HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
REGULAR BOARD MEETING

April 11, 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

a. Board Minutes for Approval, March 14, 2019
b. Board Minutes for Review, March 7, 2019

4. OPEN FORUM

5. OLD BUSINESS

a. Discussion of Ad Hoc Committee
b. Revisions to Regulations for the Just Cause for Eviction Ordinance To Eliminate Exemption Procedure for Owner-Occupied Duplexes and Triplexes
c. Staff Recommendation Re Board Attendance Policy

5. NEW BUSINESS

a. Appeal Hearings in:

i. T17-0446, Martin v. Dang/Do
ii. T17-0376, Cordes v. Park
iii. L17-0177, Dichoso et al. v. Tenants

6. SCHEDULING AND REPORTS

a. Information Regarding Board Meetings and Procedures

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, Cantones, Mandarín o de lenguaje de señas (ASL) por favor envié 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.

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
Full Board Meeting
March 14, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA

MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 7:10 p.m. by Board Chair Jessie Warner

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
T. Hall	Tenant	X		
E. Lai	Homeowner Alt.	X		
R. Stone	Homeowner	X		
J. Warner	Homeowner	X		
K. Friedman	Landlord	X		
B. Scott	Landlord Alt.			X
T. Williams	Landlord Alt.	X		

Staff Present

Kent Qian	Deputy City Attorney
Barbara Kong-Brown	Senior Hearing Officer
Kelly Rush	Acting Program Analyst

3. CONSENT ITEMS
None

4. OPEN FORUM SPEAKERS
James Vann

5. NEW BUSINESS

a. Appeals Hearings
L17-0062, Kahan v. Tenants

This case will be re-scheduled

ii. L17-0212, Shen v. Tenants

Appearances: Julie Helm, Tenant Appellant

Quan Phan, Owner Appellee Representative

The tenant appealed from a hearing decision which granted an exemption for new construction. A certificate of occupancy was issued in 1988. No tenant appeared at the underlying hearing.

The tenant contended that there was prior residential use of the subject property, that the building has been there since the 1920s, and is not new construction.

The owner appellee representative contended that the petition was untimely, that it was filed 21 days after the hearing decision was issued. He stated that there are two buildings on the lot, and one building is old and the second building, for which the exemption was claimed, was a new building, consisting of six units, built behind the old building on an empty part of the lot.

After arguments made by the parties, questions and Board discussion, J. Warner moved to affirm the hearing decision with a correction to reflect that the subject building isnot on an empty lot. K. Friedman offered a friendly amendment to reflect that the certificate of occupanc was issued in 1988. T. Williams seconded. The Board voted as follows:

Aye: T. Hall, R. Stone, E. Lai, J. Warner, K. Friedman, T. Williams
Nay: 0
Abstain: 0

The motion was approved by consensus.

iii. L17-0155, Fox v Tenants

Appearances: Greg McConnell Owner Appellant Representative

No appearance by tenants

The owner appellant representative contended that the subject building was vacant and dilapidated, and the owner bought the building in 2014 and r incurred over $320,000 to rehabilitate the building, which exceeds the 50% threshold for new construction. He had to file for the exemption before June 30, 2017, due to the change in the law. The hearing officer denied his petition for an exemption because he did not have a "finaled" permit".

He could not obtain a "finaled" electrical permit befcause he was waiting for P.G.E. to do its final inspection. This was outside his control. He had completed everything within a two year period and contends that his inability to obtain the "finaled permit" constitutes

Appeal Decision

After questions to the owner appellant's representative and Board discussion J. Warner moved to affirm the hearing decision without prejudice based on substantial evidence. E. Lai seconded.

The Board voted as follows:

Aye: J. Warner
Nay: R. Stone, K. Friedman, E. Lai
Abstain: T. Hall, T. Williams

The motion failed.

R. Stone moved to remand the hearing decision to the hearing officer to obtain evidence to determine whether the owner made reasonable efforts to obtain the final signoff with P.G.E. that would have allowed him to file and that would consitute good cause to obtain the finaled permit after the two year deadline from when the building permit was issued. If one was issued, was there good cause to have the permit issued after filing the petition?

T. Williams seconded.

The Board voted as follows:

Aye: R. Stone, E. Lai. K. Friedman
Nay: 0
Abstain:T. Hall, J. Warner, T. Williams

The motion carried.

6. OLD BUSINESS

a. None

7. SCHEDULING & REPORTS

a. Board Attendance Policy-February 28, 2019 Board Meeting-This item was tabled to the next full board meeting

b Board Officer Elections-K. Friedman nominated R. Stone for the position of

Board Chair. E. Lai nominated J Warner for the position of Board Chair. R. Stone stated that he would be amenable to serving as Vice-Chair. The Board voted and by consensus agreed that J. Warner would be the Board Chair and R. Stone will serve a Vice chair.

c.Request for RAP fee increase-This item is tabled to the next full board meeting

d. RAP Annual Report-This item is tabled to the next full board meeting

8. ADJOURNMENT

The meeting was adjourned by consensus at 9:00 p.m.

CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

PANEL MEETING
March 7, 2019
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA

MINUTES

1. CALL TO ORDER

The HRRRB Panel was called to order at 7:12 p.m. by Panel Chair, Edward Lai.

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Tanaiia Hall	Tenant	X		
Edward Lai	Homeowner	X		
Benjamin Scott	Owner	X		

Staff Present

Ubaldo Fernandez	Deputy City Attorney, Office of the City Attorney
Maimoona S. Ahmad	Hearing Officer, Rent Adjustment Program
Kelly Rush	Acting Program Analyst I, Rent Adjustment Program

3. OPEN FORUM

No speakers.

4. NEW BUSINESS

i. Appeal Hearing in cases:

a. T17-0599; Clements v. Vick Enterprises
T17-0600; Brown v. Vick Enterprises

b. T17-0572; Hetelson v. Cleveland Properties

c. T17-0413; Piceno v. Hernandez
T17-0414, Avalos et al. v. Hernandez

a. T17-0599, Clements v. Vick Enterprises
T17-0600, Brown v. Vick Enterprises

Appearances:

Donald Toomer	Owner Appellant
Roberta Toomer	Owner Appellant
Darryl Clements	Tenant Appellee
Tammy Brown	Tenant Appellee

The owner appealed the Hearing Decision which granted the tenant petition and awarded a 75% rent reduction for three months due to a non-functioning bathroom. The owner appealed on the ground that a 75% rent reduction was excessive because the tenants were relocated to a hotel during some of the repairs to the bathroom and once the tenants moved back into the unit they still had use of some of the bathroom while the repairs were completed.

Board Discussion

After arguments made by the owners and the tenants, questions to both parties and Board discussion, B. Scott moved to affirm the Hearing Decision based on a preponderance of the evidence. T. Hall seconded.

The Board panel voted as follows:
Aye: T. Hall, B. Scott
Nay: E. Lai
Abstain: 0

The Motion carried.

b. T17-0572, Lee v. Hetelson

Appearances:

Lee Hetelson	Tenant Appellant
J. Hickingbotham	Owner Appellee

The tenant appealed the Hearing Decision which dismissed the tenant petition because the tenant was not current on rent. The tenant appealed, stating that he paid the lower rent for three years without issue, and he contested factual determinations make by the Hearing Officer. The tenant also believed he was appearing for a mediation in the underlying case, not a hearing, and therefore was not prepared to present his case.

Board Discussion

After arguments made by the tenant and the owner, questions to both parties and Board discussion, T. Hall moved to uphold the Hearing Decision based on a preponderance of the evidence. E. Lai seconded.

The Board panel voted as follows:
Aye: T. Hall
Nay: E. Lai
Abstain: B. Scott

The Motion carried.

c. T17-0413, Piceno v. Hernandez
T17-0414, Avalos et al. v. Hernandez

Appearances:

Martin Hernandez	Owner Appellant
Jackie Zaneri	Representative for Tenant Appellees

The owner appealed the Hearing Decision which granted the tenant petitions and ordered restitution for overpaid rent due to invalid rent increases. The owner appealed, contesting the tenants' move-in date and initial rent.

Board Discussion

After arguments made by the owner and the tenant representative, and Board discussion, B. Scott moved to uphold the Hearing Decision based on a preponderance of the evidence. T. Hall seconded.

The Board panel voted as follows:
Aye: T. Hall, E. Lai, B. Scott
Nay: 0
Abstain: 0

The Motion passed by consensus.

5. SCHEDULING AND REPORTS

None.

6. ADJOURNMENT

The meeting was adjourned at 8:34 p.m.

CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney (510) 238-3601

Barbara J. Parker FAX: (510) 238-6500

City Attorney TTY/TDD: (510) 238-3254

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:

Date:

ATTEST_____
JESSIE WARNER
Chairperson of the Housing, Residential
Rent and Relocation Board

#2286258v1

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.~~

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.

CHRONOLOGICAL CASE REPORT

Case No.: T17-0446

Case Name: Martin v. Dang/Do

Property Address: 211 Hanover Ave., Unit #5, Oakland, CA

Parties:

David Martin	(Tenant)
Khiem Do	(Owner)
Tiep Dang	(Owner)

TENANT APPEAL:

Activity	Date
Tenant Petition filed	August 2, 2017
Owner Response filed	November 6, 2017
Hearing Decision mailed	August 10, 2018
Tenant Appeal filed	August 20, 2018

CITY OF OAKLAND

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

For date stamp: RECEIVED
AUG 02 2017
RENT ADJUSTMENT PROGRAM
OAKLAND

TENANT PETITION

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

Please print legibly T17-0446 RC/LM

Your Name	Rental Address (with zip code)	Telephone:
David Martin	211 Hanover Avenue #5 Oakland, CA 94606	510-444-0633
		E-mail: dcm3195@aol.com
Your Representative's Name Self	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) Dang & Do	Mailing Address (with zip code) PO Box 16178	Telephone: 510-207-6106
		Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 9

Type of unit you rent (check one)	☐ House	☐ Condominium	■ Apartment, Room, or Live-Work
Are you current on your rent? (check one)	■ 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.)

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:**

✓	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked

	rent increase.
	(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.)
	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
✓	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(k) 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).
	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised illegally after the unit was vacated as set forth under OMC 8.22.080.

II. RENTAL HISTORY: (You must complete this section)

Date you moved into the Unit: July 5, 2005 Initial Rent: $ 1600.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: 7/5/2005. 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. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase From	To	Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
May 11, 2017	June 7, 2017	$ 1600.75	$ 1696.80	☒ Yes ☐ No	☒ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No

*** You have 90 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 did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)**

Have you ever filed a petition for this rental unit?

☑ Yes
☐ No

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

T15-0062, T15-0094. T15-0106, T15-0162

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 problems in your unit, or because the owner has taken away a housing service, 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, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

1) **a list of the lost housing service(s) or problem(s);**
2) **the date the loss(es) or problem(s) began or the date you began paying for the service(s)**
3) **when you notified the owner of the problem(s); and**
4) **how you calculate the dollar value of lost service(s) or problem(s).**

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (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.

David C Mullen

Tenant's Signature

July 31, 2017

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 different Rent Adjustment Program Hearing Officer.

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 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
Your property owner(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the Property Owner's Response. The petition and attachments to the petition can be found by logging into the RAP Online Petitioning System and accessing your case once this system is available. 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.

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
____ Rent Adjustment Program web site
____ Other (describe): Previous Petition.

David C. Martin
211 Hanover Avenue #5
Oakland CA 94606
510-444-0633

Statement of Facts
Potential Rent Increase of 5/7/2017

On May 7, 2017 Dang and Do (Dang) initiated a rent increase in the amount of $ 96.80 (attached exhibit "A")I believe that the increase is not valid due to the following:

I) Defective notice:

1) Dang and Do increased my rent with their effective date 6/7/17. My current lease is a month to month rent, which starts on the first of every month. With that in mind, one cannon arbitrarily change the monthly rent within the middle of the month. As such I am requesting a return of excess rental payment for the month of June in the amount of $ 76.84 (1677.59 Dang's prorated amount,-1600.75=$76.84).

2) The amount on Dang's *Notice to Change Terms of Tentancy* contains defective calculations and ambiguity.
   a. Dang is using the banking rate of 2006 of 3.30%, the Rent Board information on the public web site suggests that the banking rate has a life of 10 years, thus the rate of 2006 has expired.
   b. Dang states that there is 0.06% remaining for 2007 does not make sense.

II) Decrease in Services

1) Loss of Telephone intercom system
   a. Dang has insisted that the intercom system which had allowed guests from the front door to announce oneself to the apartment unit being visited does not work because the intercom system requires a "land line". This is not true, I checked with the phone company and the manufacturer of the intercom who have both confirmed that the intercom can work with cellular and land line phones. In fact the intercom system worked with my cellular phone up until at least May 26, 2015, sometime after this, the intercom system was disabled by Dang for the reason mentioned previously.

2) Loss of Security
   a. The front door is continuously being inadvertently left ajar because the door stop keeps falling down blocking the closure of the front door. Dang left a memo in the common area in or about September 2015, stating that someone may have tried to pry open the front door to the building. At this time I told Dang verbally about the door stop falling down, but nothing has been done it. The carpet even shows wear, where the door stop has been dragged over the carpet.

3) Loss of Garbage shoot
   a. In 2015 Dang put in a new back stairwell. At the time of the in the installation, there was a garbage shoot which carried refuse from the 2nd floor to the garbage bins below. I had asked the contractor if the shoot was going to be removed, he stated no. When the work was completed the shoot was gone.

David C. Martin
211 Hanover Avenue #5
Oakland CA 94606
510-444-0633

Statement of Facts
Potential Rent Increase of 5/7/2017

4) Loss of Trash Receptacles
    a. Dang has decreased the amount of trash receptacles and recycling receptacles for apparently no reason. This results in excess recycling refuse and trash overflowing in the garbage area.
5) Windows have not been cleaned.
    a. My unit is on the second floor of a building with the face of my apartment facing Lakeshore Avenue and Lake Merritt. Since I returned to the building after a fire in 2013, the windows have not been cleaned. For me to to clean the outside windows would create possible pearl for me as it would be at least a 60 foot drop to the concrete driveway below should I fall while precariously trying to clean the outside of my windows. In 2015, one of the landlords, K. Do, was in my leased unit and commented on what a great view my unit had. Over the last 2.5 years dirt and grime have accumulated on the windows panes, thus causing a decrease in the view, and therefore a decrease in service. I have asked Dang when they were going to clean the windows, and they stated they were not going to.

In closing I believe that my rent should not be increased due to the defective notice, and that over the course of the last 2.5 years there have been substantial decrease in services involving building security, trash removal, and adequate maintenance.

Addendum T17-0446 Martin V. Dang/Do

The is an addendum to Petition T17-0446. The purpose of this addendum is to clarify my position in response do Dang & Do's responses to my petition.

II Decrease in Services

1) Loss of Telephone Intercom System:

   a. Email to RAP employee Margaret Sullivan states that I would not be able to make the previous hearing, and I requested that the hearing be cancelled. Please see attached exhibit (Attachment # A). Thus, I do not believe that this concern has been heard before the rent board.

   b. Attachment B is a text to a former tenant Nichola Raia, in which I gave him my apartment ID code of 0080. Upon entering that code in the telephone intercom system, my iPhone would ring, and I could press "7" to buzz him or anyone who calling me from the front door into the building. He had asked me for my apartment ID code in case he ever got locked out without his phone, so he could call me and let himself in.

   c. Attachments C and D show packages to tenants that were left at front perhaps because drivers were not able to contact the tenants since the intercom system had been disconnected.

   d. Attachment E shows a separate FedEx ticket for a different tenant. Since the intercom system has been disconnected I too have had FedEx Tickets for packages left for me which I had to go and pick up since they could not leave the package. If other tenants and I could be reached by the telephone intercom system, packages could be delivered inside the building instead of being allowed to be left outside the front door. This creates not only a nuisance since we now have to go out and retrieve the FedEx packages, and also a theft liability for packages left on the front porch unattended.

2) Loss of Security:

   a. The issue with the front door, as I have explained to Tiep Dang previously, is that the arm of the kickdown doorstop is loose from mounting which is affixed to the door. Many, many times I have come home to see the door stop in the down position and is lodged right up against the door threshold (Attachment F). This isn't because someone left it there, it is because during the normal operations of tenant door use, the kickdown doorstop has fallen because it is loose. One can see the drag of the doorstop over the carpet (Attachment G).

   b. Regarding my security, the front door to my apartment unit is a vintage French door with clouded window panes (Attachment H). This is the door that was here when I moved in. The main door to the outside is more substantial (Attachment I), thus a reasonable person would consider the door to the outside to be the secured door to the outside. In the past, we have had a memo from the landlord about a possible break-in in September 2015 (Attachment J). In the memo to tenants, Dang and Do stated that someone tried to pry the front door open. After the attempted break-in, the door was not professionally repaired (Attachment K), and it appears that the door could easily be pushed open.

c. In March 2018, directly in front of our building, there was an incident of a woman murdered and a man drowned directly across the street from my apartment. With that tragic event and the attempted break-in still in recent memory, it is somewhat unconscionable to believe that Dang and Do cannot enhance my security by tightening a kickstand door stopper or having a working telephone intercom system. When renting an apartment, one has the expectation of security, which one would take into consideration when renting an apartment. Clearly the lackadaisical manner in which the front door lock was unprofessionally "fixed" and the loss of the Telephone intercom system, compromises the expectation of security, which results in a loss of service to me, the tenant.

3) Loss of Garbage shoot:

   a. This matter has not been heard because Dang and Do rescinded their Notice to Change Terms of Tenancy dated 6/2016 on August 8, 2016. This issue was originally petitioned on T16-0393. Please see pictures (Attachment L) indicating before and after the garbage shoot was removed.

4) Loss of Trash receptacles:

   a. This matter has not been heard because Dang and Do rescinded their Notice to Change Terms of Tenancy dated 6/2016 on August 8, 2016. This issue was originally petitioned on T16-0393.

5) Windows have not been cleaned.

   a. Dang and Do advertise their lakeview apartments as having "Stunning and commanding lake views" [Lake Merritt] (Attachment M). Since I moved back into my unit 3 years ago (January 2015) after a fire in the building displaced me, the windows have not been cleaned once. In that Dang and Do specifically advertise the commanding views of the lake view units when advertising their property, a reasonable person would conclude that the view of the lake is included in the pricing of the unit. That being said, dirty windows discount the view. Attachments N & O show a buildup of soot and dust from the road below, but the full effect of the grime build up can be seen on Attachment P which is a bedroom window showing just how must dirt grim have accumulated on the windows within the last 3 years. In that the lease is blind concerning the outside windows (Attachment Q), the outside of the unit is the responsibility of the landlord. Since the windows are no longer clean, the view is discounted. Hence, a loss of service from the when I resumed the lease of the apartment 3 years ago.

My statements and attachments to best of my knowledge are true and correct, should you have any questions, please call me at my mobile number listed below. I thank you in advance for your time and consideration in this matter.

