materials.

³³ These charges include a charge for waste removal for \$1,133.90, two charges for portaloo rentals totaling \$243.66. The other labor and material charges are unspecified.

³⁴ These charges included a charge from J Daly stucco for window patching for \$920, a charge from Mt. Diablo Floor for installation of a podium deck for \$21,659.10, and labor for the erection of a scaffold for \$500. The other charges are for unspecified labor and materials.

Date	Total Amount	Allowable Amount	Reason Removed
May 23, 2016	\$703.98	0	All work before permits
May 23, 2016	\$8,260.10	0	All work before permits
June 24, 2016	\$3,735	0	All work before permits
July 7, 2016	\$4,590	0	All work before permits
August 12, 2016	\$4,185	\$ 4,185.00	
October 10, 2016	\$5,951.50	\$ 5,951.50	
November 6, 2016	\$17,549.35	\$17,549.35	
December 12, 2016	\$10,715	\$10,715.00	
December 14, 2016	\$11,115	\$11,115.00	
Total allowed		\$49,515.85	

The spreadsheet includes a cost of \$49,515.85 for the waterproofing work done by *WeatherTight Waterproofing*.

Structural Engineer (Santos & Urrutia): The structural engineer costs are allowed. While one bill was incurred prior to the permits being taken out, it is feasible that the structural engineers were hired before the permits to determine if the work was necessary. These are allowable expenditures. A total cost of \$6,000 is listed on the spreadsheet.

Downspouts (Rain Defense): These are allowable costs and no permits are required. The owner is entitled to a \$10,500 pass through. Since this work began after September 20, 2016, the owner is entitled to imputed interest for this work.

Habitech Electrical: The owner replaced faulty existing lights. Even though the lights that were installed were an improvement over the prior lights, this job is more similar to repair and maintenance rather than capital improvements. The claim is denied.

Security Cameras (Tech Hospitality): Security cameras are capital improvements. However, the owner did not produce proof of payment of the invoice of \$15,661.73. Since there is proof that the owner paid *Tech Hospitality*, this request is denied.

Wall repair (Mendez-Ortiz Construction): Fixing the walls after the cameras are installed is an allowable expense. The owner is entitled to pass through this \$1,200.

Spreadsheet: Attached as Exhibit A is a spreadsheet that lists the allowable capital improvement expenses. Since all the work was either before February 1, 2017, or was for work done for the exterior paint job, all the work is listed with a 5 year amortization period. As to each tenant, an analysis is made regarding whether the proposed rent increase will cause an increase of greater than 10%. (In this calculation, the tenants' rent amount is the combined amount of their base rent, including parking. This calculation does not include any prior capital improvement pass through, as the calculation is on the base rent.) If the 5 year amortization period caused an increase of greater than 10%, the amortization period was increased until the rent increase was below the 10% threshold.

The rent increases go into effect 30 days after the owner serves rent increase notices on the tenants (35 days if the rent increase notice is served by mail) See Civil Code § 827 and Code of Civil Procedure § 1013. No rent increase can go into effect any earlier than December 1, 2018, as the owner served rent increase notices on each tenant that increased the rent on December 1, 2017. Rent increases are limited to one increase per year. Additionally, the owner must concurrently serve the *RAP Notice* and the *Decision Summary* which accompanies this decision.

No capital improvement increase is allowed for the tenants in unit 107, as they moved in after the work was done.

The capital improvement increase for each tenant ends as noted in the Order below.

ORDER

1. Petition L17-0231 is granted in part.

2. As to the tenant in unit 101 (Jubar), the base rent is \$1,499 a month (\$1,391.54 for the unit and \$53.45 for parking.) The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

3. As to the tenant in unit 101 (Jubar), the new capital improvement pass through will expire 60 months after it goes into effect.

4. As to the tenant in unit 102 (Salassi), the base rent is \$1,414.68 a month. The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

5. As to the tenant in unit 102 (Salassi), the new capital improvement pass through will expire 60 months after it goes into effect.

6. As to the tenant in unit 103 (Harrison), their base rent is \$1,542.92 a month. The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

7. As to the tenant in unit 103 (Harrison), the new capital improvement pass through will expire 60 months after it goes into effect.

8. As to the tenant in unit 105 (Love), the base rent is \$1,220.69 a month. The owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.
9. As to the tenant in unit 105 (Love), the new capital improvement pass through will expire 72 months after it goes into effect.
10. As to the tenant in unit 106 (Sato), the base rent is \$1,439.57 a month (\$1,386.12 for the unit and \$53.45 for parking.) The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.
11. As to the tenant in unit 106 (Sato), the new capital improvement pass through will expire 60 months after it goes into effect.
12. No rent increase for this capital improvement work is allowed to the tenants in unit 107 (McCarty).
13. As to the tenant in unit 108 (Vance), the base rent is \$1,433.51 a month. The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020..
14. As to the tenant in unit 108 (Vance), the new capital improvement pass through will expire 60 months after it goes into effect.
15. As to the tenant in unit 202 (Angeles), the base rent is \$1,212.10 a month (\$1,158.65 for the unit and \$53.45 for parking.) The owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.
16. As to the tenant in unit 202 (Angeles), the new capital improvement pass through will expire 72 months after it goes into effect.

17. As to the tenant in unit 203 (Sheil), the base rent is \$3,646.89 a month (\$3,438.20 for the unit and \$208.69 for parking.) The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018, which expires on December 31, 2020.

18. As to the tenant in unit 203 (Sheil), the new capital improvement pass through will expire 60 months after it goes into effect.

19. As to the tenant in unit 206 (Guzman), the base rent is \$1,444.99 a month (\$1,391.54 for the unit and \$53.45 for parking.) The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

20. As to the tenant in unit 206 (Guzman), the new capital improvement pass through will expire 60 months after it goes into effect.

21. As to the tenant in unit 207 (Kundidzora), the base rent is \$1,250.82 a month. The owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

22. As to the tenant in unit 207 (Kundidzora), the new capital improvement pass through will expire 72 months after it goes into effect.

23. As to the tenant in unit 208 (Sucharski), the base rent is \$1,272.44 a month. The owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

24. As to the tenant in unit 208 (Sucharski), the new capital improvement pass through will expire 72 months after it goes into effect.

25. As to the tenant in unit 209 (De Lemos), the base rent is \$1,266.35 a month. The owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

26. As to the tenant in unit 209 (De Lemos), the new capital improvement pass through will expire 72 months after it goes into effect.

27. As to the tenant in unit 301 (Kaplan), the base rent is \$1,779.01 a month. The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

28. As to the tenant in unit 301 (Kaplan), the new capital improvement pass through will expire 60 months after it goes into effect.

29. As to the tenant in unit 303 (Cornwall), the base rent is \$1,995.58 a month (\$1,888.68 for the unit and \$106.90 for parking). The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

30. As to the tenant in unit 303 (Cornwall), the new capital improvement pass through will expire 60 months after it goes into effect.

31. As to the tenant in unit 306 (Anderson), the base rent is \$1,609.02 a month (\$1,502.12 for the unit and \$106.90 for parking). The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

32. As to the tenant in unit 306 (Anderson), the new capital improvement pass through will expire 60 months after it goes into effect.

33. As to the tenant in unit 308 (Harris), the base rent is \$1,312.48 a month. The owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

34. As to the tenant in unit 308 (Harris), the new capital improvement pass through will expire 72 months after it goes into effect.

35. As to the tenant in unit 401 (Brewer), the base rent is \$2,315.33 a month (\$2,261.88 for the unit and \$53.45 for parking). The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

36. As to the tenant in unit 401 (Brewer), the new capital improvement pass through will expire 60 months after it goes into effect.

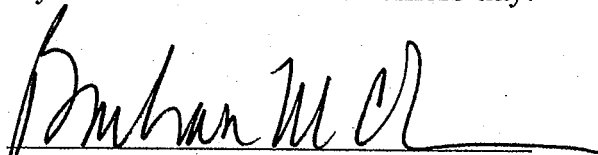
37. As to the tenant in unit 402 (Kelly), the base rent is \$2,355.80 a month (\$2,195.46 for the unit and \$160.34 for parking). The owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. However, the rent increase may not have an effective date earlier than December 1, 2018. This tenant is also paying a prior capital improvement pass through of \$96.57, which expires on December 31, 2020.

38. As to the tenant in unit 402 (Kelly), the new capital improvement pass through will expire 60 months after it goes into effect.

39. The owner is also entitled to a C.P.I. rent increase (calculated on the base rent), concurrent with the capital improvement increase, provided that adding the C.P.I. to the capital improvement pass through does not exceed 10% of each tenant's current rent. For those tenant's for whom adding the C.P.I. will cause the increase to exceed 10%, the owner can bank the C.P.I.

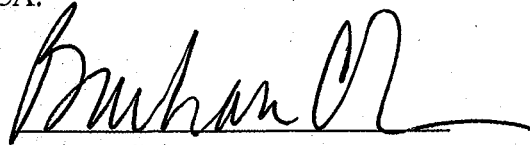
40. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: July 5, 2018


Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 05, 2018 in Oakland, CA.

A handwritten signature in black ink, appearing to read 'Barbara Cohen', with a long horizontal flourish extending to the right.

Barbara Cohen
Oakland Rent Adjustment Program

CITY OF OAKLAND



250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612-2043

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510) 238-3254

DECISION SUMMARY

CASE NUMBER: L17-0231, Arms v. Tenants
PROPERTY ADDRESS: 362 Euclid, Oakland, CA
DATE OF HEARING: April 3, 2018
DATE OF DECISION: July 5, 2018

1. Petition L17-0231 is granted in part.
2. As to the tenant in unit 101 (Jubar), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
3. As to the tenant in unit 101 (Jubar), the new capital improvement pass through will expire 60 months after it goes into effect.
4. As to the tenant in unit 102 (Salassi), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
5. As to the tenant in unit 102 (Salassi), the new capital improvement pass through will expire 60 months after it goes into effect.
6. As to the tenant in unit 103 (Harrison), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

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7. As to the tenant in unit 103 (Harrison), the new capital improvement pass through will expire 60 months after it goes into effect.
8. As to the tenant in unit 105 (Love), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
9. As to the tenant in unit 105 (Love), the new capital improvement pass through will expire 72 months after it goes into effect.
10. As to the tenant in unit 106 (Sato), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
11. As to the tenant in unit 106 (Sato), the new capital improvement pass through will expire 60 months after it goes into effect.
12. No capital improvement increase based on this case is allowed to the tenants in unit 107 (McCarty).
13. As to the tenant in unit 108 (Vance), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
14. As to the tenant in unit 108 (Vance), the new capital improvement pass through will expire 60 months after it goes into effect.
15. As to the tenant in unit 202 (Angeles), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
16. As to the tenant in unit 202 (Angeles), the new capital improvement pass through will expire 72 months after it goes into effect.
17. As to the tenant in unit 203 (Sheil), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
18. As to the tenant in unit 203 (Sheil), the new capital improvement pass through will expire 60 months after it goes into effect.

19. As to the tenant in unit 206 (Guzman), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

20. As to the tenant in unit 206 (Guzman), the new capital improvement pass through will expire 60 months after it goes into effect.

21. As to the tenant in unit 207 (Kundidzora), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

22. As to the tenant in unit 207 (Kundidzora), the new capital improvement pass through will expire 72 months after it goes into effect.

23. As to the tenant in unit 208 (Sucharski), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

24. As to the tenant in unit 208 (Sucharski), the new capital improvement pass through will expire 72 months after it goes into effect.

25. As to the tenant in unit 209 (De Lemos), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

26. As to the tenant in unit 209 (De Lemos), the new capital improvement pass through will expire 72 months after it goes into effect.

27. As to the tenant in unit 301 (Kaplan), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

28. As to the tenant in unit 301 (Kaplan), the new capital improvement pass through will expire 60 months after it goes into effect.

29. As to the tenant in unit 303 (Cornwall), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision*

Summary. The rent increase may not have an effective date earlier than December 1, 2018.