David C. Martin
211 Hanover #5
Oakland CA, 94606
510-444-0633

CITY OF OAKLAND

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

For date stamp.
RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2017 NOV -6 AM 11:28

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 T17- 0446 RC/LM

Your Name	Complete Address (with zip code)	Telephone:
Khiem Do Tiep Dang	P.O. Box 16178 Oakland, CA. 94610	(925) 336-9499 Email: Khiemdo56@yahoo.com
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: Email:
Tenant(s) Name(s) David Martin	Complete Address (with zip code) 211 Hanover Ave, Apt #5 Oakland, CA. 94606	(510) 444-0633
Property Address (If the property has more than one address, list all addresses) 211 Hanover Ave, Oakland, CA. 94606 1914 Lakeshore Ave, Oakland, CA. 94606		Total number of units on property 10

Have you paid for your Oakland Business License? Yes ☑ No ☐ Lic. Number: 00038737
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: 022-0308-022-0
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: 2/5/2003

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.

Date of Contested Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Debt Service	Fair Return
6/7/2017	☑	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐

If you are justifying additional contested increases, please attach a separate sheet.

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 7/5/2005.

The tenant's initial rent including all services provided was: $ 1,600.00 / 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? 7/1/2005

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.

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased From	Rent Increased To	Did you provide the "RAP NOTICE" with the notice of rent increase?
5/1/2017	6/7/2017	$ 1600.75	$ 1696.80	☑ Yes ☐ No
1/18/2012	3/1/2012	$ 1600.00	$ 1685.00	☑ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ 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.

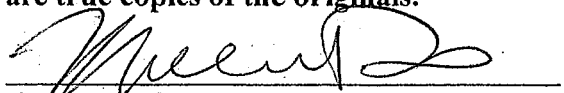
☐ The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

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

11/5/2017

Date

Response to Mr. Martin's Petition # T17-0446 RC/ LM

211 Hanover Ave. Apt#5 Oakland, CA. 94606

Mr. Martin filed the petition (T17-0446) on the following grounds:

I. Defective notice

Response: The notice was mailed on May 1, 2017 with the effective date of June 7, 2017. The previous effective rent increase was 3/1/2012. Oakland Rent Control allows one increase each year.

The increase of 6% is per banking guidelines, the increase includes 2006 & 2007 banking. Due to this year banking limit, only 2.7% of the 3.3% CPI for 2007 was applied, the difference of .6% remains in the accrual banking.

Copy of the letter (Exhibit A) and Banking Calculation worksheet (Exhibit B) are attached.

II. Decrease in Services

1) Loss of Telephone intercom system
Response: Mr. Martin filed petition T15-0587 for this matter; the petition was dismissed.

2) Loss of Security
Response: The door has a doorstop, tenants can push it down as needed, tenants need to pull it up before closing the door.
Mr. Martin has not reported any issue relating to the doorstop not functioning properly.
Per our maintenance log, tenant in Apt#1 reported an issue regarding the doorstop on 9/27/2015 and we replaced it on 9/28/2015.
We check the doorstop today (11/5/2017); it works properly. Picture is attached as Exhibit C.

3) Loss of Garbage shoot
Response: Mr. Martin filed petition T16-0393 for this matter; the petition was dismissed.

4) Loss of Trash Receptacles
Response: Mr. Martin filed petition T16-0393 for this matter; the petition was dismissed.

5) Windows have not been cleaned
Response This is not part of housing services.

250 FRANK H. 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: **T17-0446, Martin v. Do, et al.**

PROPERTY ADDRESS: **211 Hanover Ave., Unit #5, Oakland, CA**

DATE OF HEARING: **May 10, 2018**

DATE OF DECISION: **July 20, 2018**

APPEARANCES: **David Martin, Tenant**
Khiem Do, Owner
Tiep Dang, Owner

SUMMARY OF DECISION

The Tenant Petition is denied.

CONTENTIONS OF THE PARTIES

On August 2, 2017, the tenant filed a Tenant Petition, contesting a single rent increase and alleging loss of and/or decrease in housing services.

On November 5, 2017, the owners filed a timely response which alleged that the contested rent increase was justified by banking and that the items identified as decreased housing services were either repaired or addressed in prior Hearing Decisions T15-0587 and T16-0393.

ISSUES

(1) Is the contested rent increase justified by banking, and if so, has it been properly calculated?
(2) Have the housing services decreased, and if so, by what amount?

EVIDENCE

Background

The tenant moved into the subject unit on July 5, 2005, at an initial monthly rent of $1,600.00. The subject unit is located in a residential building consisting of ten (10) residential units. The current owners acquired the property on February 5, 2003.

Tenant's Current Rent

The tenant's current rent prior to the proposed rent increase was $1,600.75 and it was set by a prior Hearing Decision in T15-0062 (Martin v. Do). This Hearing Decision set the tenant's base rent at $1,685.00 with ongoing decreased housing services relating to the loss of the drop down chairs, by $84.25 (5%) per month, to $1,600.75. The Hearing Decision was issued on July 9, 2015, and was affirmed by the Board on Appeal on April 28, 2016.

Rent Increase and the RAP Notice

On May 1, 2017, the owners served a rent increase notice which proposed to increase the monthly rent from $1,600.75 to $1,696.80, effective June 7, 2017.[1] The rent increase notice stated that the increase is based on banking, and included the banking calculation sheet and the notice of the existence of the Rent Adjustment Program (RAP Notice).[2] The tenant has been paying the increased amount of $1,696.80 per month.

The tenant testified and stated on his petition that he received the first RAP Notice when he first moved into the unit on July 5, 2005. This evidence was not disputed.

The tenant argued that the rent increase notice was defective as it arbitrarily changed the effective date to the 7th, as opposed to from 1st of each month in a month-to-month tenancy.

Decreased Housing Services

On his petition and at the hearing the tenant identified the following items as decreased and/or loss of housing services: (1) disabled intercom; (2) defective entry door stopper; (3) loss of the garbage shoot; (4) loss of trash receptacles; and (5) no window cleaning.[3] The owners submitted response to the tenant's claims of decreased housing services.[4]

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[1] Exhibit A (3 pages)
[2] Exhibit A
[3] Exhibit B
[4] Exhibit C

Disabled Intercom: The tenant testified that the intercom system, which allowed guests from the front door to call the apartment, was disabled after May 26, 2015. The owner's testified that this claim was addressed in the prior case T15-0587.

Door Stopper: The tenant testified that the door stopper of the main entry door keeps falling down when the door is opened and blocks the closure of the front door. The owner's testified that they received the notice from another tenant about the door stopper on September 27, 2015 and replaced it on September 28, 2015. They received a notice from the tenant's petition, checked the doorstop and it worked properly.

Loss of Garbage Shoot: The garbage shoot that carried trash from the 2nd floor to the garbage bins on the ground level was removed in 2015 when the new back staircase was re-built. The owners testified that this claim was addressed in a prior case T16-0393.

Loss of Trash Receptacles: The tenant testified at the hearing that he mistakenly stated "trash" bins but meant "recycling" bins, not trash bins. The owners testified that this claim was addressed in a prior case T16-0393 and that the owners monitor the recycling bins and the space around the trash and recycling bins.

No Window Cleaning: The tenant testified that since he returned to the building after a fire in 2013 the windows have not been cleaned and dirt accumulated on the windows and the tenant's view of the lake is diminished. The owners testified that they never had a regular cleaning service for the windows which they discontinued. The windows were cleaned by a painting contractor as part of the exterior paint job sometime in 2008 or 2009 and again after the fire repair in 2015.

Prior Tenant Petitions in cases T15-0587 and T16-0393

Prior cases T15-0587 (Martin v. Do) and T16-0393 (Martin v. Do) addressed the same claims alleged in the tenant petition relating to decreased housing services. The tenant alleged the loss of intercom in T15-0587 and voluntarily dismissed that petition on February 29, 2016. The tenant alleged the same decreased housing services again in T16-0393 but the Tenant Petition was dismissed on October 31, 2016, when the tenant failed to appear for the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Banking

An owner is allowed to bank increases and use them in subsequent years, subject to certain limitations.[5] However, the total of CPI adjustments imposed in any one rent increase, including the current CPI rent Adjustment, may not exceed three

[5] O.M.C. Section 8.22.070(B)(5)

times the allowable CPI Rent Adjustment on the effective date of the rent increase notice.[6]

The attached banking calculation table indicates the allowable banking amount of $101.10 for the tenant's unit, allowing the rent to increase to the new base rent to $1,786.10, before the deduction of $84.25 due to ongoing decreased housing services relating to the loss of the drop-down chairs per Hearing Decision T15-0062 (Martin v. Do). The Hearing Decision T15-0062 set the tenant's base rent to $1,685.00 as of July 9, 2015, and reduced the base rent by $84.25 for ongoing decreased housing services.

Because the proposed rent increase (from $1,600.75 to $1,696.80, which includes the decrease for ongoing decreased housing services of $84.25, does not exceed the maximum allowable increase based on banking, the proposed rent increase is valid and justified by banking. However, it will be limited to the amount noticed on the rent increase, $96.05. Therefore, the new base rent prior to any deduction is $1,781.05 ($1,685.00 + $96.05 banking). As of June 7, 2017, the current rent including on-going decreased housing services of $84.25 is $1,696.80.

The Rent Adjustment Ordinance and California State Law does not specify the effective date of the rent increase. Therefore, it may be any day of the month as long as the tenant receives sufficient notice for the rent increase. Here the notice of contested rent increase was served on May 1, 2017, by mail. The owner is required to give 30-day notice plus extra 5 days for mailing. Accordingly, the effective date of the rent increase could not be before June 5, 2017.

Timeliness of filing of Tenant Petition for Decreased Housing Services

Effective September 20, 2016, for a petition claiming decreased housing services, the petition must be filed within ninety (90) days of whichever of the following is later: (1) the date the tenant is noticed or first becomes aware of the decreased housing service; or (2) the date the tenant first receives the RAP Notice.[7]

The petitioner received the first RAP Notice on July 5, 2005, when he first moved into the subject unit. The intercom was disabled in May of 2015, the garbage shoot was also removed in 2015, and the recycling receptacles were also decreased in February 2016 (per Tenant Petition in T16-0393). These were discrete acts. To be considered timely, the tenant's petition should have been filed within 90 days after each of these acts. Since the tenant petition was filed on August 2, 2017, almost two years later, it is untimely filed. Therefore, the tenant's petition as to decreased and/or loss of housing services relating to the intercom, garbage shoot and recycling bins claims are denied as untimely.

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[6] Regulations, Appendix A, §10.5
[7] O.M.C. §8.22.090A(3)(a)

Decreased Housing Services

Under the Oakland Rent Ordinance, a decrease in housing services is considered to be an increase in rent[8] and may be corrected by a rent adjustment.[9] 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 one that was provided at the beginning of the tenancy and is no longer being provided, or one that was contracted 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."[10] 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 a relief.[11]

Door Stopper: The door stopper was replaced within one day after the first complaint in 2015. The owners checked it again after they received a notice from the tenant petition, and it worked properly. The owners acted reasonably after receiving both notices. Therefore, this claim is denied.

Window Cleaning: There was no prior regular window cleaning service. The windows were cleaned on two occasions in the last fifteen years. The first time it was around 2008 or 2009 when the building was painted and the painting contractor cleaned the windows as part of the exterior paint job. The second time was after the siding was repaired due to fire damage after the fire that occurred in 2013. Because there was no regular window cleaning service offered by the owners when the tenant moved into the unit, the window cleaning is not part of the housing service provided by the owners. Therefore, there was no loss of service and this claim is denied.

ORDER

1. The Tenant Petition T17-0446 is denied.

2. The rent increase is valid and justified by banking but will continue to be reduced by $84.25 due to the ongoing decreased housing service per T15-0062.

3. As of June 7, 2017, the tenant's new **base** rent is $1,781.05 per month and the tenant's **current** rent is $1,696.80 ($1,781.05 minus $84.25) for as long as the decreased housing services relating to drop down chairs continue per Hearing Decision T15-0062.

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[8] O.M.C. §8.22.070(F)
[9] O.M.C. §8.22.110(E)
[10] *Green v. Superior Court* (1974) 10 Cal. 3d 616 at p. 637
[11] Hearing Decision T11-0191, *Howard v. Smith* (2012)

5. Upon restoring the loss of service identified in the Hearing Decision T15-0062, the owner may increase the monthly rent by $84.25 in accordance with the notice requirements of California Civil Code §827. This will not be considered a rent increase but restoration of decreased housing services.

6. The tenant's claims for decreased housing services are 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 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
City of Oakland Rent Adjustment Program

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program
http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment/

P.O. Box 70243
Oakland, CA 94612
(510) 238-3721

CALCULATION OF DEFERRED CPI INCREASES (BANKING)

Initial move-in date	5-Jul-2005
Effective date of increase	7-Jun-2017
Current rent (before increase and without prior cap. improve pass-through)	$1,685.00
Prior cap. imp. pass-through	
Date calculation begins	7-Jun-2006
Base rent when calc.begins	$1,600

MUST FILL IN D9, D10, D11 and D14

Case No.: T17-0446
Unit:

CHANGE YELLOW CELLS ONLY

If the planned increase includes other than banking put an X in the box→

ANNUAL INCREASES TABLE

Year Ending	Debt Serv. or Fair Return increase	Housing Serv. Costs increase	Base Rent Reduction	Annual %	CPI Increase	Rent Ceiling
6/7/2017				2.0%	$ 39.68	$ 2,023.64
6/7/2016				1.7%	$ 33.16	$ 1,983.96
6/7/2015				1.9%	$ 36.37	$ 1,950.80
6/7/2014					$ -	$ 1,914.42
6/7/2013				3.0%	$ 55.76	$ 1,914.42
6/7/2012				2.0%	$ 36.44	$ 1,858.66
6/7/2011				2.7%	$ 47.91	$ 1,822.22
6/7/2010				0.7%	$ 12.33	$ 1,774.31
6/7/2009				3.2%	$ 54.63	$ 1,761.98
6/7/2008				3.3%	$ 54.54	$ 1,707.34
6/7/2007				3.3%	$ 52.80	$ 1,652.80
6/7/2006				-	-	$1,600

Calculation of Limit on Increase

Prior base rent	$1,685.00
Banking limit this year (3 x current CPI and not more than 10%)	6.0%
Banking available this year	$ 101.10
Banking this year + base rent	$ 1,786.10
Prior capital improvements recovery	$ -
Rent ceiling w/o other new increases	**$ 1,786.10**

Notes:

1. **You cannot use banked rent increases after 10 years.**
2. CPI increases are calculated on the base rent only, excluding capital improvement pass-throughs.
3. The banking limit is calculated on the last rent paid, excluding capital improvement pass-throughs.
4. Debt Service and Fair Return increases include all past annual CPI adjustments.
5. An Increased Housing Service Cost increase takes the place of the current year's CPI adjustment.
6. Past increases for unspecified reasons are presumed to be for banking.
7. Banked annual increases are compounded.
8. The current CPI is not included in "Banking", but it is added to this spreadsheet for your convenience.

Revised April 2017

PROOF OF SERVICE
Case Number T17-0446

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
Dang & Do
PO Box 16178
Oakland, CA 94610

Tenant
David Martin
211 Hanover Ave #5
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 August 10, 2018 in Oakland, CA.

Maxine Visaya
Oakland Rent Adjustment Program

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

CITY OF OAKLAND

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

For date stamp
2018 AUG 20 PM 1:51

APPEAL

Appellant's Name David Martin	☐ **Owner** ☒ **Tenant**
Property Address (Include Unit Number) 211 Hanover Ave. Apt 5, Oakland, CA 94606	
Appellant's Mailing Address (For receipt of notices) 211 Hanover Ave. Apt 5, Oakland, CA 94606	**Case Number** T17-0446 **Date of Decision appealed** July 20, 2018
Name of Representative (if any) Self	**Representative's Mailing Address (For notices)** 211 Hanover Ave. Apt 5, Oakland, CA 94606

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 August 20, 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	Dang & Do
Address	PO BOX 16178
City, State Zip	Oakland, CA 94610
Name	
Address	
City, State Zip	

David C Minh Tu	8/20/18
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.

PROOF OF SERVICE
Case Number T17-0446

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Tenant
David Martin
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Oakland, CA 94606

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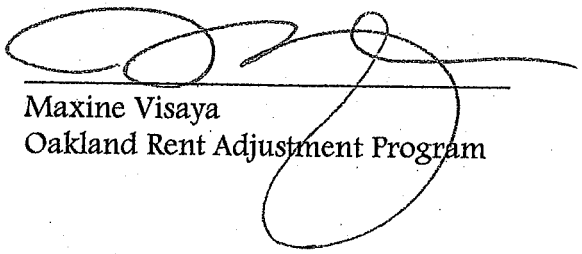
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 10, 2018 in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program

Martin v Do

Appeal Case ID T17-0446

Pursuant to Oakland Municipal Code §§8.22.070(F) "A decrease in housing services is considered an increase in rent." As I outlined in my original petition T17-0446, there has been a decrease in housing services provided to me by the current owners of my apartment unit in the building situated at 211 Hanover Avenue, #5, Oakland California. These decreased housing services were enumerated in my petition and subsequently denied by the hearing officer. Specifically, I refer to items listed in the Hearing Decision regarding the disabled intercom (page 3) and the inadequate Door Stopper and Window Cleaning cited (page 5). I believe the hearing officer denials are: 1) Not consistent with prior decisions by the Rent Board, and 2) The decision raises new policy issue(s) that have not been decided by the Board. These items are discussed as follows

Disabled Intercom

I put forth in petition T15-0587 & T16-0393 strong concerns regarding the disabled intercom. However I relied on the fact that landlord, specifically Kheim Do, stated that a land line was mandatory in order for the intercom to work. No further explanation by the landlord was given. During the hearing of T17-0446 Ms. Do verbally stated that the reason the intercom did not work was not because a land line being required, but because the intercom would only allow for a seven-digit telephone number to be encoded into the intercom system, and that with cell phones being 10 digits, cell phone numbers could not be coded into the intercom interface. With that in mind, one can reasonable conclude that an upgrade to the intercom system would need to be provided in order for the intercom to function as it had when I moved in and for the subsequent for the next 9 years ending in May 2015. In that Ms. Do was not forthcoming with the correct fact pattern in explaining why the intercom was no longer functional, I the tenant was not able to provide a proper complaint to the issue. Now that the pertinent facts have been discovered through Ms. Do's own testimony (under oath) during the T17-00446 hearing this issue should now be deemed as current setting aside the timeliness issues of the original petitions. Ms. Do's refusal to provide for an upgrade to the intercom clearly constitutes a loss of service which was previously enjoyed by the tenant for many years. In addition, the petition should be granted in that the disabled intercom constitutes a not only a loss of service but also the security of the

building following the theme of Cuello v Horizon Mgt. (case id T09-0082). In that petition a claim of decreased services based on inadequate security was granted.

Door Stopper

The hearing officer denied my portion of the petition concerning the door stopper situated on the front door of the building. In my petition I stated that: "*The front door is continuously being inadvertently left ajar because the door stop keeps falling down blocking the closure of the front door.*" The hearing officer stated in the petition denial that: "*The owners checked it again after they received a notice from the tenant petition, and it worked properly.*" The fact of the matter is that the door stop when in the up position is loose, and keeps falling down which causes the door to stop closing. Clearly the door stop apparatus needs to be tightened or adjusted such that when the main door to the apartment building closes via the closing apparatus situated on the top main door of the building, the slam of the door does not cause the door stopper to fall down and stay in a downward position such that on subsequent opening and door closures the door stop (now in the down position) keeps the door open. This also follows the concept of decreased building security as brought forth by Cuello v Horizon Mgt. (case id T09-0082).