30. As to the tenant in unit 303 (Cornwall), the new capital improvement pass through will expire 60 months after it goes into effect.

31. As to the tenant in unit 306 (Anderson), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

32. As to the tenant in unit 306 (Anderson), the new capital improvement pass through will expire 60 months after it goes into effect.

33. As to the tenant in unit 308 (Harris), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

34. As to the tenant in unit 308 (Harris), the new capital improvement pass through will expire 72 months after it goes into effect.

35. As to the tenant in unit 401 (Brewer), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

36. As to the tenant in unit 401 (Brewer), the new capital improvement pass through will expire 60 months after it goes into effect.

37. As to the tenant in unit 402 (Kelly), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

38. As to the tenant in unit 402 (Kelly), the new capital improvement pass through will expire 60 months after it goes into effect.

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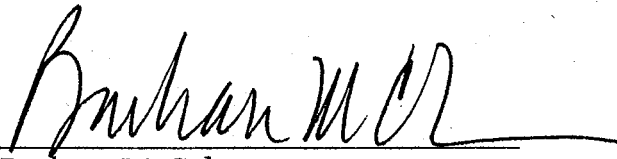
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39. The owner is also entitled to a C.P.I. rent increase (calculated on the base rent), concurrent with the capital improvement increase, provided that adding the C.P.I. to the capital improvement pass through does not exceed 10% of each tenant's current rent. For those tenants for whom adding the C.P.I. will cause the increase to exceed 10%, the owner can bank the C.P.I.

Dated: July 5, 2018



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

CITY OF OAKLAND



250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612-2043

Housing and Community Development Department
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DECISION SUMMARY

CASE NUMBER: L17-0231, Arms v. Tenants
PROPERTY ADDRESS: 362 Euclid, Oakland, CA
DATE OF HEARING: April 3, 2018
DATE OF DECISION: July 5, 2018

1. Petition L17-0231 is granted in part.
2. As to the tenant in unit 101 (Jubar), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
3. As to the tenant in unit 101 (Jubar), the new capital improvement pass through will expire 60 months after it goes into effect.
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7. As to the tenant in unit 103 (Harrison), the new capital improvement pass through will expire 60 months after it goes into effect.
8. As to the tenant in unit 105 (Love), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
9. As to the tenant in unit 105 (Love), the new capital improvement pass through will expire 72 months after it goes into effect.
10. As to the tenant in unit 106 (Satoh), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
11. As to the tenant in unit 106 (Satoh), the new capital improvement pass through will expire 60 months after it goes into effect.
12. No capital improvement increase based on this case is allowed to the tenants in unit 107 (McCarty).
13. As to the tenant in unit 108 (Vance), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.
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20. As to the tenant in unit 206 (Guzman), the new capital improvement pass through will expire 60 months after it goes into effect.

21. As to the tenant in unit 207 (Kundidzora), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

22. As to the tenant in unit 207 (Kundidzora), the new capital improvement pass through will expire 72 months after it goes into effect.

23. As to the tenant in unit 208 (Sucharski), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

24. As to the tenant in unit 208 (Sucharski), the new capital improvement pass through will expire 72 months after it goes into effect.

25. As to the tenant in unit 209 (De Lemos), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

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27. As to the tenant in unit 301 (Kaplan), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

28. As to the tenant in unit 301 (Kaplan), the new capital improvement pass through will expire 60 months after it goes into effect.

29. As to the tenant in unit 303 (Cornwall), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*.

Summary. The rent increase may not have an effective date earlier than December 1, 2018.

30. As to the tenant in unit 303 (Cornwall), the new capital improvement pass through will expire 60 months after it goes into effect.

31. As to the tenant in unit 306 (Anderson), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

32. As to the tenant in unit 306 (Anderson), the new capital improvement pass through will expire 60 months after it goes into effect.

33. As to the tenant in unit 308 (Harris), the owner is entitled to a capital improvement rent increase of \$118.12, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

34. As to the tenant in unit 308 (Harris), the new capital improvement pass through will expire 72 months after it goes into effect.

35. As to the tenant in unit 401 (Brewer), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

36. As to the tenant in unit 401 (Brewer), the new capital improvement pass through will expire 60 months after it goes into effect.

37. As to the tenant in unit 402 (Kelly), the owner is entitled to a capital improvement rent increase of \$141.25, which will be effective 30 days (35 days if served by mail) after the owner serves the rent increase notice, a *RAP Notice*, and the *Decision Summary*. The rent increase may not have an effective date earlier than December 1, 2018.

38. As to the tenant in unit 402 (Kelly), the new capital improvement pass through will expire 60 months after it goes into effect.

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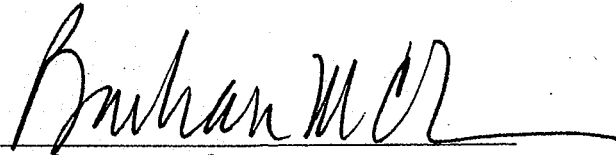
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39. The owner is also entitled to a C.P.I. rent increase (calculated on the base rent), concurrent with the capital improvement increase, provided that adding the C.P.I. to the capital improvement pass through does not exceed 10% of each tenant's current rent. For those tenants for whom adding the C.P.I. will cause the increase to exceed 10%, the owner can bank the C.P.I.

Dated: July 5, 2018



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number L17-0231

I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California 94612.

Today, I served the attached documents listed below by placing a true copy of it in a sealed envelope in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Suite 5313, 5th Floor, Oakland, California, addressed to:

Documents Included

Hearing Decision and Decision Summary

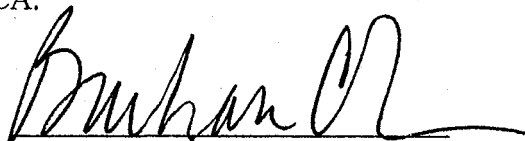
Owner Nick Arms, LP 362 Euclid Ave Oakland, CA 94610	Owner Representative Dina Batalova 1145 Bush St San Francisco, CA 94109
Tenant Akio Satoh & Jennifer Meek 362 Euclid Ave #106 Oakland, CA 94610	Tenant Anne Salassi 362 Euclid Ave #102 Oakland, CA 94610
Tenant Caitlin McCarty 362 Euclid Avenue 107 Oakland, CA 94610	Tenant Carla Lemos 362 Euclid Ave #209 Oakland, CA 94610
Tenant Chet Anderson 362 Euclid Ave #306 Oakland, CA 94610	Tenant Dawn Harris 362 Euclid Ave #308 Oakland, CA 94610

000256

<p>Tenant Douglas Cornwall 362 Euclid Ave #303 Oakland, CA 94610</p>	<p>Tenant Emmeline Angeles 362 Euclid Ave #202 Oakland, CA 94610</p>
<p>Tenant Harry Jubar 362 Euclid Ave #101 Oakland, CA 94610</p>	<p>Tenant Johannah Kaplan 362 Euclid Ave #301 Oakland, CA 94610</p>
<p>Tenant Jonathan Guzman & Van Hoang 362 Euclid Ave #206 Oakland, CA 94610</p>	<p>Tenant Justin Sucharski 362 Euclid Ave #208 Oakland, CA 94610</p>
<p>Tenant Katherine Brewer & Carl Mebane 362 Euclid Ave #107 Oakland, CA 94610</p>	<p>Tenant Ken Love 362 Euclid Ave #105 Oakland, CA 94610</p>
<p>Tenant Mel Brewer & Bridget Smith 362 Euclid Ave #401 Oakland, CA 94610</p>	<p>Tenant Nyaradzo Kundidzora 362 Euclid Ave #207 Oakland, CA 94610</p>
<p>Tenant Patrick Sheil 362 Euclid Ave #203 Oakland, CA 94610</p>	<p>Tenant Ryan Kelly & Zach Wheeler 362 Euclid Ave #402 Oakland, CA 94610</p>
<p>Tenant Shauna Vance 362 Euclid Ave #108 Oakland, CA 94610</p>	<p>Tenant Zekeia & Clifton Harrison 362 Euclid Ave #103 Oakland, CA 94610</p>

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first class postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 05, 2018 in Oakland, CA.

A handwritten signature in black ink, appearing to read 'Barbara Cohen', written over a horizontal line.

Barbara Cohen
Oakland Rent Adjustment Program



CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

For date stamp
2018 JUL 18 AM 10:20

APPEAL

Appellant's Name Lucky Stewart Nick Arms, LP		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 362 Euclid Avenue, Oakland, CA 9461 <i>See Attachment for units</i>			
Appellant's Mailing Address (For receipt of notices) 1145 Bush St San Francisco, CA 94109		Case Number L17-0231	
		Date of Decision appealed July 5, 2018	
Name of Representative (if any) Gregory McConnell JR McConnell The McConnell Group		Representative's Mailing Address (For notices) 300 Frank H. Ogawa Plaza #460 Oakland, CA 94612	

Please select your ground(s) for appeal from the list below. As part of the appeal, an explanation must be provided responding to each ground for which you are appealing. Each ground for appeal listed below includes directions as to what should be included in the explanation.

- 1) There are math/clerical errors that require the Hearing Decision to be updated. *(Please clearly explain the math/clerical errors.)*
- 2) Appealing the decision for one of the grounds below (required):
 - a) **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** *(In your explanation, you must identify the Ordinance section, regulation or prior Board decision(s) and describe how the description is inconsistent.)*
 - b) **The decision is inconsistent with decisions issued by other Hearing Officers.** *(In your explanation, you must identify the prior inconsistent decision and explain how the decision is inconsistent.)*
 - c) **The decision raises a new policy issue that has not been decided by the Board.** *(In your explanation, you must provide a detailed statement of the issue and why the issue should be decided in your favor.)*
 - d) **The decision violates federal, state or local law.** *(In your explanation, you must provide a detailed statement as to what law is violated.)*
 - e) **The decision is not supported by substantial evidence.** *(In your explanation, you must explain why the decision is not supported by substantial evidence found in the case record.)*

For more information phone (510) 238-3721.


- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue a decision without a hearing if sufficient facts to make the decision are not in dispute.)
- g) The decision denies the Owner a fair return on my investment. (You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.)
- h) Other. (In your explanation, you must attach a detailed explanation of your grounds for appeal.)

Submissions to the Board must *not* exceed 25 pages from each party, and they must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(5). Please number attached pages consecutively. Number of pages attached: _____

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •

I declare under penalty of perjury under the laws of the State of California that on July 18, 2018 I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Please See Attached Tenant Roster
<u>Address</u>	
<u>City, State Zip</u>	
<u>Name</u>	Please See Attached Tenant Roster
<u>Address</u>	
<u>City, State Zip</u>	

	7/18/18
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

IMPORTANT INFORMATION:

This appeal must be received by the Rent Adjustment Program, 250 Frank Ogawa Plaza, Suite 5313, Oakland, California 94612, not later than 5:00 P.M. on the 20th calendar day after the date the decision was mailed to you as shown on the proof of service attached to the decision. If the last day to file is a weekend or holiday, the time to file the document is extended to the next business day.

- Appeals filed late without good cause will be dismissed.
- You must provide all the information required, or your appeal cannot be processed and may be dismissed.
- Any response to the appeal by the other party must be received by the Rent Adjustment Program with a proof of service on opposing party within 35 days of filing the appeal.
- The Board will not consider new claims. All claims, except jurisdiction issues, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.
- The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.

For more information phone (510) 238-3721.