Window Cleaning

One has a reasonable expectation that when an apartment with views of Lake Merritt is leased with windows that are otherwise inaccessible to the tenant, that the windows will be cleaned. As stated in the petition, the landlords clearly capitalize on the wonderful views of Lake Merritt from the apartment windows by reminding me of the beautiful views and advertising the "commanding" views of Lake Merritt to prospective tenants. In that the landlords have advertised the views of the lake and are deriving a source of premium rental revenue from the advertised views, they have created a standard of service along with an obligation to maintain the views. Thus, the view is an integral part of the services provided by the landlord. That being said, by not washing the windows, the landlords are discounting the views of the lake and subsequently reducing the services originally provided to the tenant. To date I have not found any ruling regarding this type of scenario in the Board's previous cases, but clearly one can reasonably have an expectation that the windows would be maintained in a manner which would facilitate the enjoyment of the originally promised views.

With these points in mind I ask that the Board to deny the hearing officers decision and remand the matter back to the hearing officer requesting that a reduction in rent be prescribed due to decreased services, and a decrease in building services. I thank you in advance for any and all consideration you can give me.

David C. Martin
211 Hanover Ave #5
Oakland CA 94606

CHRONOLOGICAL CASE REPORT

Case No.:	T17-0376
Case Name:	Cordes v. Park
Property Address:	4001 San Leandro Street, #21, Oakland, CA

Parties:		
	Carver Cordes	(Tenant)
	Jean Cadwell	(Tenant)
	S. Elizabeth Miller	(Owner Attorney)
	Daniel O'Connell	(Tenants' Attorney)
	Barbara Turner	(Owner Representative)
	Jason Mauck	(Owner Attorney)
	Servando Sandoval	(Owner Attorney)

TENANT APPEAL:

Activity	Date
Tenant Petition filed	June 27, 2017
Owner Response filed	September 18, 2017
Hearing Decision mailed	August 3, 2018
Tenant Appeal filed	August 23, 2018
Owner Response to Tenant's Appeal	September 2, 2018

RECEIVED

CITY OF OAKLAND

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

For date stamp.
JUN 27 2017
RENT ADJUSTMENT PROGRAM
OAKLAND

TENANT PETITION

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

Please print legibly T17-0376 MS/BC

Your Name Carver Cordes	Rental Address (with zip code) 4001 San Leandro st. #21 Oakland, CA 94601	Telephone: 510.417.8476 E-mail: fallfloodfestival@gmail.com
Your Representative's Name	Mailing Address (with zip code)	Telephone: Email:
Property Owner(s) name(s) 901 Jefferson LLC	Mailing Address (with zip code) 115 Grand Avenue Oakland, CA 94612	Telephone: Email:
Property Manager or Management Co. (if applicable) Madison Park	Mailing Address (with zip code) 115 Grand Avenue Oakland, CA 94612	Telephone: 510.452.2944 Email:

Number of units on the property: 33.

Type of unit you rent (check one)	☐ House	☐ Condominium	■ Apartment, Room, or Live-Work
Are you current on your rent? (check one)	■ 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.)

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:**

✓	(a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
	(b) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
✓	(c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked

	rent increase.
✓	(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.)
✓	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
	(k) 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).
✓	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised illegally after the unit was vacated as set forth under OMC 8.22.080.

II. RENTAL HISTORY: (You must complete this section)

Date you moved into the Unit: January 15th, 2014 Initial Rent: $1400.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: Never. 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. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase From	To	Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
3/24/2017	5/1/2017	$ 1590.00	$ 1670.00	☑ Yes ☐ No	☐ Yes ☑ No
12/27/2015	3/1/2016	$ 1445.00	$ 1590.00	☑ Yes ☐ No	☐ Yes ☑ No
Estimate March 2014	Estimate May 2014	$ 1400.00	$ 1445.00	☑ Yes ☐ No	☐ Yes ☑ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No
		$	$	☐ Yes ☐ No	☐ Yes ☐ No

*** You have 90 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 did not receive a *RAP Notice* with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)**

Have you ever filed a petition for this rental unit?

- ☐ Yes
- ☑ No

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

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 problems in your unit, or because the owner has taken away a housing service, 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, or if you checked box (h) or (i) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

1) **a list of the lost housing service(s) or problem(s);**
2) **the date the loss(es) or problem(s) began or the date you began paying for the service(s)**
3) **when you notified the owner of the problem(s); and**
4) **how you calculate the dollar value of lost service(s) or problem(s).**

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (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.

Carmen Cuevas
Tenant's Signature

6-23-2017
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 different Rent Adjustment Program Hearing Officer.

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 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
Your property owner(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the Property Owner's Response. The petition and attachments to the petition can be found by logging into the RAP Online Petitioning System and accessing your case once this system is available. 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.

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
_✓_ Rent Adjustment Program web site
____ Other (describe): _____

CITY OF OAKLAND

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

For date stamp.
RENT ARBITRATION PROGRAM
2017 SEP 18 PM 2:06

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 T17-0376

Your Name	Complete Address (with zip code)	Telephone:
901 Jefferson Street, LLC	155 Grand Ave #950 Oakland, CA 94612	510-452-2944
		Email:
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone:
Barbara Turner	155 Grand Ave. #950	510-452-2944
		Email: Barbara@mpfcorp.com
Tenant(s) Name(s)	Complete Address (with zip code)	
Michelle Lee Elliot Curtis	4001 San Leandro Street, #21 Oakland, CA 94601	
Property Address (If the property has more than one address, list all addresses)		Total number of units on property 33

Have you paid for your Oakland Business License? Yes ☒ No ☐ Lic. Number: 0017 3883
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: 33-2166-3-3
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.** N/A

Date on which you acquired the building: 6/2/15.

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.

Date of Contested Increase	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Debt Service	Fair Return
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐
_____	☐	☐	☐	☐	☐	☐

If you are justifying additional contested increases, please attach a separate sheet.

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 _____.

The tenant's initial rent including all services provided was: $_____/ 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? _____

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.

Date Notice Given (mo./day/year)	Date Increase Effective	Rent Increased From	Rent Increased To	Did you provide the "RAP NOTICE" with the notice of rent increase?
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ No
		$	$	☐ Yes ☐ 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.

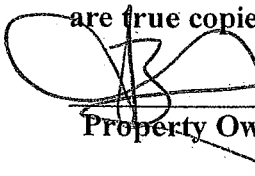
☐ The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

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

9/15/17

Date

For more information phone (510)-238-3721.

Rev. 3/28/17

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 Date

MADISON PARK

September 15, 2017

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

Re: Case #T17-0376
Cordes v. Madison Park Financial
4001 San Leandro Street, Oakland, CA 94601

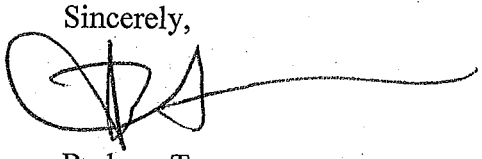
To Whom It May Concern:

901 Jefferson, LLC, and Madison Park Financial ("MPF") are in receipt of the Notice of Hearing dated August 14, 2017, for the petition filed by Carver Cordes—case number T17-0376. In response, the owner and MPF offer the following defenses:

1) The petitioning tenant's unit is exempt from Oakland's Residential Rent Adjustment Program. The subject unit was issued a certificate of occupancy after 1983 as indicated in the attached letter from the Oakland Community and Economic Development Agency. Responding Parties will provide further evidence in support of the exemption as it is recovered.
2) The petitioner was never an approved tenant and is not on a lease to the subject unit. Michelle Lee and Eliot Curtis signed the original lease for Unit 21 at 4001 San Leandro Street on January 21, 2011. Sometime during the course of their tenancy, Ms. Lee and Mr. Curtis apparently took in roommates which included Carver Cordes. The original leasing parties have allegedly vacated the unit and the petitioner has taken possession of the unit without the knowledge or consent of the owner or MPF. Without tenancy rights, this petitioner has not standing to bring this petition.
3) Related to the above, the petition seeks rent damages and rent decreases for time periods when he was not a tenant, and therefore there requests for rent reimbursement that cannot be recovered by this petitioner.
4) If any tenancy is found, it is subject to the terms of the original lease and the original leaseholders received a RAP notice with their original lease. The original lease agreement is attached here.
5) If this unit is found to be subject to the rent control ordinance, then the subject rent increases were properly calculated and applied.

If you have any questions, please contact me at (510) 452-2944.

Sincerely,



Barbara Turner
Property Management Associate
For 901 Jefferson Street, LLC

Enclosures: Tenant lease

CITY OF OAKLAND

250 FRANK OGAWA PLAZA, SUITE 5313, OAKLAND, CA 94612

Housing and Community Development Department
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: **T17-0376, Cordes v. Park**

PROPERTY ADDRESS: **4001 San Leandro Street, #21, Oakland, CA**

DATES OF HEARING: **November 20, 2017; April 13, 2018; May 14, 2018**

DATE OF DECISION: **July 17, 2018**

APPEARANCES: **Carver Cordes, Tenant (all dates)**
Jean Cadwell, Tenant (all dates)
S. Elizabeth Miller, Attorney for Tenants (4/13, 5/14)
Daniel O'Connell, Attorney for Tenants (4/13, 5/14)
Barbara Turner, Owner Representative (all dates)
Jason Mauck, Attorney for Owner (11/20, 4/13)
Servando Sandoval, Attorney for owner (5/14/18)
Douglas Lucchetti, Witness for tenant (by phone, 5/14)

SUMMARY OF DECISION

The tenant's petition is denied. The unit is exempt from the Rent Adjustment Program as new construction. The Rent Adjustment Program does not have jurisdiction over this unit.

CONTENTIONS OF THE PARTIES

The tenant Carver Cordes filed a petition on June 27, 2017, contesting a series of rent increases, on the following grounds:

1. The CPI and/or banked rent increase was calculated incorrectly;

2. The tenant received the rent increase notice before the owner received approval from the Rent Adjustment Program (RAP) for such an increase;
3. No written notice of the Rent Program (*RAP Notice*) was given together with the notice of increase; and,
4. No *RAP Notice* was given at least six months before the effective date of the increase.

Additionally, the tenant alleged that he wanted to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.

The contested rent increases were an increase in approximately May of 2014, from $1,400 to $1,445 a month; an increase served on December 27, 2015, which was effective on March of 2016 from $1,445 to $1,590 a month; and an increase served on March 24, 2017, which was effective May 1, 2017, which increased the rent from $1,590 to $1,670 a month.

Tenant Cordes alleged in his petition that he never received the *RAP Notice*.

The owner filed a timely response to the tenant petition on September 18, 2017, claiming that the unit was exempt from the Rent Adjustment Program as new construction. In an attachment to the response, the owner also alleged that tenant Cordes was not an approved tenant, and did not have standing to bring this action, and that the original tenants had been served with a *RAP Notice* with the original lease.

THE ISSUES

1. Was the tenant given adequate time to provide evidence?
2. Is the unit newly constructed under the terms of the Ordinance?

PROCEDURAL ISSUES

At the Hearing held on November 20, 2017, the owner produced a *Report of Building Record* that had not been provided to the RAP prior to the Hearing date. After taking some testimony regarding the tenants' rental history, the matter was put over to allow the tenants the opportunity to review the owner's evidence and to provide additional evidence of their own relating to the rental history of the building. A *Notice of Supplemental Hearing* was sent to the parties on November 21, 2017, setting the Hearing for January 19, 2018.

On January 9, 2018, tenant Cordes filed a *Request to change Date of Proceeding,* seeking a continuance because his attorney was not available for the date of the Hearing and there was new evidence discovered. The matter was continued to March 8, 2018, and an *Order Granting Hearing Date Change* was sent to the parties. The order specified "the tenant may not seek an additional continuance without extraordinary circumstances."

On March 7, 2018, tenant Cordes filed a second *Request to Change Date of Proceeding,* seeking a second continuance because he had found a tenant who lived in the building before 1983, who currently lives out of state, and he was having trouble getting the necessary evidence he needed. Again, an *Order Granting Hearing Date Change* was sent to the parties, setting the Hearing for April 13, 2018. This notice stated:

> "In this case, the issue of whether or not there was a prior residential use of the premises is a key question in the determination of whether or not the unit is exempt from the Rent Adjustment Program. Acquiring the testimony of this newly found witness is important to this determination. Therefore, there are 'extraordinary circumstances' and the tenant's request is granted."

On April 6, 2018, tenant Cordes submitted a third *Request to Change Date of Proceeding,* claiming that extraordinary circumstances existed for a third date change because despite the fact that the tenant had been diligent in seeking affidavits from prior tenants, due to distance and circumstances they "may not be obtained before the scheduled hearing...." and that the tenants had recently retained legal counsel to assist them. An *Order Denying Hearing Date Change* was sent to the parties. That order stated that:

> "At the Hearing, after the owner's testimony and documents are considered, the tenant will be given an opportunity to testify that there is further available evidence to establish that the unit does not qualify for the new construction exemption and if "good cause" is found, the Hearing may be continued to consider further evidence. Any such continuance will be significantly limited in duration as the tenant has already had 5 months to gather the requested evidence."

At the Hearing held on April 13, 2018, the tenants requested a further 60 day continuance. They argued that there was concrete evidence that tenants lived in the building prior to 1983. They provided information that they had been able to reach certain tenants who lived in the building in the later 1980s and 1990s, who knew people who allegedly lived in the building, earlier than 1983. At the Hearing the tenants were given an additional opportunity to produce evidence related to proof that people lived in the building before 1983, by setting an additional day of Hearing on May 14, 2018.

EVIDENCE

Rental History: Tenant Cordes testified that he has been living in the subject unit since 2014. When he moved in, the unit was already occupied by Elliot Curtis. Curtis moved out in late 2014. When Cordes moved in, he had many interactions with the building manager, Delene Hessinger, who approved his tenancy.[1] Since Curtis moved out, Cordes has had a series of roommates. He currently lives with Jean Cadwell. Cordes never received a *RAP Notice.*

[1] The tenant produced email communication between him and Delene Hessinger. In one she attached an "application to rent" and stated "since you guys are both already living here the credit check is a formality. Getting a lease signed can come after." See Exhibit 5, page 1

The tenant provided several *PG&E* statements to show that he lives in the unit and has the *PG&E* bill in his name.[2]

The owner produced a lease agreement between the owner and Michelle Lee and Eliot Curtis, dated January 21, 2011, for the rental of the subject unit.[3] Attached to this lease is an *Addendum to Lease*, which refers tenants to the Rent Adjustment Ordinance and states that the "this building does not contain any units subject to this Ordinance."[4]

The owner produced three rent increase notices. The first notice increased the rent from $1,400 to $1,445, effective April 1, 2014. The second notice increased the rent from $1,445 to $1,590 a month, effective March 1, 2016. The third notice increased the rent from $1,590 to $1,670 a month, effective May 1, 2017.[5] Each of them are addressed to Michelle Lee and Eliot Curtis and none of them had *RAP Notices* attached. The owner testified that no *RAP Notices* were served with the rent increase notices.

Tenant Cordes testified that he was living in the unit at the time the first rent increase notice was served.

The parties agree that the tenants have been paying $1,670 a month since May of 2017.[6]

Building History: Barbara Turner testified that she represents *Madison Park Financial,* which is the management company for *901 Jefferson, LLC,* which owns the building. A legal predecessor of *901 Jefferson* was *High Street Properties.* There are 33 units on the premises. The first 23 (units 1-23) were created into live work units in 1985 by Jim Alexander, the owner of the building at the time. The other units are currently undergoing construction to be additional live work units. According to *Madison Park* records, leases for these units began in 1994.

The owner produced a *Report of Building Record* from the City of Oakland which is a document that purports to contain all of the documents the City of Oakland has about this property and is also referred to as a 3R Report.[7] This document contains a list of permits received for the building. On November 7, 1984, a building permit was issued to "convert existing building into lofts."[8] There is no indication on this outline of permits that this permit was "finaled." There is indication that electrical and plumbing permits taken out in 1985 and 1986 respectively, to convert the building into lofts, were finaled.[9]

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[2] Exhibit 1. All exhibits referred to in this Hearing Decision, other than 2, 4, 10, 11, 12, 13, and 14, were admitted into evidence without objection.
[3] Exhibit 2. The tenant objected to the admission of this exhibit as irrelevant. The objection was overruled.
[4] See exhibit 2, page 18
[5] Exhibit 3
[6] The tenant produced a series of money order receipts showing his rental payments testifying that he (or Ms. Cadwell) had purchased these money orders which were given to the manager for rental payments. See exhibit 4. The owner objected that the testimony regarding the money orders lacked foundation. This objection was overruled.
[7] Exhibit 6. Within this *Report of Building Record*, are multiple earlier 3R reports.
[8] Exhibit 6, page 1
[9] See also Exhibit 6, pp 38-41

The owner acknowledged that there is nothing in the record to show that the building permit was ever finaled.

A November 5, 1984, Building Permit application (number is illegible) is in the City of Oakland records showing that the owner was seeking to construct interior partitions in the building. In that permit, the building is listed as having "no dwelling units."[10] Under "proposed use of building", the owner listed "offices, retails, studios, live/work." On the following page of the records, there is a "general request form from the Inspectional Services department." This form states that on June 21, 1985, the premises were inspected and the "existing windows changed elevation; raised approx.. 8 ft higher." This was signed by a City of Oakland employee on June 26, 1985.

An additional *City of Oakland Update/Query Project Information* document dated June 22, 2006, is in the records, in which the owner requested a "minor CUP (conditional use permit) to legalize ten live/work units in a building already containing 23 live/work units permitted under CU88-482."[11] A similar request was made on September 12, 2002, when the owner requested "reconsideration of an existing minor conditional use permit for 23 live work units ...to legalize 10 existing undocumented live work units, for a total of 33 live work."[12]

The *Report of Building Record* also shows that in September of 2015, a "permit to document previously existing live work units" was granted.[13]

The owner produced a letter from the *City of Oakland* to a prior owner, dated October 27, 2000, in reference to the request for a *conditional use permit* mentioned above. The letter states: "Your application for a Minor conditional use permit to convert ten (10) commercial units into joint live/work units. (There are existing 23 live/work space under previous Conditional Use Permit C88-482. The building contains a total of 33 live /work units) located at 4001 San Leandro Street in the Housing Business Mix General Plan....." The letter granted the owner the right to the conditional use permit provided certain conditions were met.[14]

The owner's attorney stated that the building had been an industrial building, originally built in the early 20th century. These statements were supported by a report in the record from the City of Oakland, showing that the *State of California Department of Parks and Recreation* had issued a report in 1995, which stated that:

> "4001 San Leandro Street is an early 20th Century utilitarian industrial building. ....Foundation is concrete...Present use is work/live space....."[15]

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[10] Exhibit 6, page 36
[11] Exhibit 6, p. 113
[12] Exhibit 6, p. 101
[13] Exhibit 6, page 2
[14] Exhibit 7
[15] Exhibit 6, page 15

This report also shows that the building was built in 1925, an addition was added in 1935-1948, and the building was remodeled in 1985.

The owner also produced a declaration of John Protopappas. This declaration states, in relevant part, that he is the president and CEO of Madison Park Financial, and that in 1985 he toured the subject building with the then owner, Jim Alexander. Protopappas was interested in the building because he was in the process of converting a different building into lofts. At the time he toured the building, it was vacant. The declaration also includes statements made to Protopappas by Mr. Alexander.[16]

The tenants testified that according to their internet research the band *Living Legends* recorded and lived in this unit. They did not testify as to when this occurred. Official Notice is taken of the Wikipedia entry regarding *Living Legends. See* https://en.wikipedia.org/wiki/Living_Legends_(group). In that entry it states "Beginning in the early 1990s, the crew garnered a following by recording, promoting and performing their music...."