Tenant Roster

Tenant Douglas Cornwall 362 Euclid Ave #303 Oakland, CA 94610	Tenant Emmeline Angeles 362 Euclid Ave #202 Oakland, CA 94610
Tenant Harry Jubar 362 Euclid Ave #101 Oakland, CA 94610	Tenant Johannah Kaplan 362 Euclid Ave #301 Oakland, CA 94610
Tenant Jonathan Guzman & Van Hoang 362 Euclid Ave #206 Oakland, CA 94610	Tenant Justin Sucharski 362 Euclid Ave #208 Oakland, CA 94610
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Tenant Chet Anderson 362 Euclid Ave #306 Oakland, CA 94610	Tenant Dawn Harris 362 Euclid Ave #308 Oakland, CA 94610

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Attachment to Appeal

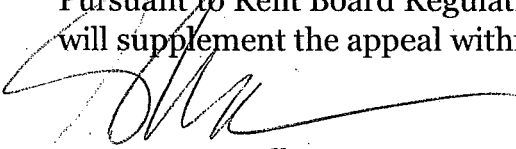
L17-0231

362 Euclid Avenue

The appeal filed herein will cite numerous errors made by the Hearing Officer in support of the grounds listed in the appeal. This is a particularly egregious decision. This was an uncontested petition. Not a single tenant objected to the petition or appeared at the hearing. Nevertheless, the Hearing Officer denied hundreds of thousands of dollars worth of Capital Improvements in violation of the Rent Board's laws, regulations, and case precedent.

Unfortunately, the Landlord's Representative is not available to fully brief the issues due to a pending vacation that was scheduled at least a year before the decision was rendered.

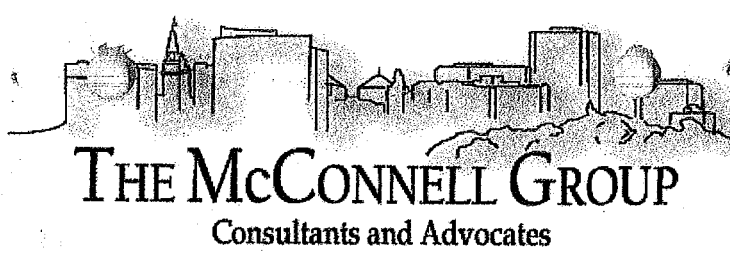
Pursuant to Rent Board Regulations and the notations on the Appeal Form, Landlord will supplement the appeal within 15 days of filing of the date of filing.



Greg McConnell
Landlord Representative

6

000264



THE McCONNELL GROUP
Consultants and Advocates

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2018 SEP 20 PM 1:05

Memorandum

To: Rent Adjustment Appeal Board
From: Gregory McConnell, Landlord Representative
Date: 9/20/18
Subject: Supplement to Appeal; L17-0231

Attached, please a **Supplement to Appeal** for case L17-0231. Including a declaration from Dina Batalova and a transcript of the original hearing.

Due to the length of the document and the fact that no tenant contested the petition, we are submitting a copy of this argument but not a copy of the transcript to each tenant unless ordered by the Rent Program to do so, or unless a tenant requests a copy.

Items:

Supplement to Appeal
Declaration of Dina Batalova and attachments
Transcript of Hearing - April 3, 2018

Thank you.

SUPPLEMENT TO APPEAL

Arms v. Tenants

L17-0231

INTRODUCTION

This is an appeal of the Hearing Officer's Decision in L17-0231, Arms v. Tenants. This was an uncontested Capital Improvement Petition. No tenant filed an objection or appeared at the hearing. Nevertheless, the Hearing Officer denies rent increases where the law clearly provides entitlement. She cites cases that are not on point. She denied the petitioner due process by not calling for further hearing. And, she undermined her own rationale for denying increases in cases where no permits are issued or finalized.

We have taken the unusual step of preparing a certified transcript of the proceedings by a court reporter because hundreds of thousands of dollars are at stake, and because we think it appropriate that the Board have the record before it when this case is heard on appeal. We attach the transcript for the Board's review.

ARGUMENT

1. The Hearing Officer Incorrectly Denied Capital Improvement Credit for Various Improvements.

Nothing in the Ordinance or Regulations requires that an owner show proof that he or she obtained building permits, and that the permits were finalized to get credit for Capital Improvement expenditures. See Rent Adjustment Program Regulation (RAPR) Section 8.22.010 Definitions "Capital Improvements", RAPR 8.22.090 C, and RAPR Appendix A, Section 10.2 (Capital Improvements). Simply put, the Hearing Officers insistence on finalized permits is not required by the law. She cited Falcon v. Bostrom, T13-0297 and Ludwig v. Tenants, L16-0038 as precedent. We do not believe these decisions will survive judicial review.

The Rent Board has amended the regulations many times in recent years. At no time did it include a requirement that finalized building permits had to be provided. The Rent Board does not have independent authority to create its own regulations without referral to the City Council. RAPR Regulations Section 8.22.090 Definitions (Regulations). Interpreting a requirement into a regulation is also improper. Landlords have the right to expect that the Rent Board will follow the law. It is fundamentally unfair and a denial of due process to impose requirements that are not stated in the Ordinance or Regulations.

The above notwithstanding, in this case, the Hearing Officer goes beyond even the cases she cites. She denies credit for capital Improvements even where the owner did obtain permits, and the work was inspected and finalized. At page 8, of the Hearing Decision she rules that work done by P Jordan Builders prior to permits being pulled in August of 2016 (to replace the patio

doors) and September 2016 (to repair the dry rot on the deck) is disallowed because that work was done before the permits were pulled. That decision is not supported by the cases she cites.

Therefore, we submit that even if the law can be read to require permits, there is no authority for a Hearing Officer to deny costs because some of it may have been done before a permit was pulled? On this ground alone, the Hearing Officer improperly denied the owners credit for \$113,062.84 of capital improvement costs. (see Decision, page 10.)

Even assuming *arguendo*, which we do not, that a finalized building permit is necessary "because where the proper permits were not issued, the City can demand that the work be redone and inspected", no logic supports denying increases where the work was ultimately inspected and approved. There are many reasons why people start work before getting all the permits. Sometimes they do not know the extent of the damage. Sometimes they pull certain permits and find that they need more permits because the work is more extensive or different than first thought. In either case, if the work was ultimately inspected and approved, what justifies denying the costs other than some punitive motivation to hurt the owner.

Moreover, the building department allows people to retroactively apply for permits. They inspect the work and if it was done to standard they issue a permit and finalize it.

As to this issue, the decision to deny expenses because some work preceded permit applications must be overturned. The work was done. There was proof it was paid for. AND the work was inspected and approved by the city building department.

2. The Hearing Officer Denied Work For "Windows" Because No Permit Was Pulled.

On page 10, the Hearing Officer denies expenses for a September 13, 2016 invoice for \$113,450.61, because "Bill for windows, no window permit".

We restate the argument above that no permit requirement is stated in the law or regulations. There is more, the "windows" were part of a permit for installing sliding doors that had glass panels inside. There was a permit for those doors and it was provided to the hearing officer. Unfortunately, the Hearing Officer seized on the word "window" that appeared in some of the invoice line items. That could have easily been explained had the Hearing Officer raised the issue.

At the hearing the Hearing Officer allowed the landlord to send in copies of permits within seven day of the hearing and promised she would notice further hearing if anything came up.

She stated: "I will allow you, within a week, to produce proof of the permits that you received for this -- work, and then I will consider them. If I think anything comes up from looking at that that I need to have further hearing, I'll notice a further hearing." (Hearing Transcript, page 17 line 23 and page 18, lines 1-4

These were not windows that required a separate permit. They were glass panels that were part of the doors for which a permit was issued and finalized. Had she followed her promise and

raised the issue with the landlord, this could have been resolved. Failure to do so was a denial of due process.

Moreover, the undisputed evidence is that a building official came and inspected the work that was done on the doors. He is the expert on what permits were necessary, not the rent board hearing officer. If he thought more permits needed to be issued, he would have said so. In any event, the fear mentioned above that failure to get a permit may lead to the work being redone does not exist where the building official inspects the work and signs off.

The decision on this issue must be reversed.

3. Expenses Denied Because the Work Related to the "Windows" Must be Allowed

On page 10 of the Hearing Decision, there is a chart of expenses that were denied for invoices for October 15, 2016; December 28, 2016 and April 25, 2017. Each expense was denied because they were related to the "windows". As stated in 2, above, the expense was for sliding doors and just as that expense must be credited, all related expenses must be credited.

4. All Expenses Denied on Page 11 Must be Allowed

On page 11 of the Hearing Decision, the Hearing Officer disallows expenses for work done between May 23 and July 7 because the work preceded the permit application. For the same reasons mentioned in 1, above, all these expenses must be allowed and the decision to deny them must be reversed.

5. Security Cameras

The landlord supplied proof of payment for the security cameras. There was no question put to the landlord about the documentation of payment provided on this issue. As the attached declaration declares under penalty of perjury, the proof of payment for this item was submitted as it was for the other expenses in the CI Petition. We believe the Rent Program lost it. As stated in the declaration, the landlord had the copy at the hearing and had the Hearing Officer indicated it was an issue, she could have provided on the spot.

Clearly, the work was done because the Hearing Officer allowed the pass through for "fixing the walls after the cameras were installed" (Hearing Decision page 11.) "

6. Length of Supporting Argument and Documentation

Section 8.22.120 provides that the length of documentation should not exceed 25 pages. Our entire package will exceed that number because it includes the transcript. We posit that in a case of this nature where hundreds of thousands of dollars were denied, having the transcript is good cause for exceed the 25-page limit.

We are submitting a copy of this argument but not a copy of the transcript to each tenant unless ordered by the Rent Program Staff to do so. Any tenant who wants a copy can contact this office and a copy will be provided.

CONCLUSION

We ask for reversal of the decision, and credit for all capital expenses that were improperly denied.

Respectfully Submitted,



Gregory McConnell
Landlord Representative

The McConnell Group
300 Frank Ogsawa Plaza Suite 460
Oakland, CA 94612
(510) 834-0400
gmc@themcconnellgroup.com

7. Attached hereto as Exhibit 1 is a true and correct copy of the stamped filing coversheet I did on October 20, 2017.

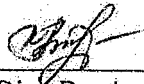
8. Attached hereto as Exhibit 2 is a true and correct copy of the Invoice for the cameras that is included in my filing.

9. Attached hereto as Exhibit 3 is a true and correct copy of the check for cameras that were installed.

10. Until the decision was provided, I was unaware that the Rent Board did not have a copy of the camera invoice and proof of payment and could have easily provided them a duplicate. This could have been done at the hearing on April 3, 2018 if raised or at anytime after but I still to this day have a copy of it in my filing.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed this 20th day of September 2018 at San Francisco, California.



Dina Batalova

DECLARATION OF Dina Batalova

EXHIBIT 1

7

000272



CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
 P.O. Box 70243
 Oakland, CA 94612-0243
 (510) 238-3721

RECEIVED
 For date stamp.
 OCT 20 PM 1:17

PROPERTY OWNER
PETITION FOR
APPROVAL OF RENT
INCREASE

Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach copies of the documents that support your petition. Before completing this petition, please read the Rent Adjustment Ordinance (Oakland Municipal Code 8.22), sections 8.22.010 through 8.22.190, and the Rent Adjustment Program Regulations.