The tenants also produced records from a 1986 phone book (white pages), showing a listing for *Fenton Stained Glass* at 4001 San Leandro Street. A similar listing was also shown in the Yellow pages of the phone book.[17] Tenant Cordes testified that as he understood it, the 1986 phone books are for listings in existence in 1985.

The tenants also produced a Declaration from Daniel Head dated April 4, 2018. This document was not a declaration under penalty of perjury. The declaration states that Daniel Head lived at 4001 San Leandro Street from the fall of 1989 through the spring of 1996 and that the building was occupied by about 60 people. There is no indication in his declaration that anyone lived at the building before 1983.[18]

The tenants further produced a *Declaration* from Patti O'Doherty-Robin, which was a sworn declaration. In this *Declaration* Ms. O'Doherty-Robin stated that she lived in a live/work studio with her partner Dan Fenton at 4001 San Leandro Street, from 1995-1998 and that Dan lived in the unit for "many years" before she met him. There is no indication in her declaration that anyone lived at the building before 1983.[19]

Finally, the tenants produced a *Declaration from S. Elizabeth Miller,* one of their attorneys. In Ms. Miller's declaration, she stated that she hired a private investigator to

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[16] See Exhibit 13. The tenants objected to this Declaration as hearsay, and vague and ambiguous. The objection was overruled except as to the statements claimed to have been made by Mr. Alexander. Generally, hearsay evidence is admissible in an administrative proceeding as long as there is other corroborating evidence. As to the comments by Mr. Alexander to Mr. Protopappas, the statements are hearsay within hearsay and are not admissible. But Mr. Protoppas' own observations about the building are admissible, since there is corroborating evidence that the building was converted in 1985. (See below.)

[17] See Exhibit 9

[18] See Exhibit 10. The owner objected to this Declaration on the ground of hearsay. Since hearsay is admissible in administrative proceedings providing the evidence is corroborated, the objection was overruled. The fact that it was not a sworn declaration, went to the weight given to the document, rather than its admissibility.

[19] Exhibit 11. The owner objected to this Declaration on the ground of hearsay. Since hearsay is admissible in administrative proceedings providing the evidence is corroborated, the objection was overruled.

determine whether anyone had lived in the subject building prior to 1983. She attached the investigator's report to her declaration. The investigative report (which is not signed under penalty of perjury) states in relevant part that:

> "The following individuals were identified as **possibly** residing at 4001 San Leandro St. Oakland, CA during the years 1978-1984. This determination was made based on the dates provided in an address history database. The database identifies when a person was at a particular address based on "credit-header" information. This is the address associated when a person established credit-related accounts, such as utilities, credit cards, bank accounts, etc. This database does not provide any financial information, only the address that was associated with the individual as a mailing address for their accounts." (Emphasis added.)
>
> "The dates provided should be used as a guideline. The database is usually reliable in providing a start date at a particular address, though sometimes there is a lag in the database recognizing a new address for an individual (the referenced subjects may have been at the subject location a few months prior to the start date provided."....
>
> "John Lawrence Lee, DOB 9/1956, 61 years old; 4001 San Leandro St., Oakland, **1981**-2003." (Emphasis in the original.) ....
>
> "Jo B. Murray, DOB 10/1945, 72 years old; 4001 San Leandro St., Oakland, **3/1982**-11/2003." (Emphasis in the original.)

This report lists other people associated with the address all of whom were associated with the address after 1984.

Ms. Miller represented that the tenants were unable to reach Ms. Murray. They were able to reach John Lee, but he was not able to remember the dates he resided at the property.

Douglas Luccetti testified by phone at the Hearing on May 14, 2018. He stated that he first saw the building in the fall of 1984, when it appeared to be vacant and he does not remember seeing residences at that point. He moved into unit 8 of the subject property beginning in the late spring or early summer of 1985. He then left town for a short time for an overseas trip and then moved to unit 6 in March of 1986. He resided in unit 6 until 1991. The units he lived in were live/work units. At the time he lived at the property, he was an artist working in flat glass. The owner's name was Jim Alexander. During the time Luccetti was living there, other units were being converted into live/work units.

Luccetti further testified that he knew Mr. Fenton, who was also a glass artist living on the premises. Luccetti knew Mr. Fenton for about three years before Luccetti moved into the subject property. Fenton did not live in the subject property before 1983.

Luccetti further testified that he knew Randy Tool and Victoria Reynolds, who were artists living on the subject premises and were also architecture students. They were living on the premises before the construction was complete sometime before the late summer of 1985. He does not know exactly when they moved into the premises.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Was the tenant given adequate time to provide evidence?

On June 27, 2017, the tenant filed a petition contesting a rent increase. The owner responded to that petition and filed a *Property Owner Response* on September 18, 2017, in which the owner alleged that the unit was exempt from the Rent Adjustment Ordinance as new construction. Official Notice is taken of the file in this case and that on October 13, 2017, the tenant was served with the *Owner Response* form.[20]

Additionally, at the Hearing held on November 20, 2017, the owner reiterated its position and claimed that the unit was exempt as new construction. The owner produced documents at that Hearing that were not provided to the RAP 7 days in advance of the Hearing.

In order to provide the tenant adequate time to review the owner documents, the case was continued to January 19, 2018. Both the tenant and the owner were given the opportunity to provide further documentary evidence.

After the Hearing was set for January 19, 2018, the tenant was granted two continuances and the case was set for April 13, 2018. A third *Request to Change Date of Proceeding* was filed, and that request was denied. The denial notice stated:

> "At the Hearing, after the owner's testimony and documents are considered, the tenant will be given an opportunity to testify that there is further available evidence to establish that the unit does not qualify for the new construction exemption and if "good cause" is found, the Hearing may be continued to consider further evidence. Any such continuance will be significantly limited in duration as the tenant has already had 5 months to gather the requested evidence."

At the Hearing held on April 13, 2018, the tenant requested a further 60 day continuance. His attorneys argued that there was concrete evidence that tenants lived in the building prior to 1983. In order to ensure that the tenant was given every reasonable opportunity to present evidence that people lived on these premises prior to 1983, the tenant was given an additional month to produce such evidence and the Hearing was set for May 14, 2018.

The tenant was notified as early as October 13, 2017, that the owner was making a new construction exemption claim in this matter. He was again informed at the Hearing on November 20, 2017. From that date, the tenant was given multiple continuances and

[20] See proof of service in the file showing that the "Owner Response" was sent to the tenant on that date.

multiple opportunities to produce relevant evidence. The tenant was given more than adequate time to present evidence in this matter.

Is the unit newly constructed under the terms of the Ordinance?

The Oakland Rent Adjustment Ordinance[21] states that dwelling units are not "covered units" under the Ordinance if such units "were newly constructed and received a certificate of occupancy on or after January 1, 1983." The dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.

The tenants attempted to produce evidence that individuals lived in this building before 1984. Their evidence was not convincing. The declaration of Daniel Head shows that he moved into the building in 1989. The declaration of Patti O'Doherty-Robin shows that she moved into the building in 1995, and that her partner Dan Fenton lived there for "many years" before that. There was no information as to what "many years" actually meant. Additionally, Luccetti testified that Fenton did not live there before 1983.

Even the private investigator's report attached to Ms. Miller's declaration does not establish that anyone lived in the building before January 1, 1983. While that report refers to two individuals who "possibly" lived there before 1983, "possibly" is not a sufficient standard. Furthermore, the private investigator was not at the Hearing, was not available for cross-examination, and his report was not signed under penalty of perjury. All these factors affect the weight of the evidence. With no other information other than the claim that there are two people who may "possibly" have lived there, the tenant's evidence is not convincing.

Weighing the references in the private investigator report against the declaration of John Protopappas, who visited the building in 1984 and saw that it was vacant, along with the permit records showing that the building had no dwelling units in 1984, and the testimony of Luccetti, who also said the building was vacant in 1984, the evidence clearly establishes that prior to 1984, there were no dwelling units in the building.

In this case, the building in question currently consists of 33 live work units. The first 23, (units 1-23) were built in 1985. To establish this fact the owner produced documentation showing that a permit was issued on November 7, 1984, to convert the existing building into lofts.[22] There is no proof in the record that this permit was ever finaled. Additionally, the owner does not have a *Certificate of Occupancy*. The permit request for the live/work space, which was signed on November 5, 1984, notes that no dwelling units were in the building at the time this request was made.[23]

The owner did establish that the plumbing and electrical permits associated with the subdivision were finaled. Additionally, the owner produced a letter from the *City of Oakland,* dated October 27, 2000, which states: "Your application for a Minor

[21] O.M.C. Section 8.22.030(A)(5)
[22] See Exhibit 6, page 1
[23] See Exhibit 6, page 36

conditional use permit to convert ten (10) commercial units into joint live/work units. (There are existing 23 live/work space under previous Conditional Use Permit C88-482. The building contains a total of 33 live /work units) located at 4001 San Leandro Street in the Housing Business Mix General Plan.....". This letter acknowledges that the 23 live/work spaces were granted a conditional use permit.

Official Notice is taken of Case No. T05-0110, et al., *Peacock, et al. v. Vulcan Props. LP* , in which tenants filed petitions contesting rent increases. The owner contended that the subject building was exempt as "new construction." In that case, the building was constructed in the 1980's and there was reliable evidence that the construction was inspected and approved by a City Building Inspector (the permit was "finalized"). However, the records of the Building Department did not contain a *Certificate of Occupancy*.

At the Hearing in that case, Ray Derania, who was then the City Code Compliance Manager, testified that many records of the Building Department were lost in the 1989 earthquake. Also, at times, due to clerical oversight, paperwork leading to a *Certificate of Occupancy* is not typed up after a building permit is finalized.

Mr. Derania further testified that, in the normal course of business, final approval by a City of Oakland Building Inspector would trigger the issuance of a *Certificate of Occupancy*. There is nothing more to be done. Therefore, a "finalized" building permit is the practical equivalent of a *Certificate of Occupancy*.

The tenant petitions in that case were dismissed. It was found that the subject building was exempt from the Rent Adjustment Ordinance as being "newly constructed" despite the lack of a *Certificate of Occupancy*. The tenants appealed, and the Hearing Decision was affirmed by both the Board and in a writ proceeding in the Alameda County Superior Court.

In the *Peacock* case, there was no evidence of a *Certificate of Occupancy,* but there was evidence of a finalized building permit. Here we don't have clear evidence of either document. Nonetheless, the failure to establish the finalized building permit appears to be an oversight from the City of Oakland. The record is clear that the electrical and plumbing permits were finaled. The record is clear that the units were vacant prior to 1984, and the record is clear that a conditional use permit was granted for these 23 units. Therefore, even without receiving the *Certificate of Occupancy* in evidence or the finaled building permit, the building is new construction and the unit is exempt from the Rent Adjustment Ordinance.

Since the unit is exempt from the Ordinance, the RAP has no jurisdiction over the tenant's claims.

///

///

ORDER

1. Petition T17-0376 is denied. The RAP has no jurisdiction over this unit because it is new construction.

2. After the appeal period is over, a *Certificate of Exemption* for this unit will be issued.

3. 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 17, 2018

Barbara M. Cohen
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE
Case Number T17-0376

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
901 Jefferson LLC
155 Grand Ave #950
Oakland, CA 94612

Owner Representative
Madison Park c/o Barbara Turner
155 Grand Ave #950
Oakland, CA 94612

Servando Sandoval, Pahl & McCay
225 West Santa Clara, Suite 1500
San Jose, CA 95113

Tenant
Carver Cordes
4001 San Leandro St #21
Oakland, CA 94601

Tenant Representative
Betsy Miller
Miller Farr and Associates
1300 Clay St, Suite 600
Oakland, CA 94612

Daniel O'Connell
Law Offices of Daniel J. O'Connell
335 Divisadero Street
San Francisco, CA 94117

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 03, 2018 in Oakland, CA.

Maxine Visaya
Oakland Rent Adjustment Program

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM
2018 AUG 23 PM 4:51

CITY OF OAKLAND

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

For date stamp

APPEAL

Appellant's Name	☐ **Owner** ☒ **Tenant**
Carver Cordes and Jean Cadwell	
Property Address (Include Unit Number)	
4001 San Leandro Street, #21, Oakland, California	
Appellant's Mailing Address (For receipt of notices)	**Case Number** T17-0376
4001 San Leandro Street, #21, Oakland, California	**Date of Decision appealed** July 17, 2018
Name of Representative (if any)	**Representative's Mailing Address (For notices)**
S. Elizabeth Miller and Daniel J. O'Connell	1300 Clay Street, Suite 600 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 _____, 20____, 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	(See attached Proof of Service)
Address	
City, State Zip	
Name	
Address	
City, State Zip	

S. Elizabeth Miller	8/23/18
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE**

S. Elizabeth Miller
Attorney for Appellants

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.

Cordes v. Madison Park Financial, Case No. T17-0376
Attachment to Appeal

THE ADMINISTRATIVE DECISION IS INCONSISTENT WITH OMC CHAPTER 8.22 AND THE REGULATIONS, IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND DENIED SUFFICIENT OPPORTUNITY TO RESPOND

Appellants Carver Cordes and Jean Cadwell appeal from the July 17, 2018 Administrative Decision of the Hearing Officer.

On June 27, 2017, Appellants filed Tenant Petition T17-0376 asserting that a rent increase for their rental unit, which is located at 4001 San Leandro Street, Oakland, CA (hereinafter "the Subject Property"), was incorrectly calculated, the increase exceeded the allowable CIP Adjustment, and was unjustified, and the tenant did not receive notice before the owner received approval from the Rent Adjustment Program for such an increase or RAP Notice with the notice of increase or six months prior.

The Ordinance in its plain language states that an Appeal can be made upon mistake or fraud.

I. The Administrative Decision was the result of Mistake or Fraud

The Ordinance provides that "For the purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the *burden of proving and producing evidence for the exemption is on the owner*. A certificate is a final determination of exemption *absent fraud or mistake.*" (emphasis added). The exemption at issue in the instant case states:

> Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. This exemption does not apply to any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with O.M.C. 8.22.400, et seq. (Ellis Act Ordinance). To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential. 8.22.030.A.5

a. The Owner failed to meet its burden that the Subject Property was newly constructed and has a Certificate of Occupancy.

The Administrative Decision relies on T05-0110 et al. *Peacock et al. v. Vulcan Props, LP*, which found that despite the fact that no *Certificate of Occupancy* had been issued for a property, the Subject Property was still considered "newly constructed". In *Peacock*, all the permits had been finaled, but a Certificate of Occupancy was never issued by the City of Oakland. It was deemed an oversight. In *Peacock* the owner provided a City Code Compliance manager to provide *testimonial evidence* to back up the owner's claims that there was an error. Here, owner took no such steps to prove that this is what happened in *their* case. Moreover, the Subject Property permit in this case has not been finaled. It also appears that Owners did not pay

property taxes on 4001 San Leandro as a residential property until approximately 2016. Thus, this case can be distinguished from this case at issue because Owner failed meet its burden that the was "newly constructed" and had a Certificate of Occupancy issued.

b. The Owner failed to meet its burden that Subject Property that was formerly entirely non-residential.

The onus is on the owner to show in fact the unit was formerly entirely non-residential. Appellants made a *prima facie* showing that residents were living at the Subject Property prior to any completion of finaled permits and prior to 1983. Owners chose to take NO affirmative steps contradict the evidence presented.

First, Appellants' counsel, S. Elizabeth Miller, presented a signed declaration presenting a Report from a private investigator that was corroborated by Appellants' counsel at the Hearing on May 14, 2018. The Report was shown to be accurate, as it confirmed that Dan Fenton resided at the Subject Property in the mid-80's which was consistent with testimony from Doug Luchetti and the declaration of Patti O'Doherty-Robin. Moreover, the Report if anything was shown to be under-inclusive, showing residents moving in a much later date than a lease indicates, or failing to find residents all together who were known to live at the Subject Property.

There is nothing in OMC 8.22 Regulations or related decisions that require a tenant petitioner to find each person on such a report and confirm whether or not each individual resided at the property. The onus is rightfully put on the owner to show that Appellants evidence in the Report is false, or at the very least unreliable. Owners could have had the opportunity to review and contradict the evidence by requesting another hearing, or otherwise, and *they chose not to*, thereby giving up the right to prove their case.

Moreover, OMC 8.22 Regulations clearly puts the onus on the *owner* to keep up records. At the hearing Agent for Madison Park, Barbara Turner testified that she only had leases starting in 1994, presumably because Madison Park and its predecessors failed to keep accurate rental records. This fact is absolutely clear in this case because Appellants were able to produce leases prior to 1994 – keeping in mind Appellants are two artists having no relationship to the building prior 2010. If Appellants are required to show evidence from 35 years ago, and are able to do so, owners should be held to the same standard. Not requiring this simple level of organization from owners to ensure their rights is their failing to prove their case. In particular, well-heeled institutional developers and owners have the means to do so, not holding owners to this standard means that any owner can omit anything by saying that they simply don't have the information. It's clear that Owners did not have complete accurate records for rental units, so the evidence presented was either mistaken or fraudulent.

It is inconsistent with the OMC Chapter 8.22 Regulations and public policy to require a petitioner tenant to determine this fact to the standard held in the Decision, when the burden truly rests on an owner and the owner cannot provide accurate and complete information at a hearing.

Second, the plain reading of statute requires that it be "newly constructed and received a certificate of occupancy on or after January 1, 1983". Nothing in the statute says that the

property needs to be "formerly entirely non-residential" prior to 1983. It would be void for public policy to allow an owner to gain the benefit of an exemption if the owner has been using a property as a residential unit while it is under construction. Moreover, it makes absolutely no sense to reward owners who put tenants into homes prior to them being deemed habitable or having basic services.

In this case, the evidence shows that electrical and plumbing permits were taken out in 1985 and 1986 respectively. Appellants have shown conclusively that tenants were residing at the Subject Property via testimony from Doug Luchessi and the Report provided by the PI. There has been corroboration of facts between the evidence presented, and there is no question that tenants had been living there prior to a point in time when any Certificate of Occupancy would have been reasonably issued by the City of Oakland. The question is, does allowing owners to rent out units that do not have, or could not have, a Certificate of Occupancy comport with the purpose and intent of OMC Chapter 8.22 Regulations, and moreover does City condone the practice by then offering those owners with the benefit of being an exempt property? The simple answer is, no. Allowing owners to subversively rent out properties for any indiscriminate amount of time prior to getting a Certificate of Occupancy is not in alignment with the purpose or intent of the OMC Chapter 8.22 Regulations. Allowing the City to then give those owners an exemption to rent control would encourage owners to delay pulling required permits and obtaining certificates of occupancy until it suits their purpose. This reading is a disservice to Oakland residents, it puts their safety at risk and it encourages owners not to provide safe housing as is intended by Oakland's Ordinances. This is not what was intended, and it should not be supported by the City.

c. Appellants were denied sufficient opportunity to present their case.

All tenants have limited time, just 30 days, to file a RAP petition, and in this case, they were required to dig up records from over 35 years ago, *and to confirm them*. While it is conceded that extensions were given to Appellants, it should be noted that Appellants, on their limited time and salaries, were unable to find counsel until April 2018, and the final hearing was in May 2018. This is a complex issue requiring an unusual amount of time and expertise given the complexity of the legal arguments and the fact that they needed to acquire and prove facts from 35 years ago. The sheer ability to find residents from the '80s, who had by and large left the Bay Area or even passed away, took a lot of time and effort. And in this particular situation, Appellants were still scrambling to get information in as quickly as possible, and did not have adequate time to follow up on all points addressed in the Decision.

II. Conclusion

For the foregoing reasons, Appellants request that this matter be remanded for a full evidentiary hearing regarding the exemption status of their rental unit.

Dated: August 23, 2018

MILLER FARR & ASSOCIATES

By: _____

S. Elizabeth Miller
Attorneys for Appellants

Cordes v. Madison Park Financial, Case No. T17-036

I, the undersigned, declare as follows:

I am employed by Miller Farr & Associates with a business address at 1300 Clay Street, Suite 600, Oakland, California, 94612. I am over the age of eighteen (18) years of age and not a party to the within action.

On August 23, 2018, I served the enclosed document(s), described as:

TENANT'S APPEAL TO RENT BOARD

☑ BY MAIL: I placed such document(s) in a sealed envelope addressed as indicated above, on the above-mentioned date. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, an envelope containing the foregoing document would be deposited with the U.S. Postal Service with postage thereon fully prepaid, at Oakland, California, on that same day in the ordinary course of business.

☐ BY PERSONAL DELIVERY: I caused such document(s) to be delivered by hand in sealed envelope(s) addressed to the address(es) indicated.

☐ BY FACSIMILE: From facsimile machine telephone number (510) 464-8002, on the above-mentioned date, I served such document(s) by facsimile transmission to the person(s) at the number(s) indicated above and sent a copy by regular mail.

☐ BY E-MAIL: Pursuant to our pattern of communication by electronic communication and by agreement between the Defendant and Plaintiff I caused a copy(ies) of such document(s) to be transmitted via electronic mail from my email address to the address on file for opposing counsel. The email transmission was reported as complete and without error.

To: Barbara Turner
Madison Park Financial
155 Grand Avenue, #950
Oakland CA 94612

Jason Mauck, Esq.
ERICKSON ARBUTHNOT
2300 Clayton Rd., Suite 350
Concord, CA 94520

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 23, 2018, at Oakland, California.

Florinda Larkin

PAHL&MCCAY
A Professional Law Corporation

Stephen D. Pahl
Karen K. McCay
Fenn C. Horton
Catherine S. Robertson
Servando R. Sandoval
Ginger L. Sotelo
Theresa C. Becerra

Sonia S. Shah
Helene A. Simvoulakis-Panos
John A. List
Eric J. Stephenson
Lerna Kazazic
Stephanie Drell
Monisha Oshtory

Sarahann Shapiro
Special Counsel

225 West Santa Clara St., Suite 1500, San Jose, California 95113-1752 • Tel: 408-286-5100 • Fax: 408-286-5722

2530 Wilshire Blvd., Suite 200, Santa Monica, California 90403-4663 • Tel: 424-217-1830 • Fax: 424-217-1854

Reply to: San Jose Office
Sender's Direct Dial No.: (408) 918-2831
Sender's Email Address: lkazazic@pahl-mccay.com

September 20, 2018

Via Electronic & U.S. Mail

Margaret Sullivan
The Oakland Rent Adjustment Program
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
MSullivan@oaklandca.gov

Re: Owner Response to Tenant's Appeal
Case No. T17-0376

Dear Ms. Sullivan:

This office represents Madison Park Financial, Managing Agent for Vulcan Lofts located at 4401 San Leandro Street, Oakland, California (the "Property"). This response is submitted as a response to the appeal filed by Appellants Carver Cordes and Jean Cadwell in Case No. T17-0376.

Although this office appeared on behalf of Owner at the hearings, Appellants' counsel did not serve this office with a copy of the Appeal. Following this improper service, this office did not receive a copy of the Appeal until September 12, 2018. This improper service is demonstrated by the Proof of Service attached to the Appeal. For this reason, Owner's response is being submitted on September 20, 2018.

Appellants appeal the Hearing Officer's decision on the following grounds: 1) the Owner failed to meet its burden that the Subject Property was newly constructed and has a Certificate of Occupancy; 2) the owner failed to meet its burden that the Subject Property was formerly entirely non-residential; and 3) Appellants were denied sufficient opportunity to present their case.

As is extensively and elaborately described in the Hearing Officer's Decision, Owner has gone above and beyond to meet the burden of proof in demonstrating that the Property was newly constructed after 1983 as defined in the ordinance. In addition to the evidence that was presented at the Hearing, the Owner is further submitting the following documents to corroborate that the building was converted into live/work units *after* 1983:

- A Certificate of Occupancy for Building "A" which contains units 1-16 (signed in 1987);

- A Certificate of Occupancy for Building "B" which contains units 17-26 (signed in 1987);
- A Temporary Certificate of Occupancy for Building "C" which contains units 28-49 (signed in April 1987)
- A Notice of Completion, dated June 12, 1987 for all three buildings certifying that the property was rehabilitated and converted into live/work lofts.
- Hearing Decision in Case Nos. T-05-0110;-0119;-0127 & -0146 dated November 2005.
- Appeal Decision dated May 25, 2006 in Case No. T05-0110
- California Court of Appeal Decision titled Vidor v. City of Oakland Community and Economic Development Agency, 2009 Cal. App. Unpub. LEXIS 8016

The failure to present these documents at the time of the hearing was an oversight. In addition, in August 2018, Owner filed a petition with the City to obtain a Certificate of Exemption for the Property and is currently in awaiting response from the City as to this petition. The enclosed documents demonstrate that the Property was an iron foundry (and related office and storage space) until the Property was sold on December 31, 1985 when the new owners applied for building permits and began a major renovation project to convert the previously non-residential iron foundry into residential live/work units. The Vulcan Lofts conversion project passed all final inspections and three building permits for Building A, B, and C were finalized on or around May 1987. A group of tenants attempted to argue that since Building "C" was never issued a certificate of occupancy, said building and the Property was not exempt under Oakland's rent control ordinance. As is confirmed by the attached Court of Appeal decision, the overwhelming evidence demonstrates that the entire Property was non-residential prior to the original owners' acquisition in 1985. While there is no certificate of occupancy for Building C for some unknown reasons that are addressed in the attached decisions, all three buildings were renovated and ready for residential occupancy after 1985. For purposes of this response, Appellants' unit is located in Building B, which has a Certificate of Occupancy that was issued in 1987.

Appellant's appeal contains numerous gross misstatements of fact surrounding their allegations that individuals resided at the Property prior to 1983. First, Appellants allege that Appellants' counsel presented a signed declaration containing a Report from a private investigator, which was corroborated by Appellants' counsel. The declaration, which was signed by Appellants' counsel and *not* the private investigator, simply declares that Appellants' counsel hired a private investigator to determine whether anyone had lived at the Property prior to 1983. The Report itself is not signed under penalty of perjury and identifies that two individuals "possibly" resided at the Property between 1978 and 1984. As stated by the Hearing Officer, "possibly" is not sufficient standard. Second, Appellants' allege the Dan Fenton resided at the Property in the mid-80's; however, the signed declaration of Patti O'Doherty-Robin states that she lived in a live/work studio with her partner Dan Fenton from 1995-1998 and that he lived there for "many years" before she met him, with no indication that anyone lived at the Property

before 1983. In addition, testimony provided by Doug Luchessi further did not establish that anyone lived at the Property before 1983.

Contrary to Appellants' allegations in their Appeal, Appellants did not make a prima facie showing that residents were living at the Property prior to 1983. Owner provided sufficient evidence to demonstrate that the Property was entirely non-residential prior to 1983; Appellants were unable to rebut this evidence and now accuse the Owner of presenting evidence that was either mistaken or fraudulent, again without a single iota of evidence.

Finally, Appellants contend that they were denied sufficient opportunity to present their case. The first hearing was held on November 20, 2017 and a supplemental hearing was set for January 19, 2018. The supplemental hearing was set in order to give Appellants further opportunity to gather evidence supporting their contention tenant previously lived at the Property prior to 1983. Before the supplemental hearing could be held, Appellants filed a request to continue the hearing and the matter was continued to March 9. 2018. To again provide Appellants further time to gather evidence. After that, Appellants filed two additional requests to continue the matter and the hearing was finally held on May 14, 2018. Appellants represented to the City that these continuances were necessary to provide them additional time to secure necessary evidence that they needed. Appellants had nearly a year from the point that the petition was filed until the final supplemental hearing. Appellants now allege that they were denied sufficient time to find residents from the '80s and secure this evidence, simply because such evidence does not exist. This demonstrates that Appellants filed this petition without any evidence or basis and had after filing the petition, expected to find evidence of their hypothetical theory, which is untrue. Even as of this date, Appellants have submitted no evidence supporting their position.

For the foregoing reasons, the Hearing Officer's Decision should be upheld and this matter should not be remanded for a further hearing as the Property is exempt from the Oakland Rent Adjustment Program.

Sincerely,

PAHL & McCAY
A Professional Law Corporation

Lerna Kazazic

LLK/lk
Enclosures
cc: Clients
*4693/001 - 00644995.DOCX.1

CERTIFICATE OF OCCUPANCY BLDG. "A"

DO NOT TYPE UNTIL APPROVED:

CITY OF OAKLAND
BUILDING AND HOUSING DEPARTMENT

CERTIFICATE OF OCCUPANCY

Bldg. "A"

(Date Issued) October 12 19 87

THIS IS TO CERTIFY that the CHECK B-2/R-1 TYPE V-N w/ sprinklers 1 STORY building

4401 San Leandro St, Bldg "A" which is owned

Ventana Properties (Owner's Name) Artist's Live-Work units

2225 Mason St (Owner's Address)

Berkeley, Ca. 94707 (City, State)

FIRE ZONE ____ USE ZONE M-30 OHC Variance No. ____ Dated ____ 19 ____

Building Permit No. 04/4269 Building Completion Date 5/27/87 has been inspected

and the following occupancy thereof is hereby authorized:

	Occupancies:	Number Habitable Rooms
Cellar	See Attached Sheets	
Basement		
____ Story		
____ Story		
____ Story		
____ Story		
____ Story		
Add Story as necessary		

Prior Cert. of Occup. ____ Date ____ TOTAL 15

Prior Cert. of Occup. void on ____ Rental Units (Yes or No) ____

Re-Inspt. Dates ____ License (Yes or No) ____

PARKING: Number of Detached Off-Street Parking spaces provided: ____

MTB Crew
(Bldg. Inspector) (Housing Representative)

APPROVED: ____
(Supervising Building Inspector)
(Supervising Housing Representative)
(Senior Housing Representative)

007-00 (REV. 4/72)

000030

Occupancy	# of Units
1st Story Kitch-Live Area, Bath	1
Mezz Sleeping Work Area	0
Unit #2 - Same as Unit #1	1
Unit #3 - Kitchen, work area, Bath,	1
mezz - Live Area	1
Unit #4 1st Story work Area	0
Mezz - Kitch - Live Area, Bath	1
Unit #5 - 1st Floor - work Area, Bath	0
Mezz - Kitchen, Bedroom, Bath	2
Unit #6 - Kitchen, Bath, work area	1
mezz - Bedroom	1
Unit #7 - Work Area (1st Floor)	0
Unit #8 - " " (")	0
Unit #9 - 1st Floor Cafe / Kitchen, Dining Area	1
Unit #10 - 1st Floor work area, Kitchen, Bedroom, Bath	1
Unit #11 1st Floor Kitchen, work Area, Bath	1
Mezz - Living Area - Bedroom	1
Unit #12 - Same as # 11	1
Unit #13 - 1st Floor - work Area	
Mezz - Bath, work Area	
Unit #14 Same as #13	
Unit #15 - work Area	
Unit #16 " "	
	10

CERTIFICATE OF OCCUPANCY BLDG. "B"

CITY OF OAKLAND
BUILDING CERTIFICATE OF OCCUPANCY

No. _____ 9 February 19 11

THIS IS TO CERTIFY that the GROUP R-2/R-1 TYPE V- ? 1 STORY building

on Canal San Leandro St. which is owned

by Valeen Properties
2225 Marin St
Berkeley, Ca. 94707

Artists Live-work units

In FIRE ZONE _____ USE ZONE M-30 OHC Variance No. _____ Dated _____

Building Permit No. Den760 Building Completion Date 11-7-11 has been inspected

and the following occupancy thereof is hereby authorized:

Occupancies:	Number Habitable Rooms
Cellar (See Attached)	
Basement	
____ Story	
____ Story	
____ Story	
____ Story	
____ Story	
Add Story if necessary	
Prior Cert. of Occup. _____ Date _____	TOTAL
Prior Cert. of Occup. void on _____	Rental Units (Yes or No)
Re-Inspr. Dates _____	License (Yes or No)

_____
Chief Building Inspector

The Certificate of Occupancy shall not be construed as authority to violate, cancel, alter or set aside any of the provisions or requirements of any laws or ordinances of the City of Oakland nor shall such issuance thereafter prevent requiring corrections of errors or of violations of any applicable law or ordinance of the City of Oakland.

Necessary licenses shall be obtained, as this Certificate does not of itself constitute a license.

Parcel # 041760

	# of Units
Occupancies	
Unit #17 – 1st Story – work area	0
Unit #18 – 1st Story – work Area + Shop	0
mezz – kitchen, Living – Bedroom, Bath	2
Unit #19 – 1st Story – kitchen, Bath, work area	1
mezz – Living – Bedroom Area	1
Unit #20 – 1st Story – Bedroom, Bath, work Area	1
mezz – Kitchen, Living Room	1
Unit #21 – 1st Story – work Area	0
mezz – kitchen, Living – Bedroom Area, Bath	2
Unit #22 – 1st Story – work Area, Bedroom	1
mezz – kitchen, Living Area, Bath	2
Unit #23 – 1st Story – 2 work Areas	2
mezz – kitchen, Living – Bedroom Area, Bath	2
Unit #24 – 1st Story – Shop Area	0
mezz – work Area, Bath	
Unit #25 – 1st Story – work Area	
1st mezz – Bedroom, 2nd mezz – kitchen, Bath	2
Unit #26 – Same as #25	

TEMPORARY CERTIFICATE OF OCCUPANCY BUILDING "C"

CITY OF OAKLAND
BUILDING AND HOUSING DEPARTMENT
Building Division
City Hall • 1421 Washington Street
Oakland, CA 94612

SUBJECT: TEMPORARY CERTIFICATE OF OCCUPANCY

A Temporary Certificate of Occupancy is requested for the following portion(s) of the building at:

(Address) 4401 San Leandro St Bldg "C" (Permit No.) D43880

Describe requested area by floor, room, or other method: #28, 29, 30, 31, 32, 33 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49

Length of Time Requested: 35 Days

I will submit this form to the Building Section of the Building and Housing Department after approval has been granted by ALL of the agencies listed below and prior to the temporary occupancy of the area(s) described above.

Name (Please Print) Vulcan Products

Address 4401 San Leandro St.

City Oakland State Ca. Zip 94601

Phone Number 536-6680 Date 4/21/87

Signature of Requestee

To the Personnel of the following agencies: Please sign and date where indicated if above request has been approved by you. If you cannot approve the request, indicate why not, IN DETAIL, under "Remarks." If additional space is needed under "Remarks," use back side or attach another sheet and so note.

Agency	Phone No.	When Approved Sign and Date	Remarks
Fire Prevention Bureau	273-3851		
Plumbing Section	273-3291	[illegible] 4-22-87	
Mechanical Section	273-3291	[illegible] 4/22/87	030.192
Electrical Section	273-3341	RK 4/22/87	
Zoning Division	273-3911	[illegible] 4/22/87	
Engineering - Underground	273-3437	N/A	
[illegible]ding Section	273-3441	[illegible] 5/[illegible]	
Other:			

12/3/81

CITY OF OAKLAND
BUILDING AND HOUSING DEPARTMENT
Building Division
City Hall, 1421 Washington Street
Oakland, CA. 94612

SUBJECT: TEMPORARY CERTIFICATE OF OCCUPANCY

A Temporary Certificate of Occupancy is requested for the following portion(s) of the building at:

(Address) 4401 SAN LEANDRO ST (Permit No. B 0405362

Describe requested area by floor, room, or other method: UNIT 5, 52 AND 52

Length of Time Requested: 60 DAYS

I will submit this form to the Building Section of the Building and Housing Department after approval has been granted by ALL of the agencies listed below and prior to the temporary occupancy of the area(s) described above.

Name (Please Print)

Address

City Zip

Fire Prevention Bureau

Plumbing Section 273-3791

Mechanical Section 273-3791

Electrical Section 273-3141

Zoning Division 273-3911

Engineering-Underground 273-3417

Building Section 273-3444

Others

12/3/81

000087

CITY OF OAKLAND
BUILDING AND HOUSING DEPARTMENT
Building Division
City Hall - 1421 Washington Street
Oakland, CA 94612

SUBJECT: TEMPORARY CERTIFICATE OF OCCUPANCY

A Temporary Certificate of Occupancy is requested for the following portion(s) of the building at:

(Address) 4401 S. Lincoln Ave. (Permit No.) B8706-1

Describe requested area by floor, room, or other method: UNIT [illegible]

Length of Time Requested: [illegible]

I will submit this form to the Building Section of the Building and Housing Department after approval has been granted by ALL of the agencies listed below and prior to the temporary occupancy of the area(s) described above.

Name (Please Print) J F Offield

Address 4401 Lincoln Ave.

City Oakland State CA Zip [illegible]

Phone Number [illegible] Date 2-1-88

Signature of Requestor [signature]

To the Personnel of the following agencies: Please sign and date where indicated if above request has been approved by you. If you cannot approve the request, indicate why not, IN PENCIL, under "Remarks." If additional space is needed under "Remarks," use back side or attach another sheet and so note.

Agency	Phone Number	When Approved Sign and Date	Remarks
Fire Prevention Bureau	273-3851	2-3-88 [signature]	
Plumbing Section	273-3291	2/3/88 [signature]	
Mechanical Section	273-3291	2/3/88 [signature]	
Electrical Section	273-3341	RK 2-3-88	
Zoning Division	273-3911	Anita D. Nichols 2/3/88	
Engineering - Underground	273-3437		
Building Section	273-3441	[signature] 2/3/88	

Other:
12/3/81

NOTICE OF COMPLETION

87-166924

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

Name JAMES ALEXANDER
Street Address 200 PANORAMIC WAY
City & State BERKELEY, CA. 94704

FILED IN OFFICIAL RECORDS
ALAMEDA COUNTY, CALIF.
LEE D. DAVIDSON, CO. RECORDER

'87 JUN 12 PM 1 48

4/1

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF COMPLETION

Notice pursuant to Civil Code Section 3093, must be filed within 10 days after completion. (See reverse side for Complete requirements.)

Notice is hereby given that:

1. The undersigned is owner or corporate officer of the owner of the interest or estate stated below in the property hereinafter described:
2. The full name of the owner is ALEXANDER-ORTON PROPERTIES, A CALIFORNIA LIMITED PARTNERSHIP
3. The full address of the owner is 4401 SAN LEANDRO ST. OAKLAND, CA 94601
4. The nature of the interest or estate of the owner is: in fee.