Your Name Nick Arms, LP	Complete Address (with zip code) 362 Euclid Avenue, Oakland, CA 94610	Daytime Telephone: (510) 301-3767 E-mail:
Your Representative's Name (if any) Dina Batalova	Complete Address (with zip code) 1145 Bush Street, San Francisco, CA 94109	Daytime Telephone: (408) 905-8602 E-mail: dbatalova@gmail.com
Property Address (If the property has more than one address, list all addresses) 362 Euclid Avenue, Oakland, CA 94610		

Total number of units on property: 29

Date on which you acquired the building: 02.13.2015

Type of units (circle one) House Condominium **Apartment, Room, or Live-Work**

Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to the tenants in each unit affected by the petition?	Yes	No
On what date was the RAP Notice first given?	<u>02.25.2015</u>	
Have you paid your Oakland Business License? The property owner must have a current Oakland Business License. If it is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.)	Yes	No
Oakland Business License number.	<u>00171890</u>	

EXHIBIT 2

9

000274



Tech Hospitality Inc.
 870 Market St
 Ste 1038
 San Francisco, CA 94102
 (415) 517-2585

[Handwritten signatures]
 Spend
 Partner

Bill To:
 Meridian - 362 Euclid Ave
 362 Euclid Avenue
 Oakland, CA
 United States

Date	Invoice
09/19/2016	2183
Account	
Meridian Management Group:362 Euclid Ave	

Terms	Due Date	PO Number	Reference
Net 15 days	10/04/2016		

Products & Other Charges	Quantity	Price	Amount
Billable Products & Other Charges			
NVR: Hik Vision 16 Channel NVR - network video recorder server, 6 Terabytes storage to accomodate storage up to 21 days, 4 years manufacturer's warranty	1.00	\$1,350.00	\$1,350.00
Camera: Hik Vision 3MP Megapixel Dome Cameras, night vision, outdoor, vandal resistant. For outdoor and indoor areas. 4 years manufacturer's warranty. 1 camera for lobby, 1 outside of front door, 1 covering garage gate entrance, 1 providing general coverage of the garage, 1 camera covering left side of the building, 1 camera covering right side of the building	16.00	\$190.00	\$3,040.00
Hardware: Power back-up battery	1.00	\$150.00	\$150.00
Hardware: Camera mounts	16.00	\$50.00	\$800.00
MONITOR 0E-19LED: HD Monitor	1.00	\$200.00	\$200.00
Hardware: NVR security lockbox	1.00	\$150.00	\$150.00
Cable: CAT6 network cable, patch panel, cabling supplies	1.00	\$685.00	\$685.00
Router: Network Router/Firewall to provide protection to the NVR recorder, allow set-up of email alerts and network monitoring	1.00	\$200.00	\$200.00
Hardware: EMT conduit for: garage, vertical cabling to floors, roof camera	1.00	\$950.00	\$950.00
Miscellaneous: Miscellaneous: conduit hardware, supplies	1.00	\$250.00	\$250.00
Engineer - Fixed Fee: In-Wall cabling installation option: all hallway cabling to be installed inside the walls and ceilings, building management company will patch and paint any open holes and openings in walls and ceilings that were made during the installation	1.00	\$1,500.00	\$1,500.00
Engineer - Fixed Fee: Professional Installation and Design: Installation of 16 cameras to cover most areas of the building as specified by management: 1 camera for lobby, 1 outside of front door, 1 covering garage gate entrance, 1 camera covering left side of the building, 1 camera covering right side of the building, 3 cameras per floor (floors 2, 3, 4) to get a clear image of most units, 1 camera for Penthouse, 1 for new laundry room, all indoor cabling to be hidden and installed inside wiremaid conduit as applicable; installation of outdoor camera for back area with outdoor cable, fine-tuning of cameras for best performance, installation and fine-tuning of the NVR recorder, set-up of remote viewing (requires ordering internet connection). All work includes 1 year full parts and labor warranty, equipment includes 4 years warranty from	1.00	\$5,670.00	\$5,670.00

136

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000275

manufacturer	
Miscellaneous Invoice	
	Total Products & Other Charges: \$14,928.00
Make checks payable to Tech Hospitality Inc.	Invoice Subtotal: \$14,928.00
	Sales Tax: 678.79
	Invoice Total: \$15,606.79

Thank You For Your Business!

11

000276

EXHIBIT 3

PROOF OF SERVICE BY MAIL

L17-0231

I am a citizen of the United States, a resident of the state of California, and am over 18 years of age. I am not a party to the within-entitled action. My business/residence address is 350 Frank H. Ogawa Plaza #460, Oakland, California 94612.

Today, I served a copy of the attached

**Supplement to Appeal
Declaration of Dina Batalova and attachments**

***Transcript of Hearing - April 3, 2018**

in this action by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail collection receptacle at 532 16th St. Oakland, California, addressed as follows:

Owner Representative
Lucky Stewart
1145 Bush St.
San Francisco, CA 94109

Tenant Akio Satoh & Jennifer Meek 362 Euclid Ave #106 Oakland, CA 94610	Tenant Anne Salassi 362 Euclid Ave #102 Oakland, CA 94610
Tenant Caitlin McCarty 362 Euclid Avenue 107 Oakland, CA 94610	Tenant Carla Lemos 362 Euclid Ave #209 Oakland, CA 94610
Tenant Chet Anderson 362 Euclid Ave #306 Oakland, CA 94610	Tenant Dawn Harris 362 Euclid Ave #308 Oakland, CA 94610

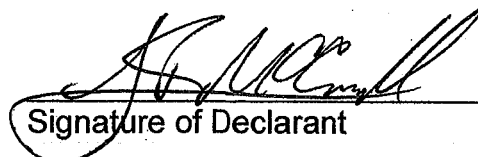
* see cover memo

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Tenant Douglas Cornwall 362 Euclid Ave #303 Oakland, CA 94610	Tenant Emmeline Angeles 362 Euclid Ave #202 Oakland, CA 94610
Tenant Harry Jubar 362 Euclid Ave #101 Oakland, CA 94610	Tenant Johannah Kaplan 362 Euclid Ave #301 Oakland, CA 94610
Tenant Jonathan Guzman & Van Hoang 362 Euclid Ave #206 Oakland, CA 94610	Tenant Justin Sucharski 362 Euclid Ave #208 Oakland, CA 94610
Tenant Katherine Brewer & Carl Mebane 362 Euclid Ave #107 Oakland, CA 94610	Tenant Ken Love 362 Euclid Ave #105 Oakland, CA 94610
Tenant Mel Brewer & Bridget Smith 362 Euclid Ave #401 Oakland, CA 94610	Tenant Nyaradzo Kundidzora 362 Euclid Ave #207 Oakland, CA 94610
Tenant Patrick Sheil 362 Euclid Ave #203 Oakland, CA 94610	Tenant Ryan Kelly & Zach Wheeler 362 Euclid Ave #402 Oakland, CA 94610
Tenant Shauna Vance 362 Euclid Ave #108 Oakland, CA 94610	Tenant Zekeia & Clifton Harrison 362 Euclid Ave #103 Oakland, CA 94610

I declare, under penalty of perjury, that the foregoing is true and correct.

Date 9/20/18


Signature of Declarant

JR McConnell
Type or Print Full Name of Declarant

000280

In The Matter Of:
RENT BOARD HEARING VS.
IN RE:

EUCLID AVENUE
April 3, 2018

CLARK REPORTING & VIDEO CONFERENCING
2140 SHATTUCK AVE. STE. 405
BERKELEY, CA 94704
510.486.0700

Original File EUCLID.TXT
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OAKLAND RENT BOARD
RENT ADJUSTMENT HEARING

CASE L170231

ARMS Vs. TENANTS, 3612 Euclid Avenue
HEARING DATE: APRIL 3, 2018

AUDIO TRANSCRIPT OF PROCEEDINGS

PARTICIPANTS:

- HEARING OFFICER, BARBARA COHEN
- LUCKY STEWART
- DINA BATALOVA
- JEANNE ROBERTSON

CLARK REPORTING & VIDEOCONFERENCING
2140 SHATTUCK AVE., SUITE 407
BERKELEY, CA 94704
510.486.0700

BY JILL STEPHENSON, CSR 8563

1 HEARING OFFICER COHEN: Okay, good morning.
2 We're on the record in case L170231, the case of Arms
3 versus Tenants involving rental units at 3612 Euclid
4 Avenue.

5 I'm Barbara Cohen. As you know, I'm the
6 hearing officer assigned to the case. It's being
7 recorded, and today is April 3rd, 2018. We started the
8 hearing at about 20 after 10:00. No tenants were
9 present in the waiting room when the hearing started.

10 Testimony is given under oath, so if you can
11 all please raise your right hand. Do you swear the
12 testimony you're about to give in this matter is the
13 truth under penalty of perjury?

14 (Yesses.)

15 HEARING OFFICER COHEN: That's the other right
16 hand. Okay. And starting to my right, can you state
17 your name for the record, please?

18 MS. ROBERTSON: Jeanne Robertson.

19 HEARING OFFICER COHEN: Great.

20 MR. STEWART: Lucky Stewart.

21 MS. BATALOVA: Dina Batalova.

22 HEARING OFFICER COHEN: Great. Okay, and I
23 have a pile of -- 90 pages of documents you filed along
24 with your petition. So we'll just go through them. I
25 know this is a capital improvement rent increase. How

1 many units in the building?

2 MS. BATALOVA: 29.

3 MR. STEWART: 29.

4 HEARING OFFICER COHEN: And are you seeking --
5 are all of the people that you're seeking -- let me
6 restate that.

7 Are you seeking the past due for all of the
8 units, or has anybody moved in since you started the
9 work?

10 MR. STEWART: I think it's just the ones that
11 are listed here. We've done a few renovation units, and
12 we didn't include the newer ones.

13 HEARING OFFICER COHEN: Okay, so the -- Page 1
14 is the list of units for which you're seeking the
15 capital improvement increase?

16 MS. BATALOVA: Yes.

17 MR. STEWART: 19.

18 HEARING OFFICER COHEN: That's 19 units,
19 right?

20 MR. STEWART: Yes.

21 MS. BATALOVA: Right.

22 HEARING OFFICER COHEN: Okay. And does this
23 show me their current -- the current base rent? So
24 that's Column 3 -- or 4, and then there's a prior
25 capital improvement past due from 2016, the \$9,657?

1 MR. STEWART: Yes.

2 HEARING OFFICER COHEN: Is that right? And
3 then there's a column for current total rent; that's
4 what they're currently paying for rent. And this has
5 not changed since you filed this petition; is that
6 right?

7 MS. BATALOVA: Just one second.

8 MR. STEWART: No, it might have changed. So
9 rent increases were given in October 2017 that were
10 effective December 1st through --

11 MS. BATALOVA: October 11th.

12 MR. STEWART: Yeah, so in October there were
13 -- rent increases were given out.

14 HEARING OFFICER COHEN: Okay, can you tell me
15 which units rent increases were given, because obviously
16 any --

17 MR. STEWART: Are they in the packet? Did you
18 include them in that or is it just on our side?

19 MS. BATALOVA: On our side.

20 MR. STEWART: On our side, okay. Let's see.
21 December is this. So January -- okay, so it looks like
22 Unit 101 --

23 HEARING OFFICER COHEN: Okay.

24 MR. STEWART: -- is showing as \$1,541.56.

25 HEARING OFFICER COHEN: Is the base rent or

1 the total rent?

2 MR. STEWART: It might be the total. In
3 fact --

4 MS. BATALOVA: No, it's base.

5 MR. STEWART: Is it?

6 MS. BATALOVA: It says here, "Therefore
7 effective December 1st, the new monthly base rent on
8 your apartment will be \$1,541.56."

9 MR. STEWART: No, it's inclusive. If you look
10 on Page 2, it comes through your current base is blank,
11 correct, it breaks -- would it be easier if I just give
12 you my copy?

13 HEARING OFFICER COHEN: Sure.

14 MR. STEWART: Okay. I'm just going to give --
15 this is all the -- that might make things easier.

16 HEARING OFFICER COHEN: Okay, so I'm going to
17 mark this. I'll mark the first -- the package of
18 documents that you submitted as Exhibit 1, and I'll just
19 make this as Exhibit 2. And, as I'm understanding,
20 Exhibit 2 are all the rent increases you gave in October
21 of 2017 that went into effect December 1st of '17.

22 MR. STEWART: It might have been different
23 dates, but it looks like some --

24 HEARING OFFICER COHEN: They all look like
25 they went into effect -- I'm looking at all of them.

1 They all say December 1st ... December 1st.

2 MR. STEWART: And I think December 1st there
3 might have been --

4 HEARING OFFICER COHEN: Why would you have had
5 a different rent for December -- oh, is one because you
6 were imposing the RAP fee itself?

7 MR. STEWART: It might have been a RAP fee.

8 HEARING OFFICER COHEN: I got it. I see it.

9 MR. STEWART: Sorry. New management style. A
10 little different.

11 HEARING OFFICER COHEN: Okay. That makes
12 sense, because the other one is not -- one of them is --
13 one month all the other -- the others are 11 months, so
14 that would make sense that you were imposing a RAP fee.

15 Okay, so all of these in Exhibit 2 are the
16 rent increases that went into effect in December, and
17 it's one, two, three, four, five, six, seven, eight,
18 nine -- 11, 12, 13 -- looks like everybody -- 14, 15,
19 16, 17, 18 -- in fact, there are 20 of them. So if you
20 were only seeking the past due for 19 units, this might
21 be one more unit.