(If other than fee, strike "in fee" and insert, for example, "purchaser under contract of purchase," or "lessee")

5. The full names and full addresses of all persons, if any, who hold title with the undersigned as joint tenants or as tenants in common are:

NAMES ADDRESSES

6. A work of improvement on the property hereinafter described was completed on MAY 27, 1987. The work done was: REMODEL 5 BUILDINGS AT 4401 SAN LEANDRO ST. OAKLAND, CA
7. The name of the contractor, if any, for such work of improvement was ALEXANDER CONSTRUCTION

(If no contractor for work of improvement as a whole, insert "none".) OCTOBER 1, 1985 (Date of Contract)

8. The property on which said work of improvement was completed is in the city of OAKLAND, County of ALAMEDA, State of California, and is described as follows: 5 BUILDINGS WITH A TOTAL OF APPROXIMATELY 103,000 SQUARE FEET FLOOR AREA
9. The street address of said property is 4401 SAN LEANDRO ST OAKLAND

(If no street address has been officially assigned, insert "none".)

Dated: MAY 27, 1987
Verification for Individual Owner

ALEXANDER-ORTON PROPERTIES
LTD

Signature of owner or corporate officer of owner named in paragraph 2 or his agent

VERIFICATION

I, the undersigned, say: I am the PARTNER OF ("President of", "Manager of", "A partner of", "Owner of", etc.) the declarant of the foregoing notice of completion; I have read said notice of completion and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6/7/ (Date of signature), 19 87 at OAKLAND (City where signed.), California.

(Personal signature of the individual who is swearing that the contents of the notice of completion are true.)

Certification of Complete Building Rehabilitation in 1987 4401-4437 San Leandro Blvd. January 17, 1997

I hereby certify that from approximately January, 1985 until April, 1987, Alexander-Orton Properties, dba Vulcan Properties, completely rehabilitated the property 4401-4437 San Leandro St., Oakland, California 94601.

These properties had been in use in their entirety as a foundry and were converted in their entirety to artist loft and live/work. We have photos and slides in our office which show the actual foundry work being done in the period immediately prior to our purchase. A use permit amendment was received and is attached as exhibit A.

The project was done using a series of building permits. The building inspector on the property was Harry Blow. All the current codes were met by the construction, including the prevailing seismic code. As part of the construction, seismic upgrading including steel bracing, plywood sheer walls, anchoring, and reinforcement of parapets.

The construction budget exceeded the purchase price of the building and was a sufficiently large amount to require upgrade of the entire premises to the then current code. In addition, as one of the first conversions to live/work in Oakland, the project was considered a change of use to R use for building code purposes. The City of Oakland has plans and permits reflecting the facts in this certification.

I certify this to be true and correct.

J.R. Orton, III
President, General Partner Alexander-Orton Properties, LP

File:I/Vulseism

HEARING DECISION

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA, SUITE 5313, OAKLAND, CALIFORNIA 94612-2034

Community and Economic Development Agency(510) 238-3721
Rent Adjustment Program

FAX (510) 238-3691
TDD (510) 238-3254

HEARING DECISION

CASE NUMBERS: T05-0110; -0119; -0127 & -0146 (Peacock, Vidor, Mignaud & Cotton-Burnett v. Vulcan Props. LP)

PROPERTY ADDRESS: 4401 San Leandro St., #s 45, 29, 19, & 54, Oakland, CA

HEARING DATES: June 22, 2005 and September 29, 2005

APPEARANCES:
Jason Peacock (Tenant)[1]
Richard Vidor (Tenant)
Philip Mignaud (Tenant)
Rebecca Cotton-Burnett (Tenant)
Carrie Orange (Witness for Tenants)[2]
Robert Lavezzo (Witness for Tenants)[3]
Janel Lavezzo (Witness for Tenants)[4]
Nancy M. Conway (Attorney for Tenants)
Sandra Kablitz (Agent & Witness for Landlord)[5]
Troy Peterson (Agent for Landlord)
Dean G. Miller (Attorney for Landlord)
Manuel A. Martinez (Attorney for Landlord)[6]
Ray Derania (Witness)[7]

INTRODUCTION

This consolidated matter involves petitions filed on April 26, May 2, May 6, and May 23, 2005 by tenants who contest current and prior rent increases that they claim exceed the Consumer Price Index (CPI) Rent increase authorized by the Rent Adjustment Ordinance and Regulations. Tenant Jason Peacock also alleges decreased housing services.

[1] Appeared only on June 22, 2005
[2] Appeared only on June 22, 2005
[3] Appeared only on June 22, 2005
[4] Appeared only on June 22, 2005
[5] Appeared only on June 22, 2005
[6] Appeared only on September 29, 2005
[7] Appeared only on September 29, 2005

The landlord, in response to the petition, contends that the tenants' units are exempt from the Rent Ordinance because the units were "newly constructed."

The persons listed above appeared at the hearing and were given full opportunity to present relevant evidence and argument. All persons other than the attorneys testified under oath.

THE DECISION

The petitions are dismissed. The tenants' units are exempt from the Rent Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background: The tenants rent live-work units in adjacent buildings owned by the landlord, consisting of a total of 59 units. The tenants moved into their units at various times and at varied rent levels.

The landlord contends that, prior to the year 1985, the property on which the tenants' units are located ("the property") was used as a metal foundry. In the year 1985, the landlord purchased the property in order to convert the buildings on the property to artist live-work units. This conversion began in 1985, pursuant to a series of building permits. The landlord contends that Certificates of Occupancy were either issued or should have been issued in the years 1987 and 1988.

The tenants contend that the property is not exempt from the Ordinance, since the legal requirements for exemption have not been met.

Are the Tenants' Units Exempt as "New Construction"?: Dwelling units are not "covered units" under the Ordinance if such units "were newly constructed and received a certificate of occupancy on or after January 1, 1983. To qualify as a newly constructed dwelling unit the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential."[8] "Newly constructed units include legal conversions of uninhabited spaces not used by Tenants, such as . . . Spaces that were formerly entirely commercial."[9] A landlord has the burden of proving that a dwelling unit is exempt.[10]

Notice Requirements: An owner of any covered unit is required to give a tenant written notice of the existence and scope of the Rent Adjustment Program (RAP) both at the commencement of the tenancy[11] and concurrent with any notice of rent increase.[12] If the required notices have not been provided, any proposed notice of rent increase is invalid.

[8] O.M.C. 8.22.030(A)(5)
[9] Regulations, Section 8.22.030(B)(2)(a)(iv)
[10] O.M.C., Section 8.22.030(B)(1)(b)
[11] O.M.C. 8.22.060(A)

At the hearing, the landlord's attorney admitted that the tenants were never provided notice of the RAP. Therefore, if the tenants' units are subject to the Ordinance, all contested rent increases will be disallowed.

THE FIRST DAY OF HEARING

The Landlord's Evidence:

Testimony of Sandra Kablitz: Ms. Kablitz has been employed as the landlord's property manager since September, 2004, and she is the custodian of records for the property. In approximately May of 2005 she met with Gary Lim, a representative of the City Building Department, regarding building permits and Certificates of Occupancy for units on the property. The City file contained neither building permits issued during the 1980's nor Certificates of Occupancy, and only a document entitled Temporary Certificate of Occupancy for Units 1 through 26. There appeared to be a significant gap in the City records for the time during which she believes the live-work conversions occurred.

Following this meeting, Ms. Kablitz reviewed the files in her office. These files contained Landlord Exhibit No. 1, a group of 13 documents. She has no knowledge of how or when these documents came to be placed in the files. Ms. Kablitz then photocopied these 13 documents and gave them to Mr. Lim, who placed them in the City file for the subject property, where they remain to date.[13]

Ms. Kablitz also asked Mr. Lim if Certificates of Occupancy could now be issued. She was informed that new inspections and, if necessary, new Building Permits would first be required.

Testimony of Troy Peterson: Mr. Peterson is employed as the Project Manager for Orton Development, a legal entity that, for present purposes, is the equivalent of the landlord. Part of his job is to oversee improvements and repairs in the subject buildings, and he has met with a number of City officials, including Building Department officials and an Assistant Fire Marshall.

He has asked such officials if Certificates of Occupancy could now be issued, and was told that a new inspection by the Building Department would be required. An inspection took place in his presence in June of 2005, and several units did not pass inspection due to damage and tenant improvements that were made without permits. Mr. Peterson has since presented a compliance plan to senior officials of the Building Department.

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[12] O.M.C. 8.22.070(H)

[13] Several of these documents were introduced into evidence as Tenant Exhibits, and all were observed by the Hearing Officer, who reviewed the file following the hearing, in accordance with a stipulation of the parties' attorneys at the hearing.

Relevant Documents:

The landlord's Exhibit "1" includes the following documents regarding the property[14]:

Pages 1 & 2 – Certificate of Occupancy, Bldg "A"; Units 1-16; Bldg. Permit No. D41469; dated October 12, 1987

Page 4 & 5 – Building Certificate of Occupancy; Units 17-26; Bldg. Permit No. D41760; dated October 12, 1987

Page 6 – Building Permit Application, No. D41760; Change to "R" Building "B" Artists Studios; issued 12/20/85; Final Inspection _____, 1987

Page 7 – Temporary Certificate of Occupancy; Permit No. D 43880; Building "C"; Units 28-49; signed on various dates in the year 1987

Page 8 – Temporary Certificate of Occupancy; Permit No. B 8765362; Units 51 & 52; signed on various dates in the year 1988

Page 9 – Temporary Certificate of Occupancy; Permit No. B 87_____; Units _____; signed on various dates in the year 1988

Page 10 – Building Permit Application, No. D43880; Building "C" Artist Studios; issued 8/29/85; Final Inspection _____, 1987

Page 11 – Building Permit Application, No. B8705362; Building "B" Artist Studios; filed 10/28/87; Final Inspection _____

Both the landlord (Exhibit No. 3, p. 1 & 2) and the tenants (Exhibit No. 14, p. 1 & 2) introduced a 2-page document entitled "3rd Report Worksheet." This document, which Ms. Kablitz testified is contained in the Building Department file (but was not provided by Ms. Kablitz), lists building permits on file, spanning the years 1934 through 2003. Included in the list of permits are the following:

No. B 8765362; Issued 10/29/87; Convert 1 Commercial to 3 Units; Ex 4/15/92
No. B 8800132; Issued 1/14/88; Convert Warehouse to Live/Work; Ex 9/17/90
No. D 41469; Convert 6 Rms Bldg "A" to Artist Studios; 5/27/87
No. D 43880; Convert Bldg "C" to Artist Studios (21); 5/28/87
No. D 41760; Convert Bldg "B" to Artist Studios; 5/27/87

Pursuant to a stipulation at the hearing, the Hearing Officer reviewed, and took official notice of the file of the Oakland Permit Center with regard to the subject property. The file contained pages 1 through 11 of Landlord Exhibit No. 1, as well as Landlord Exhibit No. 3.

[14] Certified copies of these documents, which are generally more legible than those introduced as Landlord's Exhibit No. 1, were also submitted by the landlord on September 22, 2005.

The Tenants' Evidence: At the first hearing, the tenants introduced the following documents from the file of the Building Department concerning the subject property:

Tenant Exhibit No. 1, p. 2 – Hand-written notations on a typed letter from the landlord to Mayor Brown and Calvin Wong, the former director of Building Services, concerning the subject property. The notations say, in part: "Permits never finaled. No evidence of CO's [Certificates of Occupancy] for any units." It is unknown who made these hand-written notations, or when this was done.

Tenant Exhibit No. 2 – A typed document entitled "Application Review History." Following the date 5/9/03 is the notation: "Appears that no legal conversion to live/work was ever permitted. Applications and permits have all expired w/o finals . . ."

Tenant Exhibit No. 3 – A Declaration signed by tenant Rebecca Cotton, stating that a former property manager told her in the year 1998 that the subject units were not technically legal residencies, and that she dealt with Sandra Kablitz regarding the property for at least 3 years.

Tenant Exhibit No. 4 – A form entitled "Certificate of Occupancy." Witness Janel Lavezzo testified that during the lunch break she went to the Building Department, requested a sample Certificate of Occupancy, and was given this document. The form is significantly different from the Certificates of Occupancy introduced by the landlord.

Tenant Exhibit No. 7, p. 1 – A document entitled Update/Query Complaint Inspection History, generated by the Building Department, concerning complaints in the year 2003. This document states, in relevant part, "live/work w/o permits," as well as citing several apparent Code violations.

Tenant Exhibit No. 12 – A Building Permit application from Peter Smith, 4401 San Leandro St., #5, filed 4/13/87 for "construction of storage loft above bathroom in existing live-work studio." The application expired on an unknown date.

Tenant Exhibit No. 13 – A group of 4 blank printed documents, including "Application for Certificate of Occupancy" and "Temporary Certificate of Occupancy." In the lower left-hand corner of the first document is the date "7/04," and on the second the date "6/02."

Tenant Exhibit No. 14 – The tenants note the hand writing on the bottom of page 1: "No CO's issued for conversions only TCO's. New CO's should be applied for." This was written by an unknown person at an unknown time.

Tenant Exhibit No. 15, page 2 – A document entitled "Update/Query Project Information," dated 6/22/05, concerning Building Permit No. B8800132. This document states, in part: "Date filed: 1/14/88 . . . Ax Appl Expire 9/17/90 . . . Convert Warehouse to Live/Work Artist Studio."

The Parties' Contentions at the First Day of Hearing: The position of the landlord was that the presentation of building permits, which appeared to show that the work was completed and approved on final inspection, together with documents entitled "Certificate of Occupancy" and "Temporary Certificate of Occupancy," was enough to satisfy the standard of "new construction" as required by the Ordinance. The issuance of Certificates of Occupancy was a mere formality and, in any case, the landlord should not suffer due to the City's apparent problems in maintaining its files.

The tenants' attorney argued that there was no evidence that the documents in the landlord's file were authentic, and all such documents should be excluded by the "Hearsay Rule." She further believed that the signature on many of the Building Permits, which appears to be "Harry Blow," casts further doubt upon the reliability of these documents. Therefore, the landlord had not met its burden of proof.

THE SECOND DAY OF HEARING

Background: Following the first day of Hearing, and upon review of the evidence, it became apparent to the Hearing Officer that additional evidence was necessary in order to render a fair decision. Although many of the documents presented by the landlord appeared to be genuine, they are dated nearly 20 years ago, and there was no evidence of their authenticity or significance. Further, both the landlord and tenants presented witnesses who testified to conversations between themselves and various employees of the City.

The essence of the tenant witness testimony is that they were told by City employees that the documents presented by the landlord did not appear to be customary forms and that Certificates of Occupancy were probably never issued. The landlord witnesses related conversations to the contrary. However, neither the landlord nor the tenants offered the testimony of a single City employee. This is hardly the best evidence upon which to decide the important issues presented in this case.

Therefore, the hearing was re-opened. Claudia Cappio, the Director of Development of the Community and Economic Development Agency, was asked in writing to produce the person most knowledgeable concerning the practices of the Building Services Department in the mid- and late-1980's to testify at the continued Hearing. In response to this request, Mr. Ray Derania appeared and testified at the second day of Hearing.

The attorney for the tenants objected, both in writing and at the Hearing, to the decision to hold a continued Hearing, and particularly to the testimony of Mr. Derania. She also objected to the landlord's submission of additional documents following the first hearing, on the ground that they should have been submitted no less than 7 days prior to the first hearing, rather than 7 days prior to the second hearing.

Witness Testimony: Ray Derania is an engineer, who has been employed by the Building Department since 1990. His current job title is Code Compliance Manager. He

is familiar with the practices of the Department from 1984 through the late 1980's, and he has known Harry Blow, a retired Building Inspector with the Department, for many years. He is also familiar with Mr. Blow's signature.

At the hearing, Mr. Derania was shown the following documents and asked questions regarding their significance in the mid- and late-1980's. He testified that all of these documents appear to be forms used by the Building Department in the mid- and late-1980's. Many of them were still in use when Mr. Derania began his employment in the year 1990. Significant portions of his testimony are as follows:

Landlord Exhibit No.1, pages 1 & 2, entitled "Certificate of Occupancy" is actually a worksheet prepared by a Building Inspector prior to the issuance of a Certificate of Occupancy. The worksheet is then reviewed by a supervisor and, if approved, the Certificate is then typed. The worksheet is generally approved, although it is sometimes revised before approval. This exhibit contains the code B-2/R-1, which reflects a change of use from commercial space to multi-family residential use. The document concerns Building "A" (Units 1 through 16), and is signed by Harry Blow.

Landlord Exhibit No. 1, pages 4 & 5, is an actual Certificate of Occupancy for Units 17 through 26.

Landlord Exhibit No. 1, page 6, is a Building Permit Application / Building Permit for Building "B." The document reflects the change of use of an existing building to residential. The description of the proposed construction, in the upper right corner of the document, is supplied by the person applying for the permit. Writing in the lower right-hand corner indicates that there was a final inspection ("finalized"). Thereafter, the Certificate of Occupancy being Exhibit No. 1, pages 4 & 5 was issued.

Landlord Exhibit No. 1, pages 7, 8 & 9, are entitled Temporary Certificate of Occupancy. Page 7 covers Building "C," being Units 28 through 49; page 8 covers Units 51 and 52; page 9 appears to cover Unit 50. This document issued before a building permit is "finalized," if there are no unsafe conditions. The building can be occupied temporarily, pending completion of any remaining work. However, the fact that such a certificate was issued does not mean that either the Building Permit was finalized or that a Certificate of Occupancy was issued.

Landlord Exhibit No. 1, page 10, is a Building Permit for Building "C" that has been "finalized." The codes reflect alteration of an existing building, although there is no indication of the existing use of the building.

Landlord Exhibit No. 1, page 11, is a "finalized" building permit for the conversion of 1 commercial unit to 3 residential units. On the form, the number 59 is written on the line headed "Number of Units."

A Building Permit is a two-sided document, and many of the permit copies that are the above exhibits do not reflect the back of the permits. Therefore, Mr. Derania was also

questioned concerning exhibits attached to the Declaration of Harry J. Blow, submitted by the landlord on September 22, 2005. Mr. Derania testified that the back sides of Exhibits No. 1 (Building "A"), No.2 (Building "B") and No. 3 (Building ("C") attached to the Blow Declaration are all signed under the heading "Final OK."

Mr. Derania explained that, if a building permit is signed off ("finalized"), this triggers the preparation and issuance of a Certificate of Occupancy for both new buildings and buildings with a change of use, such as from commercial to residential. There is nothing else to be done by the property owner.

It is "unusual" for a Certificate of Occupancy not to be approved once a permit is finalized. However, Mr. Derania has known of situations in which the paperwork leading to a Certificate of Occupancy was not typed up after a building permit was finalized, due to clerical oversight. Additionally, many Building Department documents were lost in the 1989 earthquake. In sum, it is more likely than not that Certificates of Occupancy were issued for Buildings "A," "B," and "C."

Building Department files were routinely recorded on microfilm prior to the year 1989. There has been little if any microfilming of records since that time. The witness noted that, if there had been residential use of the subject buildings prior to the issuance of the Building Permits in question, the Department file, including microfilmed records, would contain prior building permits. No such records are contained in the file, nor are any such permits listed in Tenant Exhibit No. 14 (3R Report Worksheet – an itemized listing of all building permits) prior to the year 1987.

The abbreviation "Ex" (meaning "Expired") is written on Page 1 of Tenant Exhibit No. 14 regarding the status of two of the relevant building permits. Also, hand-written on the bottom of this page is the notation "No COs [Certificates of Occupancy] issued for conversions only TCO's. New C.O.'s should be applied for." However, it is unknown when this was written, or by whom.

Mr. Derania stated that, since the Building Permits were finalized, it is likely that the Building Department employee(s) who wrote "Ex" and the hand written notation only checked the computer – which showed that the expiration date had passed – but had not checked the actual permits. Further, there is no indication on Tenant Exhibit No. 14 that permits had been issued or approved regarding residential use before the year 1985, when the present landlord purchased the property.

Finally, Mr. Derania testified that, if a microfilm record were legible, the Building Department could issue a retroactive Certificate of Occupancy. This would be accomplished by a Department representative conducting a "walk-through" of the premises. If everything were satisfactory, a Certificate would likely be issued.

The Tenants' Contentions at the Second Hearing:

(1) The landlord has the burden of proving that the tenants' units are exempt from the Rent Ordinance, and this burden was not met on the first day of hearing. Therefore, it was improper for the Hearing Officer to, in effect, give the landlord a second opportunity to prove its case.

(2) The second day of hearing should not have been continued at the request of the attorney for the landlord, since this enabled the landlord to obtain additional evidence.

(3) Only documents that were filed seven days prior to the first hearing should be considered. This is the intent of the Rent Ordinance, especially in view of the fact that all of the late-submitted evidence was available to the landlord at the time of the first hearing. Therefore, the Declarations of Harry J. Blow, Manuel A. Martinez and J. R. Orton, Jr. – and the documents attached to these Declarations – should be disregarded.

(4) If the lack of Certificates of Occupancy was merely a clerical or administrative error, the landlord should be have been able to have the Certificates issued. Since the landlord has not done so, the requirements of the Ordinance have not been met and the tenants' units are covered under the Rent Ordinance.

(5) The fact that a Building Permit Application was submitted by Peter Smith in April of 1987 – which proposes work in an "existing live-work studio" – is proof that the subject premises were residential before the landlord applied for any Building Permits. Therefore, the tenants' units were not "created from space that was formerly entirely non-residential" prior to the landlord's construction activities and they are not exempt from the Rent Ordinance.

(6) Much of Mr. Derania's testimony and many of the landlord's exhibits should be excluded as "hearsay."

DISCUSSION

Conduct of the Hearing:

One of the stated purposes of the Rent Ordinance is "encouraging investment in new residential property in the City."[15] Therefore, claims of exemption based upon "new construction" must be carefully scrutinized by the Hearing Officer.

A Hearing Decision should be based upon the best available reliable evidence. If the parties do not present such evidence, it is proper for the Hearing Officer to take reasonable steps to ensure that all available evidence is considered when ruling upon a claim of exemption. All judges, including Hearing Officers, have the inherent power to call witnesses in order to determine the truth. This common law policy was codified as Evidence Code Section 775, and interpreted by reported cases.

[15] O. M. C. Section 8.22.010(C)

Evidence Code Section 775 states, in part: "The court, on its own motion . . . may call witnesses and interrogate them the same the same as if they had been produced by a party to the action . . ."

> Section 775 itself merely codifies traditional case law. Numerous courts . . . have recognized that it is not merely the right but the duty of a trial judge to see that the evidence is fully developed . . . and to assure that ambiguities and conflicts in the evidence are resolved insofar as possible.[16]

Admissible Evidence:

The rules of evidence that govern hearings of the Rent Adjustment Program are set forth in the California Administrative Procedures Act (Government Code, Section 11513).[17] Applicable portions of the Act state as follows:

> (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. 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, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions . . .

Hearsay Evidence:

"'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. . . . (b) Except as provided by law, hearsay evidence is inadmissible."[18] Therefore, although a writing is "hearsay," certain writings are nonetheless admissible evidence. Such exceptions to the "hearsay rule" include a writing made in the regular course of business[19] and a writing made by and within the scope of duty of a public employee.[20]

Evidence Code Section 1280 states:

"Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered . . . to prove the act, condition, or event if all of the following applies:

(a) The writing was made by and within the scope of duty of a public employee.

[16] People v. Carlucci, 23 Cal.3d 249, 255 (1979)
[17] Regulations, Section 8.22.110(E)(4)
[18] Cal. Evidence Code, Section 1200
[19] Cal. Evidence Code, Section 1271
[20] Cal. Evidence Code, Section 1280

(b) The writing was made at or near the time of the act, condition, or event.
(c) The sources of information and method and time of preparation were such as to indicate its trustworthiness."

The Evidence:

The attorney for the tenants objects to the Declarations of Harry J. Blow, Manuel A. Martinez, and J. R. Orton, Jr., which were filed by the landlord after the first day of hearing. This objection is sustained, and these documents are excluded as being untimely filed. However, some of the documents attached to Mr. Blow's declaration, being the backs of building permits previously submitted by the landlord as Exhibit No. 1, will be considered in that Mr. Derania testified as to their significance.

Mr. Derania's testimony was based upon his personal knowledge, and the documents that he authenticated and discussed were made by public employees. Therefore, this evidence is admissible as an exception to the Hearsay Rule, under the legal standards set forth above.

The Building Permit Application of Peter Smith, submitted in the year 1987, proves nothing. The landlord had applied for all relevant building permits (Landlord Exhibits Nos. 1 thru 10) in the year 1985.

Mr. Derania credibly testified that the Building Department records that he was shown – as itemized on pages 4, 5, 7 and 8 above – contain no building permit applications, or reference to such applications, for residential use of the property prior to the year 1985. This testimony was not contradicted, and therefore the landlord has proven by a preponderance of the evidence that the tenant units were formerly entirely commercial in nature.

The uncontradicted testimony of Mr. Derania is that all building permits for the three buildings on the property were "finalized." He stated that, once a building permit is "finalized," it was the normal procedure of the Building Department for a Certificate of Occupancy to be issued. Mr. Derania further credibly testified that, in his expert opinion, it is more likely than not that the Certificates were issued.

There is no evidence to prove whether the Certificates were issued but then lost in the earthquake or otherwise or if, due to clerical oversight, some or all of these documents were never issued. However, it clear from Mr. Derania's testimony that a "finalized" permit is the practical equivalent of a Certificate of Occupancy. Mr. Derania explained that, in the normal course of business, final approval by a Building Inspector would trigger the issuance of a Certificate of Occupancy. Under these circumstances, it would be illogical and unfair to penalize the landlord for the result of acts of nature or clerical mistakes.

Ms. Kablitz and Mr. Peterson testified that they sought to obtain Certificates of Occupancy. Once it was determined that Certificates were not in the file of the Building

Department, they requested the issuance of these documents. However, their request was denied due to the need for further permits, work, and inspections.

It is clearly in the landlord's interest for Certificates of Occupancy to be issued. If the landlord could have had the Certificates issued based upon the building permits from the 1980's, no one would question the claim of exemption. Ms. Kablitz and Mr. Peterson testified that, because the Building Department required additional permits and inspections, they were unable to obtain retroactive Certificates. This testimony is found to be credible, and is in accord with the testimony of Mr. Derania regarding the practices of the Building Department. The law does not require the impossible, and the landlord's inability to obtain these Certificates does not in itself defeat the claim of exemption.

Conclusion: The landlord has proven by a preponderance of the evidence that the tenants' units were created from space that was formerly entirely non-residential, and that the units either did or should have received Certificates of Occupancy after January 1, 1983. Therefore, the units are exempt from the Rent Ordinance.

POST-HEARING REQUEST

On November 2, 2005 – more than one month after the conclusion of the Hearing – the tenants FAXed Petition Withdrawal Forms to the Rent Adjustment Program, in which they sought to withdraw their petitions in this case. These requests followed two full days of hearing and the submission of numerous documents by the attorneys for the parties.

Following the second day of hearing – and particularly the testimony of Mr. Derania – it appeared that the subject buildings might be found exempt from the Ordinance as new construction. Therefore, it appears that the tenants filed requests for dismissal in anticipation of such a result. If the tenant requests were granted, they would then be able to contest rent increases in subsequent years.

The question of when a tenant should be allowed to withdraw a petition is not directly addressed in either the Rent Ordinance, Regulations or California law. However, a tenant petitioner is largely the equivalent of the plaintiff in civil litigation. Therefore, the following legal authorities are helpful in deciding this issue:

Code of Civil Procedure Section 581 states, in part:

> (c) A plaintiff may dismiss his or her complaint . . . with or without prejudice prior to the actual commencement of trial.
>
> (d) Except as otherwise provided in subdivision (e), the court shall dismiss the complaint . . . with prejudice, when upon the trial and before the final submission of the case, the plaintiff abandons it.

(e) After the actual commencement of the trial, the court shall dismiss the complaint, . . . with prejudice, if the plaintiff requests a dismissal . . .

This statute is not, by its terms, applicable to an administrative hearing. However, the policy considerations upon which this statute is based, as set forth in decisions interpreting C.C.P Section 581, properly govern the result in this case.

> Prior to 1947, section 581 of the Code of Civil Procedure had been interpreted to allow dismissal during trial, but prior to submission [citations]. This practice led to a number of abuses, wherein plaintiffs, learning of, or suspecting, an adverse decision, dismissed the suit after presentation of the case, thereby putting defendant to considerable expense and effort and wasting valuable court time [citations]. In 1947, the section was amended to eliminate such abuses. Gherman v. Colburn, 18 Cal. App.3d 1046, 1049 (1971)

California courts have also refused to allow plaintiffs to re-file complaints in situations other than the start of a "trial." In the case of Groth Bros. Oldsmobile, Inc. v. Gallagher, 97 Cal.App.4th 60 (2002) the trial court issued a "tentative ruling" sustaining a defendant's demurrer, which would result in a dismissal of the case. Before the actual hearing on the demurrer, the plaintiff filed a dismissal without prejudice and then essentially re-filed the same complaint.

The appeals court ordered the trial court to sustain the demurrer and dismiss the complaint with prejudice, stating: "[A]llowing a plaintiff to file a voluntary dismissal without prejudice in the face of a tentative ruling that the court will sustain the demurrer without leave to amend waste(s) the time and resources of the court and other parties and promote(s) annoying and continuous litigation . . ." (at p. 70).

> The thread running through all these cases seems to be one of fairness: Once the parties commence putting forth the facts of their case before some sort of fact finder, such as an arbitrator . . . it is unfair – and perhaps a mockery of the system – to allow the plaintiff to dismiss his complaint and refile. Gray v. Superior Court (Hunter), 52 Cal. App.4th 165,173 (1977)

It would be an abuse of the Rent Adjustment Program, and contrary to the frequently stated policy of the courts, if the tenants were allowed to dismiss their petitions following two full days of hearing. If the petitions were dismissed, the tenants would then be free to file new petitions in later years, thereby imposing a burden upon the Rent Program and the landlord while allowing the tenants a second "bite at the apple." Therefore, the requests to withdraw the petitions are denied.

ORDER

Wherefore, all the evidence having been heard and considered, it is the order of this Hearing Officer that:

1. Petitions No. T05-0110, -0119; -0127 and -0146 are dismissed.

2. The tenants' rental units are exempt from the Rent Ordinance.

3. 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) days after service of this decision. The date of service is shown on the attached Proof of Service. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day.

Dated: November 15, 2005

Stephen Kasdin
Hearing Officer
Rent Adjustment Program

Orton, III, c/o Vulcan
ıerties, LP
9 Research Dr.
ımond, CA 94806

on Peacock
1 San Leandro St. 45
and, CA 94601

hard Vidor
1 San Leandro St. 29
and, CA 94601

nuel A. Martinez
Montgomery Street, 14th Flr.
Francisco, Ca. 94111

Nancy M. Conway
345 Franklin St.
San Francisco, CA 94102

Dean G. Miller
3756 Grand Ave. Unit 306
Oakland, CA 94610

Philip Mignaud
4401 San Leandro St. Unit 19
Oakland, CA 94601

Sandra Kablitz
3049 Research Dr.
Richmond, CA 94806

Eddie Orton c/o Vulcan Properties
3049 Research Dr.
Richmond, CA 94806

Rebecca Cotton-Burnett
4401 San Leandro St. Unit 54
Oakland, CA 94601

APPEAL DECISION

CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Community and Economic Development Agency
Rent Adjustment Program

(510) 238-3721
FAX (510) 238-3691
TDD (510) 238-3254

Housing, Residential Rent and Relocation Board (HRRRB)

APPEAL DECISION

CASE NUMBER: **T05-0110, Peacock, et al. v. Vulcan Properties**

APPEAL HEARING: **May 25, 2006**

PROPERTY ADDRESS: **4401 San Leandro St., Oakland, CA**

Appearances

Nancy Conway, Esq. appeared for the tenants-appellants. Manuel Martinez, Esq. appeared for the landlord-appellee.

Procedural Background

The tenant filed the petition in this case on March 26, 2005, contesting a proposed rent increase as excessive under Rent Adjustment Ordinance and Regulations. The petitions also claimed decreased housing services. The landlord filed a timely response to the petitions. The response alleged that the units are exempt from the Ordinance because it was newly constructed on or after January 1, 1983.

The Decision

On November 15, 2005 a Hearing Decision was issued, denying the petition. The Decision concluded that the evidence showed that the subject units were newly constructed. The Hearing Officer based his decision on the factual finding that it was more likely than not that Certificates of Occupancy were issued for the units at issue. He also reached the legal conclusion that a "finalized" permit is the practical equivalent of a Certificate of Occupancy. The Hearing Officer wrote that the lack of finalized permits can be explained by clerical oversight or earthquake loss, and that it would be unfair to penalize the landlord for acts of nature or clerical mistakes.

Grounds for Appeal

The tenant filed an appeal on December 19, 2005, asserting that the decision was incorrect because it is inconsistent with the Ordinance, Regulations, and/or prior decisions of the Board; that it raises a new policy issue that has not been decided by the Board; that it is not supported by substantial evidence; and that tenant petitioners were denied a sufficient opportunity to present their claims. At the appeal hearing, the tenant raised multiple objections to the Hearing process and decision.

In the case, the Hearing Officer re-opened the record after reviewing the evidence presented at the hearing when he felt that he did not have sufficient evidence upon which to make a fair decision. The Hearing Officer sent a letter to the co-Director of the City Community and Economic Development Agency, Ms. Claudia Cappio, asking her to designate a witness to testify to the authenticity and meaning of documents submitted by the landlord, but which the landlord could not properly authenticate after objection by the tenants. The tenants objected to the Hearing Officer in writing that the investigation was improper since it was instigated by the Hearing Officer after the record was closed, claiming that no additional evidence should be allowed after the close of the record and that the Hearing Officer cannot call witnesses.

The tenant also argued that the fact that the Hearing Officer rejected tenant's evidence and accepted landlord evidence, combined with the Officer's independent investigation, demonstrates that the Hearing Officer was biased in favor of the landlord. The tenants argued that the Hearing Officer should have allowed the tenants to withdraw their petitions, without prejudice, after the close of the hearing. Finally, the petitioner presented new evidence discovered since the Hearing, and claimed that additional evidence, which had been in landlord's possession, would be available in the future.

The landlord argued that the Hearing Officer's rejection of some of its evidence disproves claims that the Hearing Officer was biased. He asserted that the Hearing Officer was biased in favor of the tenants because he allowed the tenants too much latitude to present evidence. He also argued that the Hearing Officer properly reopened the case to receive new evidence. He finally argued that substantial evidence supported the decision.

The appeal hearing came before the Board on May 25, 2006. The Board rejected claims of Hearing Officer bias and did not propose a motion to allow appellant to withdraw the petition. The Board affirmed the authority of the Hearing Officer to call witnesses in an appropriate case. The Board declined to consider the additional evidence not presented at the Hearing.

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Appeal Decision

The Board affirms the decision of the Hearing Officer, finding that it was supported by substantial evidence.

NOTICE TO PARTIES

Pursuant to Ordinance No(s). 9510 C.M.S. of 1977 and 10449 C.M.S. of 1984, modified in Article 5 of Chapter 1 of the Municipal Code, the City of Oakland has adopted the ninety (90) day statute of limitations period of Code of Civil Procedure, Section 1094.6.

YOU ARE HEREBY NOTIFIED THAT YOU HAVE NINETY (90) DAYS FROM THE DATE OF MAILING OF THIS DECISION WITHIN WHICH TO SEEK JUDICIAL REVIEW OF THE DECISION OF THIS BOARD IN YOUR CASE.

Rick Nemcik Cruz — June 9, 2006

RICK NEMCIK CRUZ
BOARD DESIGNEE
CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND
RELOCATION BOARD

DATE

Passed by the following vote:

Aye:	L. Arreola, A. Flatt, R. Hunter, S. Kennedy, J. Leavitt, S. Sanger, D. Taylor.
Nay:	None
Abstain:	None
Absent:	None

PROOF OF SERVICE
Case Number T05-0110

I am a resident of the State of California and over 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 **Appeal Decision** 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, 5th Floor, Oakland, California, addressed to:

Dean G. Miller
3756 Grand Ave. Unit 306
Oakland, CA 94610

Nancy M. Conway
345 Franklin St.
San Francisco, CA 94102

Sandra Kablitz
3049 Research Dr.
Richmond, CA 94806

Jason Peacock
4401 San Leandro St. 45
Oakland, CA 94601

J.R. Orton, III, c/o Vulcan Properties, LP
3049 Research Dr.
Richmond, CA 94806

Manuel A. Martinez
600 Montgomery St. Unit 14th Flr.
San Francisco, CA 94111

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 Friday, June 09, 2006, in Oakland, California.

CHRISHELLE CHATMAN
Oakland Rent Adjustment Program

CALIFORNIA COURT OF APPEAL DECISION TITLED

Vidor v. City of Oakland Community and Economic Development Agency

Filed 10/6/09 Vidor v. City of Oakland Comm. and Econ. Dev. Agency CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

RICHARD VIDOR,

Plaintiff and Appellant,

v.

A120973

CITY OF OAKLAND COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY,

(Alameda County Super. Ct. No. RG06287844)

Defendant and Respondent;

VULCAN PROPERTIES, LLP, et al.,

Real Parties in Interest and Respondents.

Appellant Richard Vidor filed a petition for writ of administrative mandamus challenging a decision by the City of Oakland's rent board to deny his request for a decrease in rent. The trial court denied the petition ruling the rent board had not prejudicially abused its discretion and Vidor had not been denied a fair hearing. Vidor now appeals contending (1) certain aspects of the rent board's decision are not supported by substantial evidence, and (2) he was not given a fair hearing. We reject these arguments and affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In December 1985, J.R. Orton and James Alexander purchased what formerly was the Vulcan Foundry located on San Leandro Street in Oakland. Operating through a partnership known as Vulcan Properties, L.P., Orton and Alexander then converted the foundry into 59 residential artist live/work units in three different buildings.

In March 1998, appellant Richard Vidor rented a unit in Building C of the property. In the years that followed, Vulcan Properties increased Vidor's rent from $900 per month in 1998 to $1,266 per month in 2005.

In May 2005, Vidor filed a petition with the City of Oakland's rent board alleging his rent had been increased illegally. The petition was consolidated with similar petitions that had been filed by three other tenants who lived in units at the Vulcan property.