22 MR. STEWART: 304.

23 HEARING OFFICER COHEN: So it's one 101 --

24 MR. STEWART: 304 --

25 HEARING OFFICER COHEN: -- 102, 103 --

1 MS. BATALOVA: And 304.

2 HEARING OFFICER COHEN: 105, 106. You didn't
3 do one for 107, assuming these are in order. So there's
4 no rent increase for 107?

5 MS. BATALOVA: Yes, and there is 304 and 305.

6 HEARING OFFICER COHEN: Okay, hold on a
7 minute. 108, and then there's one for -- you gave me
8 for 201, but 201 is not one of the people you're seeking
9 a past due -- I'm going to give that one back to you.

10 202, 203, 206, 207, 208, 209 301 -- so I don't
11 have one for 303, so no rent increase for 107 or 303. I
12 have one for 305, which isn't on your list. I'm going
13 to give that one back to you.

14 So 306, 308, 401 and 402. Okay, so now I have
15 one for everybody except 107 and 303. And you're not
16 going to impose rent increases on these people before
17 you get a hearing decision from me?

18 MR. STEWART: No. I think what we did is we
19 chose to just keep the normal going because we didn't
20 know how long the process would take, so I think our
21 intention is to -- our next increase would be inclusive
22 of the capital improvements.

23 HEARING OFFICER COHEN: Okay.

24 MR. STEWART: Yes.

25 HEARING OFFICER COHEN: But just to be sure,

1 the two people that you have not yet increased, 107 and
2 303, you're going to wait until you get a hearing
3 decision from me.

4 MR. STEWART: I believe they probably were
5 increased; we might not just have had it in my stack.
6 If you would like, I can --

7 HEARING OFFICER COHEN: I would like you to --

8 MR. STEWART: Produce that?

9 HEARING OFFICER COHEN: Produce that to me.
10 You can -- what you can do is within, what, seven days,
11 is that good enough, send me --

12 MR. STEWART: Sure.

13 HEARING OFFICER COHEN: I think you've done
14 this before. Send me an e-mail including the rent
15 increases for 107 and 303, if you have them.

16 MR. STEWART: Okay.

17 HEARING OFFICER COHEN: Or a note saying "We
18 did not increase and we're waiting for the decision."
19 Okay? All right, so now I know where we are.

20 And then, just so that I understand, the
21 second part of your Page 1 is your analysis of the
22 capital improvement and past due that you're requesting;
23 is that right?

24 MS. BATALOVA: Yes.

25 HEARING OFFICER COHEN: Where you're -- where

1 one of them says 13 years, one says 26 years, one says
2 five years. That's based on the capital improvement
3 you're requesting going forward.

4 MS. BATALOVA: Yes.

5 HEARING OFFICER COHEN: Okay. So that's going
6 to be based on what's identified, those two.

7 All right, and then tell me what Page 2 is.

8 MS. BATALOVA: Page 2 is a calculation on how
9 we did -- to calculate how many years it's going to be.

10 HEARING OFFICER COHEN: Okay, but -- and then
11 what's this, \$447? I mean -- what's these -- these say
12 \$32,000 and these say \$447. What are these?

13 MS. BATALOVA: This is 70% of five years.

14 HEARING OFFICER COHEN: But what is this
15 total? What does this \$32,000 represent and what is
16 this --

17 MS. BATALOVA: It represents --

18 HEARING OFFICER COHEN: -- \$447,000 represent?

19 MS. BATALOVA: It represents painting,
20 exterior painting at 70% of the total amount.

21 HEARING OFFICER COHEN: Okay. And then what's
22 the \$447,000 represent?

23 MS. BATALOVA: It represents total amount of
24 all the ten years work that was done. I don't know how
25 to explain. Like here, like, ten years, and all the

1 work was done at 70% of the total amount.

2 HEARING OFFICER COHEN: Okay. I don't know
3 that I need to understand 'cause I'm going to make my
4 own spreadsheet, but I'm not understanding what you're
5 saying.

6 MS. BATALOVA: So --

7 HEARING OFFICER COHEN: What is \$447,710?
8 What number is that?

9 MS. BATALOVA: It's 70% of total cost of ten
10 years items, like ten --

11 MR. STEWART: So you're telling me it's ten --
12 okay, so the total is \$639,586.21.

13 MS. BATALOVA: Yes.

14 MR. STEWART: You took 70% --

15 HEARING OFFICER COHEN: What is \$639,000 the
16 total of? What work? What is it? What was the work?
17 What is it? Where is that number?

18 MR. STEWART: It's the total on this, on this
19 page on the spreadsheet that was a ten-year amortization
20 page. Do you have that?

21 HEARING OFFICER COHEN: Okay, so it would help
22 -- that's why we number the pages, so that you can tell
23 me. Okay. So I'm on -- I'm on the three-year
24 amortization page -- five-year amortization page.
25 That's Page 3. And then --

1 MR. STEWART: It must be one of these down
2 here. Okay.

3 HEARING OFFICER COHEN: Ten-year amortization
4 page. Got it. Okay. And this is just you calculating
5 out what the different amount is for each year. So if
6 it's a -- 18 years, it's -- are these the unit numbers,
7 this 120, 132, 144?

8 MS. BATALOVA: No, it's how many month.

9 HEARING OFFICER COHEN: Okay. Okay, I guess I
10 don't need this because I have a calculator that does
11 all of this, so I just put it in the calculator and it
12 will tell me what the numbers are.

13 Okay, so Page 4 is -- Page 4 and 5 is the Lean
14 Maloney Painting. So is Lean Maloney the person who --
15 they painted the exterior?

16 MR. STEWART: Yes.

17 HEARING OFFICER COHEN: Okay. Tell me about
18 this building. Let's start there. What -- what was the
19 -- how many stories is it?

20 MR. STEWART: It's a 1960s constructed
21 building, which means it's stucco wood frame with decks,
22 windows, all of the above, sliding glass doors leading
23 to all of the decks. And --

24 HEARING OFFICER COHEN: And you purchased it
25 when? Or who was the owner?

1 MR. STEWART: Nico Arms is the owner,
2 ownership.

3 HEARING OFFICER COHEN: Okay. Is that a LLC?

4 MR. STEWART: It's an LP.

5 HEARING OFFICER COHEN: Okay.

6 MR. STEWART: And it was purchased in February
7 of 2015.

8 HEARING OFFICER COHEN: Okay. And when you
9 purchased it, what was the condition of the building?

10 MR. STEWART: Condition of the building was
11 worn, but it wasn't -- we've had worse.

12 HEARING OFFICER COHEN: I'm not sure that's
13 saying much, Mr. Stewart, but, okay.

14 Okay, so you had the exterior painted, and
15 that was -- you hired this Lean Maloney Painting.

16 MR. STEWART: Yes.

17 HEARING OFFICER COHEN: And do you have a
18 contract from him or an invoice or -- 'cause all I see
19 is your kind of internal documentation. Is there -- I
20 mean, there might be something from him in here further,
21 now, in the read. Because I --

22 MR. STEWART: It just references; I don't
23 think there is a contract for this in here.

24 HEARING OFFICER COHEN: Okay. Did you have a
25 contract with him?

1 MR. STEWART: Oh, I'm sure. At least he would
2 have given us a bid and we probably would have just said
3 -- moved forward and signed it, and it could have been
4 consistent of what we saw here. This was at the final
5 -- it's kind of the final stages of a lot of the work
6 that's included here, but I do -- I would have had to
7 have had a bid first.

8 HEARING OFFICER COHEN: All right, and so I
9 have a progress payment showing on Page 4 of Exhibit 1
10 which shows that they were -- so was \$45,000 the total
11 amount, or was there -- was there multiple other
12 payments?

13 MR. STEWART: No. I think this wasn't all in
14 -- by the time he finished the work and completed it, it
15 was done in stages. But by the time he finished and
16 completed the work, he was, "Okay, here's our total
17 bill."

18 HEARING OFFICER COHEN: So it's not that you
19 paid other bills at other times; this is the total
20 amount, \$45,035.

21 MR. STEWART: I believe that's correct, yes.

22 HEARING OFFICER COHEN: Okay.

23 MR. STEWART: Is that what you have, too?

24 MS. BATALOVA: Uh-huh.

25 HEARING OFFICER COHEN: Okay. And then on

1 Page 5 I have the check to him for that amount of money
2 which was in April of 20 -- paid in April of 2017,
3 right?

4 MR. STEWART: Yes.

5 HEARING OFFICER COHEN: Okay. Now this says
6 -- this document, at the top, it says "Lucky Stewart,
7 362 Euclid, Progress Payment No. 1," and then it says
8 "Lean Maloney." This, I assume, is a -- a document you
9 created.

10 MR. STEWART: No, this is what they actually
11 send us. Typically he'll send it, and it's a weird
12 format. It's Irish painters, but they have a very
13 interesting format when they send it over.

14 HEARING OFFICER COHEN: Okay, so this actually
15 came from Lean Maloney Painting?

16 MR. STEWART: It this.

17 HEARING OFFICER COHEN: Okay. Because it had
18 your name on it, I wasn't -- I was confused as to
19 whether it was created from -- by him. So it's to Lucky
20 Stewart from Maloney Painting. Got it. And what does
21 Neyum Kenney mean? Any idea?

22 MR. STEWART: Neyum Kenney is his bookkeeper.

23 HEARING OFFICER COHEN: Okay.

24 MR. STEWART: So she's the -- yeah, so she's
25 the bookkeeper for Maloney.

1 HEARING OFFICER COHEN: I thought maybe that
2 was some special Irish-like greeting or something.

3 MR. STEWART: No.

4 HEARING OFFICER COHEN: Like "Go in good
5 health" or something.

6 Okay. So I have Exhibit 4 and 5. And did
7 they need any -- did they get scaffolding or anything
8 like that?

9 MR. STEWART: Yes, but it was all part of --
10 there was a larger project that was done on the whole
11 exterior of the building, and that was already -- the
12 scaffolding was already in place, so it kind of all went
13 hand in hand.

14 HEARING OFFICER COHEN: Okay, and is that
15 somebody else whose bills I'm going to see as we get --

16 MR. STEWART: It will be under PJ, or Jordan
17 Builders is the other name they go under.

18 HEARING OFFICER COHEN: Okay, got it. The guy
19 who does your dry rot stuff.

20 MR. STEWART: Yes.

21 HEARING OFFICER COHEN: Okay. And then Page 6
22 is a spreadsheet, an internally created spreadsheet for
23 description of work done that says new intercom, new
24 mail boxes, dry rot, exterior work and sliding glass
25 doors, sliding door pans, sheet metal and flashing,

1 engineering drawings, gutters and downspouts, and then
2 LED emergency lighting and cameras.

3 So here I think you're breaking -- you're
4 describing all of the work that was done. This is the
5 -- this is the ten-year, the things that you believe
6 belong under the ten-year amortization period.

7 MS. BATALOVA: Yes.

8 HEARING OFFICER COHEN: Okay. Was intercom
9 under the amortization period at all, or did you --
10 curious how brilliant our analysis went as to whether we
11 actually included intercoms. We did not.

12 SHAWN: I think it's under security.

13 HEARING OFFICER COHEN: Security. Entry,
14 door, telephone and intercalm. Look at that, ten years.

15 MR. STEWART: Thanks, Shawn.

16 HEARING OFFICER COHEN: You guys are on it.
17 Okay. All right. So you had a new intercalm installed.
18 Yes?

19 MR. STEWART: Yes.

20 HEARING OFFICER COHEN: And you didn't get
21 permits for any of this work.

22 MR. STEWART: For --

23 HEARING OFFICER COHEN: Anything.

24 MR. STEWART: The painting didn't require it,
25 but for --

1 HEARING OFFICER COHEN: I understand the
2 painting did not require it --

3 MR. STEWART: Yes, we do have permits for the
4 exterior work. It required the engineer and the City to
5 be involved.

6 HEARING OFFICER COHEN: Okay, 'cause I don't
7 have -- I don't think you produced any permits to me,
8 unless I'm wrong and it's in here buried under
9 something. I am not permitted to give capital
10 improvement rent increases for anything for which a
11 permit was required that was not produced to me. I
12 looked through this last week and I did not see a single
13 permit.

14 MR. STEWART: I can get that permit for you.
15 I know we had one. Jordan Builders --

16 HEARING OFFICER COHEN: As you know, generally
17 speaking, the rule is that you're supposed to provide
18 all documents seven days before, which I'm just telling
19 you now is changing to 14 days. So in the future, just
20 have that in your mind, that that seven-day rule is
21 changing to 14 days.

22 But because there are no opposing people here,
23 I will allow you, within a week, to produce proof of the
24 permits that you received for this --

25 MR. STEWART: Okay.

1 HEARING OFFICER COHEN: -- work, and then I
2 will consider them. If I think anything comes up from
3 looking at that that I need to have further hearing,
4 I'll notice a further hearing.

5 MR. STEWART: Sure.

6 HEARING OFFICER COHEN: But you can produce it
7 with the document that you're going -- with the e-mail
8 you're going to send me about the other -- the rent
9 increases for the other two units, okay?

10 MR. STEWART: Sure.

11 MS. BATALOVA: Could you please repeat, Unit
12 107 and --

13 HEARING OFFICER COHEN: You're going all the
14 way back there --

15 MR. STEWART: 303.

16 HEARING OFFICER COHEN: Oh, so back there, I
17 don't remember.

18 MR. STEWART: Unit 107, 303, and then the copy
19 of the permits.

20 HEARING OFFICER COHEN: Right.

21 MS. BATALOVA: Okay.

22 HEARING OFFICER COHEN: Okay, so for the -- I
23 see at Page 7 the Reed Brothers Security invoice for the
24 phone entry system, and that was \$14,718.13; is that
25 right?

1 MS. BATALOVA: Yes.

2 MR. STEWART: Yes.

3 HEARING OFFICER COHEN: Okay. And then the --
4 there's a Mail Box Keys invoice for \$131, and then the
5 installation of the mail boxes for \$3,220, and then
6 proof of payment of all three of these -- or did you pay
7 them? Let's see. I have one check for \$9,506 which,
8 fortunately, you explained on top what the different
9 payments were for.

10 And then the other -- that's the same check.
11 You gave me the same check twice. And then there's
12 another check for \$8,562, which was the original -- was
13 a down payment on the -- or can you explain to me what
14 these two checks were for? Because this, the \$8,562.57
15 has -- on the left at the bottom it has some -- a GB
16 number. Is that -- does that relate to the invoice
17 numbers, or what is that?

18 MR. STEWART: Do you know the (inaudible).

19 MS. BATALOVA: GB? I don't see a GB.

20 MR. STEWART: Right here, on the bottom of the
21 check, left side, handwritten.

22 MS. BATALOVA: Oh, okay.

23 MR. STEWART: I don't know.

24 SHAWN: It's the last check, the last page.

25 HEARING OFFICER COHEN: Okay, so just help me

1 line this up. If I add \$14,718, \$131 and \$3,220, am I
2 going to get the same total of these two checks
3 together?

4 MS. BATALOVA: I think so.

5 HEARING OFFICER COHEN: Okay, good. Then I
6 don't have to go -- I don't have to delve any further
7 than that.

8 And then Exhibit 1, Pages 12 through 15, are
9 the proposals for the work that you did, right?

10 MR. STEWART: Yes.

11 HEARING OFFICER COHEN: Okay. Now, did you
12 permit anything related to the security, the intercalm
13 or the mail boxes?

14 MR. STEWART: No. I've never needed a permit
15 for that.

16 HEARING OFFICER COHEN: There's only a permit
17 required if the electrical needed to be upgraded in any
18 way to accommodate the intercalm. So do you know if you
19 did any work on the --

20 MR. STEWART: Did not need to.

21 HEARING OFFICER COHEN: -- electrical?

22 Okay. There's some reference on Page 15 for "Reed
23 Brothers will provide and install conduit for wire run
24 from garage to lobby door reader, conduit for wire runs
25 in laundry room." That's the stuff that I'm -- "plywood

1 for mounting equipment and electrical room." So it
2 might be that that was the work for which -- okay, but
3 you don't have them, so I will look at that.

4 And then Pages 6 -- and these look like
5 duplicates of these same documents, so any --

6 MS. BATALOVA: Yes --

7 HEARING OFFICER COHEN: -- reason why you
8 produced them twice?

9 MS. BATALOVA: Yeah, to explain, because there
10 is Item 10-1 and 10-2.

11 HEARING OFFICER COHEN: Okay.

12 MS. BATALOVA: So -- and the amount separate,
13 just to -- I don't know how to explain. Because the
14 checks were paid for different jobs, is why we edit
15 invoices.

16 HEARING OFFICER COHEN: Okay, so this is the
17 same invoice --

18 MS. BATALOVA: Yes, same invoice --

19 HEARING OFFICER COHEN: -- produced twice
20 because you paid it by a different check? Is that what
21 you're saying?

22 MS. BATALOVA: So it's refer -- the second
23 stack referred to 10-2.

24 HEARING OFFICER COHEN: And 10-2 was on your
25 spreadsheet; is that the --

1 MS. BATALOVA: Yes, and we already went
2 through that. It's new mail boxes.

3 HEARING OFFICER COHEN: 10-2, got it. Okay,
4 but isn't -- okay, but when you produced it in here with
5 Page 8 it was also for mail boxes; it was also part of
6 10-2. So why did you produce it twice?

7 SHAWN: I think `til the check paid.

8 MS. BATALOVA: So the first supposed to be for
9 amount of \$14,718.

10 HEARING OFFICER COHEN: Right.

11 MS. BATALOVA: So -- and the second mail boxes
12 is for amount \$3,351, and we included invoices to the
13 first one with mail boxes because -- so the total amount
14 of checks includes these invoices.

15 HEARING OFFICER COHEN: Okay.

16 MS. BATALOVA: If it makes sense.

17 HEARING OFFICER COHEN: Okay. Then why did
18 you include it again? I mean, I don't care. I'm only
19 going to count it once, but I'm just trying to
20 understand the logic.

21 MS. BATALOVA: Yes -- no, no, no, we no trying
22 to make you count once, but in San Francisco, for
23 example, they require for each item to add invoices to
24 show that the checks and invoices match, match, matches.

25 HEARING OFFICER COHEN: Okay, but that's what

1 -- don't these checks match up with these invoices?

2 MS. BATALOVA: Yeah, but they -- they want us
3 to do, like -- for example, intercom, all the invoices
4 that even not included, but the total amount of checks
5 and invoices supposed to be the same, so --

6 HEARING OFFICER COHEN: Got it. So because
7 the check that you produced in Pages 10 and 11 --

8 MR. STEWART: Okay, I think I understand.

9 HEARING OFFICER COHEN: Well, maybe you do,
10 but I'm going to try to -- that check is more than the
11 \$14,718; you included these invoices --

12 MS. BATALOVA: Yes --

13 HEARING OFFICER COHEN: -- here just to show
14 that that's why you paid them more.

15 MS. BATALOVA: Yes.

16 HEARING OFFICER COHEN: But then you're
17 producing the \$13,140 and the \$3,220 separately --

18 MS. BATALOVA: Yeah. No, it's the same, but

19 --

20 HEARING OFFICER COHEN: I'm not sure why --
21 okay. It's fine.

22 MS. BATALOVA: Next --

23 HEARING OFFICER COHEN: You don't have to do
24 that for me. You don't.

25 MS. BATALOVA: Okay.

1 HEARING OFFICER COHEN: Okay.

2 MS. BATALOVA: Next time we won't do just --

3 HEARING OFFICER COHEN: Okay, just --

4 MS. BATALOVA: As a letter to explain.

5 HEARING OFFICER COHEN: Perfect. I don't need
6 the same checks and the same invoices twice because then
7 I'm thinking, "Is this a different invoice?"

8 MS. BATALOVA: No, it's the same.

9 HEARING OFFICER COHEN: Got it. Okay. Okay,
10 and then here, again, I have the same invoice, again,
11 the telephone access system with FOB reader. No wonder
12 it kept looking like I was looking at the same thing
13 over and over again, because I was looking at the same
14 thing over. Okay. So I think I've gone over all of the
15 Reed Brothers, right?

16 MR. STEWART: Okay.

17 MS. BATALOVA: Yes.

18 HEARING OFFICER COHEN: Okay, there are three
19 invoices from Reed Brothers.

20 MS. BATALOVA: Right.

21 HEARING OFFICER COHEN: Yes?

22 MS. BATALOVA: Yes, only three.

23 HEARING OFFICER COHEN: Okay. And then P.
24 Jordan Builders, what did -- what was -- tell me, what
25 was the dry rot situation when you purchased it and what

1 work did he do dealing with -- there was dry rot on the
2 decks. Was that ongoing before you purchased the
3 building?

4 MR. STEWART: Yeah, it had been in -- I think
5 the prior ownership had addressed it as needed when --
6 before we purchased the building, and I think this was
7 right around the same time as the Berkeley incident, so
8 we took no chances and sent in the inspectors and sent
9 in Patrick Jordan of Jordan Builders to check and see
10 how the cantilever decks on our property there, the
11 condition they were in. Because if the old ownership
12 had worked on a couple of them, we didn't want any
13 surprises. And when we found out there were issues, we
14 started addressing the ones that we saw that were pretty
15 obvious, and then we ended up having to do a full
16 perimeter rebuild, but it was --

17 HEARING OFFICER COHEN: Okay, and tell me what
18 these -- what you mean by a cantilever deck. So is that
19 a deck where the -- the joists or whatever it is that
20 holds up the deck is coming out of the building,
21 extending out past the perimeter of the -- you know, the
22 stucco of the building and that's what's holding up the
23 deck? Is that what you mean by "cantilever"?

24 MR. STEWART: Similar, yes. What I mean is
25 that the joists actually start inside of the unit and

1 they extend all the way to the outside. So the joist
2 might be five or six feet inside and might be five or
3 six feet on the outside, and they're all held at the
4 outside which we were finding -- some of these have
5 design flaws, and what we've found with a lot of these
6 decks is design flaws, because they didn't really take
7 -- first, they're stucco. But also we have had to
8 redesign all of the drains and the plumbing and all of
9 the downspouts throughout, because the way they were
10 designed were set up for failure.

11 Moisture had nowhere to escape. They weren't
12 properly pitched. They weren't properly installed. So
13 there's a lot of things that kind of came into play with
14 this. But once we started opening up one or two, we
15 started realizing that -- where they're being suspended,
16 and kind of the same thing with the Berkeley, where
17 there was too many -- the Berkeley incident there was
18 too many people on the deck. These things were
19 collapsed. So once we started looking into it, we
20 realized that we needed to keep going, extending
21 further. And that's what we ended up doing. We ended
22 up having to completely redesign and rebuild all of the
23 decks.

24 HEARING OFFICER COHEN: And is this the work
25 that you had the permits for?

1 MR. STEWART: Yes.

2 HEARING OFFICER COHEN: And was there visible
3 dry -- external dry rot before you started the work?

4 MR. STEWART: No. And it really didn't -- it
5 really didn't appear that there was, but what we ended
6 up doing was doing a couple tests, and even looking at
7 the decks that they had replaced and already had done
8 some work on prior, and noticed that it was recurring.
9 The design --

10 HEARING OFFICER COHEN: What was it that was
11 recurring?

12 MR. STEWART: Dry rot, water intrusion --

13 HEARING OFFICER COHEN: That was hidden
14 underneath the apparatus --

15 MR. STEWART: Exactly. It wasn't very
16 physical, but we started doing some tests and opening up
17 and realized that several of the joists that were
18 leading inside of the units were rotten below there and
19 crumbling. And it was a couple renovations that we did
20 that we noticed it. Then we also noticed some of the
21 occupied, so then I ended up saying we are not taking
22 any chances.

23 We ended up inspecting all and found out that
24 they all had failed and they needed to all be
25 redesigned. Not only were they -- needed to be

1 redesigned, but to make matters worse, the design, when
2 they built the building, thought it was a great idea to
3 put a six-inch amount of concrete on top of those decks.
4 So not only did they have the joists going into the
5 apartment, they had concrete -- the water -- it just was
6 destined for failure, someone to get hurt.

7 HEARING OFFICER COHEN: So what was the con --
8 what was the problem with the concrete?

9 MR. STEWART: Concrete, the moisture was
10 getting through the concrete and the extra weight on top
11 of the joists, which was just -- so when we redesigned
12 it and we -- when we redesigned it, and what we'll get
13 into in some of the other work, is we redesigned it,
14 re-pitched everything and built metal shower pans, in a
15 sense, and then created proper runways and designs to
16 actually run and push the water out of the building so
17 it wasn't getting trapped inside.

18 We had to install new vents on the uppers and
19 things like that. And all the downspouts had to be
20 routed properly, because if water did get into that
21 newly designed pans that we did -- we demo'd all the
22 concrete, rebuilt them all, and then the water would
23 just -- we had to -- we did many tests to make sure
24 anything -- any water would come, it always went the
25 right way and went out.

1 Because what we were finding is a lot of them
2 were just holding the water and water would be trapped
3 inside the unit. And then it would come by the sliding
4 glass door and into the unit. And that's the first
5 place once, you crossed that barrier, that's where the
6 most danger was.

7 HEARING OFFICER COHEN: And when you're
8 talking about redesigning the pitch, you're talking
9 about there being a tiny little bit of a slope so that
10 the water would come off the deck so that it's --

11 MR. STEWART: Off the deck --

12 HEARING OFFICER COHEN: -- holding --

13 MR. STEWART: And we also built -- basically
14 improved the whole system, because it was really set for
15 -- in our opinion, it was someone was going to get hurt.

16 We built shower pans out of metal, and then
17 did multi-layers of epoxy paints and such inside of
18 those shower pans. Instead of coming back and
19 rebuilding with the concrete that was originally there,
20 we basically made shower -- almost like shower pans
21 which hold the water and push the water to the way where
22 it would need in the units.

23 HEARING OFFICER COHEN: And it was Jordan
24 Builders who did all of this work?

25 MR. STEWART: He did most of the building part

1 of it, but also we used -- Rain Defense did some of the
2 gutters. Weather Tight did a lot of the sheet metaling
3 and flashings, but then we also replaced all the sliding
4 doors that led out there. And we -- not only did we
5 replace them, but we actually put in wood with wood clad
6 on the outside to keep the metal on the outside and the
7 wood frame on the inside. So we basically -- every
8 single one of these units and decks were custom rebuilt
9 and are substantially nicer, as well.

10 HEARING OFFICER COHEN: Okay. So it looks
11 like Jordan charged you, at least the total that I see,
12 is \$102,058. That's an invoice dated May 1st of 2016.
13 That is -- okay, now that invoice -- I'm sorry. I'm
14 wrong. That invoice is a total of \$94,000. So there's
15 one invoice dated May 1st. Then there's an invoice
16 dated June 15 of 2016 for \$12,000 and change, and then a
17 third invoice for \$95,000, and then a fourth invoice,
18 Invoice No. 117, for \$102,000. So all of those invoices
19 relate to this work --

20 MR. STEWART: They do.

21 HEARING OFFICER COHEN: -- is that right?

22 MR. STEWART: Yes.

23 HEARING OFFICER COHEN: Okay. And then I
24 guess there's another one in September of 2016, okay,
25 for a \$113, and another one in October for \$51,900,

1 another one in December for \$22,058. So this was a
2 substantial expenditure.

3 And why -- why so long between -- there's one
4 last invoice that's three months later, May of 2017 --
5 it's the very last invoice in the Jordan Builders
6 section for \$37,958. Why would there be -- any
7 particular reason why there was a -- a several month
8 delay for finishing up or --

9 MR. STEWART: No, I think it's --

10 HEARING OFFICER COHEN: -- am I looking at
11 that wrong?

12 MR. STEWART: No, I think this is more -- the
13 entire project was T and M, 'cause it was too hard to
14 know what the -- couldn't get somebody to bid the whole
15 entire project. And this is -- I can see what some of
16 this was for, additional waterproofing and stairways and
17 common area walkway that he subbed out to Mt. Diablo
18 Flooring. so they were using the grekos system on
19 there.

20 HEARING OFFICER COHEN: And what's grekos --
21 what does that mean, grekos?

22 MR. STEWART: It's a certain layer of
23 waterproofing paints that are put on a built up system,
24 and I think probably that's -- only reason that's given
25 then is that's probably because he was paying them in

1 full when they completed their job.

2 HEARING OFFICER COHEN: Got it.

3 MR. STEWART: And the grekos is kind of -- I
4 have paperwork on it, but we've used them in a couple of
5 other buildings where we've done the similar -- where --
6 the '60s buildings have kind of met their shelf life,
7 where some of these buildings have really bad water
8 intrusions. There's, like, three different levels of
9 '60s buildings. There's top tier, middle tier and low
10 tier, and they really didn't do a lot of streets and
11 water proofing, which is kind of problematic in a lot of
12 '60s buildings we're finding now.

13 HEARING OFFICER COHEN: Okay, and then the
14 rest of the documents in this package are the proofs of
15 payments to Jordan Builders, right?

16 MR. STEWART: Correct.

17 HEARING OFFICER COHEN: Okay. And do they
18 line up with the invoices so that each invoice was paid
19 in full and then --

20 MR. STEWART: I believe so, yes.

21 HEARING OFFICER COHEN: Okay. So I've got --
22 yep. Yeah, 36 is the first one, yes, yes, yes. Good.
23 Okay, so this is the work for which the permits are
24 required.

25 MR. STEWART: Correct.

1 HEARING OFFICER COHEN: And then -- and I'm
2 not saying that's the only work for which, but I know
3 for sure that permits were required for this work.

4 MR. STEWART: Yeah, and I know for sure we
5 have them.

6 HEARING OFFICER COHEN: Okay.

7 MR. STEWART: Because we also have got the
8 engineer involved with the city inspectors, and I met
9 with them personally also on site. We started out just
10 doing repair, and then it was kind --

11 HEARING OFFICER COHEN: And I need the proof
12 of the final permit, not --

13 MR. STEWART: Yeah.

14 HEARING OFFICER COHEN: -- just that you took
15 a permit, but that you got it finalled --

16 MR. STEWART: I'll make sure you get that.

17 HEARING OFFICER COHEN: Okay. And then at
18 Page 51 I've got the sliding pan door and custom doors.
19 All of this would have needed a permit as well. So did
20 you get permits for the doors and --

21 MR. STEWART: This is all part of the same
22 project.

23 HEARING OFFICER COHEN: Got it. Okay.

24 MR. STEWART: Same thing with the exterior
25 painting. Everybody was kind of doing portions and

1 sections at a time --

2 HEARING OFFICER COHEN: Okay, but permits need
3 to specifically reflect that the windows and doors --
4 that the doors -- this was just the doors, right, were
5 replaced.

6 MR. STEWART: These were actually the doors,
7 but this would have been -- this is where they actually
8 did the sheet metal, was the base of the doors --

9 HEARING OFFICER COHEN: The door pans.

10 MR. STEWART: Leading to the door pans of the
11 decks.

12 HEARING OFFICER COHEN: Okay. And that's what
13 this -- is the name of the company Weather Tight
14 Waterproofing?

15 MR. STEWART: Weather Tight is the company.

16 HEARING OFFICER COHEN: With the W as their --

17 MR. STEWART: Yes, little American flag, I
18 guess.

19 HEARING OFFICER COHEN: Yeah. Cute. All
20 right, and I see their invoice amounts, and then I see
21 some of your --

22 MR. STEWART: These were the subs for Jordan,
23 if that makes more sense.

24 HEARING OFFICER COHEN: Okay.

25 MR. STEWART: Same thing with the painter.

1 Everything was kind of -- Jordan was the general on the
2 site that was kind of point guarding, and then also
3 explained where some of the flaws were in the system.

4 HEARING OFFICER COHEN: Okay. And then Santos
5 and your TI were the structural engineers on the
6 project.

7 MR. STEWART: Yes.

8 HEARING OFFICER COHEN: And looks like I've
9 got three invoices from them, and then three proofs of
10 payments, Pages 69 through 74. And then 75 is Rain
11 Defense. What did Rain Defense do?

12 MR. STEWART: Rain Defense mostly did all the
13 downspouts and rerouting of some of the designs that
14 were problematic or water was coming. So we actually
15 had to go throughout the building in some of the
16 challenging areas and come up with a creative way to
17 push the water in some areas so it wasn't actually
18 getting trapped on these decks.

19 HEARING OFFICER COHEN: Okay. And that is
20 Pages 75 through 79, and then that's paid all in one
21 lump sum. Okay.

22 And then Page 80 I've got Habitat Electrical
23 Services.

24 MR. STEWART: Okay.

25 HEARING OFFICER COHEN: What did they do?

1 MR. STEWART: Looks like this one is for
2 emergency lighting in the stairwells. This one is not.
3 Yeah. Okay, so these other invoices were not passed
4 through.

5 MS. BATALOVA: Yes.

6 MR. STEWART: Just for the emergency lighting.

7 HEARING OFFICER COHEN: Okay.

8 MR. STEWART: Is that correct? That's what
9 I'm reading.

10 HEARING OFFICER COHEN: So just the \$74,702
11 was --

12 MS. BATALOVA: Yes.

13 HEARING OFFICER COHEN: -- part of the past
14 due; the other two are just shown to me why the check
15 adds up to a bigger number?

16 MS. BATALOVA: Yes.

17 MR. STEWART: Thank you.

18 HEARING OFFICER COHEN: That's good, 'cause I
19 wouldn't have given you -- I wouldn't have given you the
20 other one. That's maintenance.

21 So there was a faulty existing light, so they
22 provided and installed for emergency lights. Is there a
23 reason why that's not repair and maintenance as opposed
24 to capital improvement?

25 MR. STEWART: Probably because they're new and

1 improved LEDs, more expensive. That's kind of -- as
2 we've been going throughout some of the lobbies of these
3 buildings, we've been trying to do our part to kind of
4 upgrade and put the LEDs. And right now fire codes in
5 the egress are going to be -- we're doing a lot of that
6 right now where we're having to upgrade a lot of
7 lighting, design, maps, panels and fire systems, because
8 a lot of these buildings actually don't even have them.

9 HEARING OFFICER COHEN: Okay. I will decide
10 where this one falls.

11 All right, and then 84 is Tech Hospitality.
12 What did they do?

13 MR. STEWART: They installed the security
14 camera system throughout the entire building. And
15 that's what most of this -- Tech Hospitality is the ones
16 that actually does the install, the wiring and poling of
17 the cameras. And then Mendez Construction was the one
18 that came behind, after they made the holes, and patched
19 everything up.

20 HEARING OFFICER COHEN: Okay. And then is the
21 invoice at Page 87 one that you were passing through to
22 remove all damaged walls and ceiling or is that just
23 again showing me that -- the only one you're passing
24 through is the \$1,200.

25 MS. BATALOVA: Yes.

1 HEARING OFFICER COHEN: But you paid them a
2 bigger amount.

3 MS. BATALOVA: Yes.

4 HEARING OFFICER COHEN: Okay.

5 MR. STEWART: Maybe next time we should get a
6 stamp that says "Not being submitted," or something.

7 HEARING OFFICER COHEN: Right, right.

8 MR. STEWART: That might be helpful.

9 HEARING OFFICER COHEN: Yeah, that helps me
10 understand --

11 MR. STEWART: "Backup purpose only."

12 HEARING OFFICER COHEN: Right. Okay.

13 MR. STEWART: You did a lot of work in this
14 all together. Thank you.

15 HEARING OFFICER COHEN: Page 86, not 87.
16 Okay. And then I have proof of payment to these guys.
17 Okay. And then that's it. That's your -- anything else
18 you want to tell me?

19 MR. STEWART: Anything else?

20 MS. BATALOVA: I don't think so -- oh, can we
21 add one more notice? It's 303.

22 HEARING OFFICER COHEN: Okay, you have it
23 already? You have it here?

24 MS. BATALOVA: Yes.

25 HEARING OFFICER COHEN: Okay.

1 MS. BATALOVA: So we need only 107, right?

2 HEARING OFFICER COHEN: Right. Okay, so 303
3 -- let me put these in order. Okay. So then these are
4 -- whatever I decide, the pass-through won't be -- you
5 won't be able to do it until --

6 MR. STEWART: Until the --

7 HEARING OFFICER COHEN: -- December of next
8 year -- well, which means I don't have to worry about
9 you needing this right away because I can put this on my
10 back burner in terms of --

11 MR. STEWART: Wait --

12 HEARING OFFICER COHEN: -- you know, I try to
13 help, or if there's an emergency or a reason something
14 needs to happen sooner, I try to -- I'll -- you know,
15 generally speaking, I do things in the order that I
16 finish them. But every now and then I take something
17 out of order if it needs --

18 MR. STEWART: Yeah, we have time.

19 HEARING OFFICER COHEN: You have time. You
20 clearly have already given your 2017 rent increase, so
21 you're not going to need this until --

22 MR. STEWART: It was tough because --

23 HEARING OFFICER COHEN: -- 2018.

24 MR. STEWART: -- when we filed originally, we
25 didn't know how long the process would take, and then we

1 heard through Lapham and some other company like, "Yeah,
2 it's taking a little bit of time."

3 HEARING OFFICER COHEN: Long time. You know,
4 we are getting -- well, I'll tell you this story after.
5 Anything else you want to say to me?

6 MR. STEWART: I think -- I think we're good.
7 I just need to get you permits from Jordan Builders and
8 107.

9 HEARING OFFICER COHEN: Right.

10 MR. STEWART: And -- okay, and I think I'll
11 need your e-mail.

12 HEARING OFFICER COHEN: Okay, it's
13 Bcohen@Oaklandnet.com. C-o-h-e-n.

14 MR. STEWART: At Oakland ...

15 HEARING OFFICER COHEN: Net dot com.

16 MR. STEWART: Perfect.

17 HEARING OFFICER COHEN: And just because I'm
18 giving this to you doesn't mean generally you can e-mail
19 me.

20 MR. STEWART: I won't bother you.

21 HEARING OFFICER COHEN: Only e-mail me
22 especially about this; otherwise you need to contact the
23 -- 'cause, you know, I'm not allowed to talk to parties
24 outside of the -- okay, so rent increases.

25 MR. STEWART: And it's C-o-h-e-n.

1 HEARING OFFICER COHEN: Yes. So Exhibit 1 is
2 the documents you produced for the capital improvements
3 which is Pages 1 through 90, and then Exhibit 2 are your
4 rent increases that you provided to me. And then
5 Exhibit 3, I'm just going to write down that the permit
6 docs are going to be Exhibit 3, and the rent increase
7 for 107, right, is going to be Exhibit 4 -- is it 107 or
8 10 --

9 MS. BATALOVA: 107.

10 HEARING OFFICER COHEN: 107. Okay. Owner to
11 produce within one week. Okay. All right, we're off
12 the record. Thank you very much.

13 (End of recording.)

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1 I, Jill Anne Stephenson, certify that the
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CSR 8563

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CITY OF OAKLAND



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March 20, 2019

Housing Residential Rent and Relocation Board
Oakland, California

**RE: Revisions to Regulations for the Just Cause for Eviction
Ordinance to Eliminate Exemption Procedure for Owner-Occupied
Duplexes and Triplexes**

Dear Chairperson Jessica Warner and Members of the Board:

The City Attorney's Office recommends that the Housing Residential Rent and Relocation Board amend the Regulations for the Just Cause for Eviction Ordinance to eliminate exemption procedures for Owner-Occupied Duplexes and Triplexes.

The Just Cause for Eviction Ordinance ("Ordinance") tasks the Housing Residential Rent and Relocation Board with the adoption of regulations pursuant to that Ordinance. On November 6, 2018, Oakland voters approved Measure Y, which amended the Ordinance to make owner-occupied duplexes and triplexes subject to just cause for eviction requirements effective December 21, 2018. The current Regulations for the Just Cause for Eviction Ordinance ("Regulations") still reflect procedures for exempting owner-occupied duplexes and triplexes from the ordinance. The Regulations must be amended to conform to the changes in the Ordinance.

I recommend adoption of the following proposed modifications to the Regulations, included as Attachment A.

Respectfully submitted,

/s/ Ubaldo Fernandez

Ubaldo Fernandez
Deputy City Attorney

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
RESOLUTION

RESOLUTION No. R19-001

**RESOLUTION APPROVING AMENDMENTS TO JUST CAUSE FOR
EVICTION REGULATIONS TO ELIMINATE EXEMPTION FOR UNITS IN
RESIDENTIAL PROPERTIES DIVIDED INTO A MAXIMUM OF THREE
UNITS, ONE OF WHICH IS OWNER-OCCUPIED**

WHEREAS, Oakland voters approved of Measure Y on November 6, 2018, and the measure became effective on December 21, 2018; and

WHEREAS, Measure Y amended the Just Cause for Eviction Ordinance to eliminate the exemption for units in residential properties divided into a maximum of three units, one of which is owner-occupied; and

WHEREAS, the current Regulations for the Just Cause for Eviction Ordinance have not been conformed to the elimination of such exemption and are currently in conflict with the Just Cause for Eviction Ordinance; and

WHEREAS, the Rent Board is tasked with adopting new Regulations to require eviction notices to inform tenants of the new relocation requirement and the payments they are entitled to; now, therefore be it

RESOLVED: The Just Cause for Eviction Regulations are hereby amended as set out in Attachment A.

APPROVED BY THE FOLLOWING VOTE

AYES: WILLIAMS, FRIEDMAN, HALL, STONE, AND CHAIRPERSON WARNER

NOES:

ABSENT:

ABSTENTION:

000332

Date:

ATTEST _____
JESSIE WARNER
Chairperson of the Housing, Residential
Rent and Relocation Board

#2286258v1

000333

Attachment A

Proposed Revisions to Regulations for the Just Cause for Eviction Ordinance

8.22.350 – Applicability and Exemptions. [rev. 7/24/18]

B. Health Facilities.

1. Where a federal, state, county, or local license or permit is required in order to lawfully engage in the activity that qualifies for the exemption, the Landlord must plead and prove that the facility is properly licensed.

C. Substance Abuse Treatment Facilities.

1. Where a federal, state, county, or local license or permit is required in order to lawfully engage in the activity that qualifies for the exemption, the Landlord must plead and prove that the facility is properly licensed.

D. Homeless Transitional Facilities.

1. Where federal, state or local license or permit is required in order to lawfully engage in the activity that qualifies for the exemption, the Landlord must plead and prove that the facility is properly licensed.

~~F. Certifications For Owner Occupancy of Properties with Two or Three Units [new 7/24/18]~~

- ~~1. — Scope of Regulations: The regulations in this section are designed to provide reporting requirements to better assure compliance with the Owner Occupancy Exemption from Just Cause for Eviction Ordinance Contained in Section 8.22.350F of the Oakland Municipal Code.~~
- ~~2. — Applicability: This regulation applies to any unit in a residential property that is divided into two or three units, one of which is occupied by the Owner of Record as his or her principal residence.~~
- ~~3. — Certification to the Rent Program Following Occupancy.~~
 - ~~a. — Within 30 days of an Owner of Record commencing occupancy of a unit as a principal residence, the Owner of Record must file a certificate with the Rent Program attesting to the occupancy in addition to any evidence of occupancy as required by the certificate. The certificate must also attest to whether the Owner of Record claims a homeowner's property tax exemption on any other real property in the State of California.~~
 - ~~b. — The certificate must be accompanied by a proof of service on each Tenant of the other units of the property.~~
 - ~~c. — A certificate must be filed within 30 days of occupancy for each subsequent new Owner of Record who occupies a unit as a principal residence.~~
 - ~~d. — At the commencement of each new tenancy after the initial certificate filing, the Owner of Record must serve the Tenant a copy of the certificate filed with the Rent Program with a proof of service on the Tenant.~~
 - ~~e. — Filing of a certificate under this subsection will satisfy the filing requirement in 8.22.360.B.8.b.ii (Certification Following Occupancy After No-Fault Eviction), if the Owner of Record is also subject to the filing requirement in that subdivision.~~
 - ~~f. — If the Owner of Record commenced occupancy before the effective date of the regulation, the Owner of Record must file a certificate with the Rent Program within 30 days after effective date of the regulation or when the forms are available from the Rent Program, whichever is later.~~
- ~~4. — Continued occupancy certification. Following owner occupancy, the Owner of Record must submit a certificate that the Owner of Record continues to reside or not~~

- reside in the unit as a principal residence. The Owner must attach proof of residence in the unit. This certification must be provided every twelve (12) months from the initial move-in date until the property is no longer exempt.
5. ~~Certification to the Rent Program when Property is no Longer Exempt~~
 - a. ~~The owner occupancy exemption continues until an Owner of Record no longer continuously occupies the property or begins claiming a homeowner's property tax exemption on any other real property in the State of California.~~
 - b. ~~If an Owner of Record no longer qualifies for the exemption, the Owner of Record must file a certificate with the Rent Program stating the reason why the property is no longer exempt within 30 days of expiration of the exemption.~~
 - c. ~~The certificate must be accompanied by a proof of service on each tenant of the other units of the property.~~
 6. ~~Rent Program Dispute Resolution~~
 - a. ~~The Rent Program has concurrent jurisdiction with the court over disputes over the Owner's eligibility for the owner occupancy exemption.~~
 - b. ~~Either an Owner of Record or a Tenant may petition the Rent Program at any time to address Owner of Record's exemption eligibility.~~
 - c. ~~Rent Program hearings contesting an Owner of Record's exemption eligibility are conducted in accordance with the procedures set forth in Rent Adjustment Program Regulations 8.22.090.~~
 - d. ~~The Owner has the burden of proving exemption eligibility.~~
 7. ~~Forms and Information Required as Part of Certification.~~
 - a. ~~Staff shall develop forms for required certificates.~~
 - b. ~~The certificates shall be filed under penalty of perjury.~~
 - c. ~~The certificates must include the name(s) and ownership interest of the current owner occupant(s) of the unit, and the date such occupancy commenced. The Owner of Record must submit supporting documentation of the ownership interest.~~
 - d. ~~Supporting Documentation. The Owner of Record shall attach to the Certificate Following Occupancy or Continued Occupancy at least three of the following forms of supporting documentation. Confidential information may be redacted from the supporting documentation prior to filing it with the Rent Program:~~
 - i. ~~current motor vehicle registration, plus a copy of the current insurance policy for the vehicle that shows the name of the insured, the address of the unit and the period of coverage, with proof of payment;~~
 - ii. ~~current driver's license, official California ID card from the Department of Motor Vehicles (DMV), or comparable government issued identification with the address of the unit;~~
 - iii. ~~official letter from a social services/government agency within last 45 days;~~
 - iv. ~~current voter registration;~~
 - v. ~~current homeowner's property tax exemption;~~
 - vi. ~~current homeowner's insurance policy for the contents of the unit showing the name of the insured, the address of the unit and the period of coverage, with proof of payment; and/or~~
 - vii. ~~utility bill dated within 45 days.~~
 - e. ~~Staff is authorized to request supplemental information consistent with the purpose of each of these certifications.~~
 8. ~~Penalties for Failing to File Certificate.~~

- a. ~~An Owner of Record who fails to timely file or serve a certificate after notice of the filing requirement or submits false information may be assessed an administrative citation pursuant to O.M.C. Chap. 1.12.~~
- b. ~~An Owner of Record who fails to timely file or serve a certificate on more than one occasion after notice of the filing requirement or submits false information on more than one occasion, may be assessed a civil penalty pursuant to O.M.C. Chap. 1.08.~~