A hearing on the petitions was conducted on June 22, 2005. The primary issue was whether the units at the Vulcan property were exempt from Oakland's rent control ordinance. Section 8.22.030(A)(5) of the ordinance states that the rent restrictions set forth therein do not apply to "Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. . . . To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential." The parties disagreed whether the Vulcan property ever received a "certificate of occupancy" and whether the property was "formerly entirely non-residential."

The officer conducting the hearing received documentary evidence and heard testimony from witnesses. There was considerable dispute about the authenticity of some of the documents and whether Oakland's building department had provided the parties with full and accurate records. At the conclusion of the hearing, the parties agreed the hearing officer could go to the building department and independently review the documents located there.

On August 11, 2005, the hearing officer served notice that a second hearing was needed. The notice stated as follows: "Following a review of the testimony and documentary evidence presented at the hearing, it has become apparent that, in order to

render a proper Decision, further evidence must be developed in two respects: [¶] (1) Pertinent history of the subject property, including use and construction projects undertaken, from 1985 to date; and [¶] (2) The authenticity and significance, or lack of authenticity and significance, of certain Exhibits introduced by the parties at the June [22] hearing, as follows: Building Permit Applications; Certificates of Occupancy; Temporary Certificates of Occupancy; letters and other documents contained in the files of the Oakland Building Services Department."

Then on August 22, 2005, the hearing officer sent a letter to the director of the Community and Economic Development Agency asking that she "arrange to have the person most knowledgeable concerning the practices of the Building Services Department in the mid-and late-1980's" appear to testify at the second hearing.

A second day of hearings was conducted on September 29, 2005. Ray Derania, the interim building official for the City of Oakland, appeared as the person most knowledgeable about practices of the building department. After hearing the additional evidence presented, the hearing officer rendered a lengthy written decision. As is relevant here, he rejected the rent petitions, ruling Vulcan had "proven by a preponderance of the evidence that the tenants' units were created from space that was formerly entirely non-residential, and that the units either did or should have received Certificates of Occupancy after January 1, 1983."

Vidor and the other tenants filed an appeal to Oakland's rent board. The rent board conducted a public hearing and denied the appeal unanimously.

Vidor alone then filed a petition for a writ of administrative mandamus. He argued the decisions issued by the rent board and the hearing officer were not supported by substantial evidence and that he had not received a fair hearing. The trial court conducted a hearing on Vidor's petition and denied it.

Vidor then filed the present appeal.[1]

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[1] The briefs Vidor has filed describe the other tenants who filed rent petitions as "real parties in interest." In fact, none of the other tenants filed an appeal, and none

II. DISCUSSION[2]

A. Sufficiency of the Evidence

Vidor contends certain aspects of the ruling issued by the hearing officer are not supported by substantial evidence.

When a party files a petition for writ of administrative mandamus contending the administrative record does not support the findings, the superior court reviews the record using either an independent judgment standard or a substantial evidence standard. (Code Civ. Proc., § 1094.5, subd. (c); *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811.) Where the administrative decision substantially affects a vested fundamental right, the trial court must apply the independent judgment test. (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1526.) When the administrative decision

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has made an appearance in this action. The legal rights of the other tenants are not at issue in this appeal.

[2] While this appeal was being briefed, the parties each filed a request for judicial notice. We deferred ruling on the requests until the merits of the appeal. Having now considered the requests, we rule as follows:

On December 12, 2008, Vidor filed a request asking this court to take judicial notice of (1) the administrative decisions issued in *Garsson v. Collins*--T04-0163, a case involving different parties that also arose under Oakland's rent control ordinance, (2) a printout from a website that allegedly is operated by Orton Development, (3) this court's unpublished opinion in *Old Mother's Cookies, LLC v. City of Oakland* (Nov. 10, 2008, A117899) and (4) Oakland's ordinance No. 7248. We decline to take judicial notice of the first items because many of them are already part of the record on appeal. We decline to take judicial notice of the second and third items because they were never presented to the trial court below. (See *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325.) We decline to take judicial notice of the fourth item because it is not relevant to any issue that has been properly presented to this court. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089 fn. 4.)

On March 18, 2009, the City of Oakland filed a motion asking this court to take judicial notice of (1) its rent control ordinance, and (2) the related regulations. The unopposed request is granted. (See Cal. Rules of Court, rule 8.54(c).)

On March 18, 2009, Vulcan Properties et al. filed a motion asking this court to take judicial notice of (1) Oakland's rent control ordinance, (2) the regulations that implement Oakland's rent control ordinance, and (3) a grant deed for the subject property that was recorded on December 31, 1985. Requests one and two are granted. Request three is denied. (*Brosterhous v. State Bar, supra,* 12 Cal.4th at p. 325.)

involves primarily economic interests, the trial court must determine if the findings of the administrative board are supported by substantial evidence. (*Concord Communities v. City of Concord* (2001) 91 Cal.App.4th 1407, 1414; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281, 287.)

The petition here involves Vidor's request for a decrease in rent, an economic interest that does not involve a fundamental vested right. (Cf. *San Marcos Mobilehome Park Owners' Assn. v. City of San Marcos* (1987) 192 Cal.App.3d 1492, 1500, holding the decision of a rent board must be reviewed under the substantial evidence standard.) Accordingly, the trial court's review of the administrative proceedings below was governed by the substantial evidence standard.

When a decision of the trial court applying the substantial evidence standard is challenged on appeal, the same substantial evidence standard applies. (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 334-335.) The issue is whether the administrative decision is based on substantial evidence in light of the entire administrative record. (*Ibid.*) When making that determination, the reviewing court must review the administrative record, apply the substantial evidence test, and "begin with the presumption that the record contains evidence to sustain the [administrative] board's findings of fact." (*Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd., supra,* 70 Cal.App.4th at p. 287.)

Here, Vidor challenges the sufficiency of the evidence in two primary respects. First, he argues the evidence was insufficient to support the hearing officer's conclusion that the building in which he lived, (Building C) received a certificate of occupancy after January 1, 1983.

At the hearing, Vulcan presented a building permit that indicated a final inspection had been completed for Building C in 1987. The hearing officer also heard testimony from Ray Derania, Oakland's interim building official, who stated that a final inspection, once completed, is "authorization to occupy the building. And, for this particular building, a change in use, a certificate of occupancy would be following from that." Derania explained further, "in Oakland and many jurisdictions . . . the building permit is

the last document to be final. So you're supposed to assure that the electrical permit had been final beforehand, the plumbing permit, the mechanical permit. If you have a Health Department approvals, that's been done. If you had Public Works approvals. At the conclusion of that, then, all right, and the building is okay, you final the building permit. That triggers the preparation issuance of the certificate of occupancy for new buildings and buildings of change of uses." Given the presumption that official duty has been regularly performed, (Evid. Code, § 664) the hearing officer evaluating this evidence reasonably could conclude that Vulcan had *in fact* obtained a certificate of occupancy for Building C after January 1, 1983.[3]

Vidor also challenges the hearing officer's conclusion that Building C was formerly entirely nonresidential.

Vulcan presented testimony that indicated that the property at issue formerly had been a steel foundry. Vulcan also presented documentary evidence that prior to its purchase, the buildings on the property "had been in use in their entirety as a foundry and were converted in their entirety to artist loft and live/work." In addition, Vulcan presented building permits that described the proposed construction at the property as a "change to R." Derania, the building official, testified that designation meant the project was adding residences to "an existing non-residential use." Again, the officer evaluating this evidence reasonably could conclude that prior to Vulcan's work, the property at issue was "entirely non-residential."

None of the arguments Vidor makes convince us the trial court erred.[4] As to the former issue, Vidor contends the evidence was insufficient because Vulcan never produced a final certificate of occupancy for any of the buildings on the property. Vidor

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[3] Having reached this conclusion, we need not decide whether the hearing officer was also correct when he ruled that Vidor was not entitled to a decrease in rent because Building C "should have received" a certificate of occupancy.

[4] Vidor scatters what could be interpreted as challenges to the sufficiency of the evidence throughout his briefs. As required by the California Rules of Court, we will only address those arguments that are presented correctly through appropriate headings. (See Cal. Rules of Court, rule 8.204(a)(1)(B).)

argues that the documents Vulcan did produce, certificates of occupancy that did not have an official stamp, and temporary certificates of occupancy that had expired, were inadequate as a matter of law. Vidor is correct that the documents he cites do not appear to be final certificates of occupancy. However, this point is not dispositive. As we have explained, the record contains substantial evidence that Vulcan in fact obtained a certificate of occupancy for Building C. "If such substantial evidence be found, it is of no consequence that the [hearing officer] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion. [Citations.]" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874, italics omitted.)

As to prior nonresidential use, Vidor argues the hearing officer's conclusion was flawed because it was inconsistent with a document he submitted that showed on April 13, 1987, a tenant at the property named Peter Smith filed an application for a building permit to perform work on an "'existing live-work studio.'" The evidence Vidor cites does support an inference that on some date prior to April 1987 the property may have been used for residential purposes. But that is of no consequence. Evidence of residential use prior to April 1987 does not defeat the trial court's conclusion that the property was entirely nonresidential before it was purchased and renovated by Vulcan in December 1985. Again, the hearing officer's conclusion is supported by substantial evidence even though there is other evidence in the record that might have supported a different result. (*Bowers v. Bernards, supra,* 150 Cal.App.3d at p. 874.)

B. Whether Vidor Received a Fair Hearing

Vidor contends the trial court should have granted his petition for a writ because he did not receive a fair hearing from the rent board.

A petition for writ of administrative mandamus may be granted if a party has not received a fair trial before an administrative body. (Code Civ. Proc., § 1094.5, subd. (b).) On appeal, the trial court's factual findings with respect to whether a party received a fair hearing will be upheld if supported by substantial evidence. However, the trial court's ultimate determination as to whether the administrative proceedings were fundamentally fair is a question of law that this court reviews de novo on appeal. (*Nightlife Partners,*

Ltd. v. City of Beverly Hills (2003) 108 Cal.App.4th 81, 87; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1169; *Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1443.)

Here, Vidor presents four arguments when arguing the underlying hearing before the rent board was unfair. First, he contends the decision issued by the hearing officer was unfair because it was inconsistent with the decision issued in a prior case: *Garsson v. Collins*—T04-1063. We reject this argument because Vidor has not cited any authority to support his position. The issue is forfeited. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) It is also unpersuasive. In the prior case, the same hearing officer who presided over this case initially ruled that a tenant was not entitled to a decrease in rent even though the landlord had never obtained a certificate of occupancy. The decision issued by the hearing officer states the "landlord credibly testified that he did not apply for a Certificate because he was informed by City representatives that the City grants such certificates only for buildings that are entirely newly constructed, and not those in which the exterior structure remains essentially intact. The tenant did not dispute this testimony." The record in this case strongly suggests that Oakland city officials misinformed the landlord in the prior case. The testimony of Derania and the documentary evidence presented indicates a certificate of occupancy can be issued for buildings where the exterior structure remains essentially intact. In any event, the mere fact that the hearing officer in the prior case rendered a different decision in a different dispute between different parties and based on different evidence does not demonstrate unfairness.

Next, Vidor contends he did not receive a fair hearing because the hearing officer sought and allowed the introduction of additional evidence after the conclusion of the first day of testimony. Vidor contends that act was inconsistent with the court's statement at the end of the first day that "the record is now closed." While the hearing officer did state the record was "closed," all parties knew the hearing officer would in fact receive additional evidence because they had agreed he could go to the building department and review the records there. It is apparent that after that review, the hearing

officer believed additional evidence was needed. On August 11, 2005, he sent the parties notice stating, "Following a review of the testimony and documentary evidence presented at the hearing, it has become apparent that, in order to render a proper Decision, further evidence must be developed . . . ." Then on August 22, 2005, the hearing officer asked that the person most knowledgeable with Oakland's building department appear to present testimony. Ray Derania, Oakland's interim building official, appeared in response to that request and he testified at the second hearing. We see no unfairness in these actions. It is well settled that a trial court is granted broad discretion to determine whether it is appropriate to reopen a case and receive additional evidence. (*Rosenfeld, Meyer & Susman v. Cohen* (1987) 191 Cal.App.3d 1035, 1052.) It is also settled that a trial court has the discretion to call and examine a witness in furtherance of justice. (*Travis v. Southern Pacific Co.* (1962) 210 Cal.App.2d 410, 424-425.) An officer conducting an administrative hearing, a much less formal proceeding, (*Blinder, Robinson & Co. v. Tom* (1986) 181 Cal.App.3d 283, 289) would at a minimum possess similar powers. We conclude the hearing officer here did not abuse his discretion or provide an unfair hearing simply because he sought and allowed the introduction of additional evidence that he believed was necessary in order to render a fair decision.

Next, Vidor contends he "should have been allowed to submit additional evidence which was not readily available to [him] at the time of the second hearing . . . ." Vidor's argument on this point is unclear. He tried to present additional evidence to the rent board and to the trial court and he was rebuffed on both occasions. We cannot determine whether Vidor is arguing the rent board erred, the trial court erred, or both. However, we need not try to sort the issue out because we reject Vidor's argument on procedural grounds. Vidor has not cited any authority to support his argument. He has forfeited the issue. (*Benach v. County of Los Angeles, supra,* 149 Cal.App.4th at p. 852.)

Finally, Vidor contends the rent board hearing officer should have concluded the evidence presented by Vulcan was unreliable because it was not the best evidence that Vulcan could have been presented to show it had obtained certificates of compliance or that the property formerly had been entirely nonresidential. Vidor bases this argument on

Evidence Code sections 412 and 413.[5] However, the technical rules of evidence do not apply in administrative hearings. (*Big Boy Liquors, Ltd. v. Alcoholic Bev. Etc. Appeals Bd.* (1969) 71 Cal.2d 1226, 1230.) "[N]either the trier of fact nor the board was required to weigh the evidence in accordance with the provisions of sections 412 and 413 of the Evidence Code." (*Ibid.*)[6]

III. DISPOSITION

The judgment denying the petition for writ of administrative mandate is affirmed.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.

[5] Evidence Code section 412 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."

Evidence Code section 413 states: "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case."

[6] In his opening brief, and again in his reply brief, Vidor makes statements that seem to argue Vulcan was not entitled to any rent increases because its conversion of the Vulcan Foundry into residential units violated Oakland's municipal ordinances. We declined to address this issue because it is not presented properly through appropriate headings. (See Cal. Rules of Court, rule 8.204(a)(1)(B).)

CHRONOLOGICAL CASE REPORT

Case No.: L17-0177

Case Name: Dichoso et al v. Tenants

Property Address: 1172/1174 72nd Ave., Oakland, CA

Parties: Kelly Dichoso (Owner)

OWNER APPEAL:

Activity	Date
Landlord Petition filed	July 21, 2017
No Tenants Responses filed	----------
Hearing Decision mailed	May 7, 2018
Owner Appeal filed	May 15, 2018

L17-0177 RE/MA

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. RECEIVED JUL 21 2017 OAKLAND RENT ADJUSTMENT **LANDLORD PETITION FOR CERTIFICATE OF EXEMPTION** **(OMC §8.22.030.B)**

Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.

Section 1. Basic Information

Your Name	Complete Address (with zip code)	Telephone
Kelly Dichoso Sophia Do	3264 ADAMS ST. ALAMEDA, CA 94501	Day: 510-381-5155 510-282-7239
Your Representative's Name	Complete Address (with zip code)	Telephone Day:
Property Address 1172 72nd Ave. Oakland, CA 94621		Total number of units in bldg or parcel. 2 units

Type of units (circle one)	Single Family Residence (SFR)	Condominium	Apartment or Room Duplex
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	No
Assessor's Parcel No. 41-4135-63			

Section 2. Tenants. You must attach a list of the names and addresses, with unit numbers, of all tenants residing in the unit/building you are claiming is exempt.

Section 3. Claim(s) of Exemption: A Certificate of Exemption may be granted **only** for dwelling units that are **permanently** exempt from the Rent Adjustment Ordinance.

New Construction: This may apply to individual units. The unit was newly constructed and a certification of occupancy was issued for it on or after January 1, 1983.

Substantial Rehabilitation: This applies only to entire buildings. An owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project. The average basic cost for new construction is determined using tables issued by the Chief Building Inspector applicable for the time period when the Substantial Rehabilitation was completed.

Single-Family or Condominium (Costa-Hawkins): Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), 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 a notice of rent increase under 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 current 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?
8. When did the tenant move into the unit?

I (We) petition for exemption on the following grounds (Check all that apply):

[X]	New Construction
[ ]	Substantial Rehabilitation
[ ]	Single Family Residence or Condominium (Costa-Hawkins)

Section 4. 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 stated and responded in this petition is true and that all of the documents attached to the petition are correct and complete copies of the originals.

Owner's Signature — Date: 7/18/2017

Owner's Signature — Date: 7/18/2017

Important Information

Burden of Proof The burden of proving and producing evidence for the exemption is on the Owner. A Certificate of Exemption is a final determination of exemption absent fraud or mistake.

File Review Your tenant(s) will be given the opportunity to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the tenant's Response. Copies of attachments to the Response form will not be sent to you. However, you may review any attachments in the Rent Program Office. Files are available for review by appointment only. For an appointment to review a file, call (510) 238-3721. Please allow six weeks from the date of filing for notification processing and expiration of the tenant's response time before scheduling a file review.

List of tenants located at 1172 72nd Ave. Oakland CA 94621. Unit is a Duplex. 1172/1174

Top Unit 1172 Tenants:

- Rosita Catarina Mendoza
- Jorge Antonio Martin
- Jose B. Alvarenga
- Wilfredo Alvarenga

Bottom Unit 1174 Tenants:

- Francisco Espinoza
- Francisco Jr. Espinoza
- Cecilia Espinoza
- Omar Espinoza

OFFICE OF ASSESSOR
COUNTY OF ALAMEDA

ADMINISTRATION BUILDING, ROOM 145, 1221 OAK STREET
OAKLAND, CALIFORNIA 94612-4288
(510) 272-3787 / FAX (510) 272-3803

RON THOMSEN
ASSESSOR

PROPERTY CHARACTERISTICS PRINTED ON 07/14/17

41-4135-63

Mailing Name: DO SOPHIA & DICHOSO KELLY F
Location: 1172 72ND AVE, OAKLAND, CA 94621-3243
C/o Name:
Mailing Addr: 3264 ADAMS ST, ALAMEDA, CA 94501-5556

Use Code: 2PLEX/DUPLEX
Nbhrd Code: 251000
Tax Area: 17-032

2017 Roll Land: $76,394
2017 Roll Imps: $178,253

PROPERTY CHARACTERISTICS Effective Date: 04/10/2009

Date of Change			Rooms	10		Lot Size	5,000 SF		Pool		
Class	D6.0A		Studios	0		L/I Ratio	0		Amenities		
Bldg Area	2,928		Bedrooms	6		View			Elevator		
Eff Year	2008		Baths	4.0		Slope					
Built Year	2008		Adds			Topo			Condition		
Stories	2.0		Addtl Area	0					Remodel		
Bldgs	1		Rentable			Condo Type			Hazards		
Units	2		% Office			Unit Floor			Conformity		
Parking	G		Wall Ht						Land		

Case #: L17-0177

10/20/2017

Property Address: 1172 72nd Ave.
Oakland, CA 94621

CITY OF OAKLAND

Record Detail with Inspection Log

Record ID: *RB0703732*

Description: Raise existing home to add new secondary unit on 1st floor. 600 sf; Add 344 sf to rear of 2nd floor. New unit is 1174 72nd Ave. Save 2 walls per demo RB0704470 & rebuild.

APN: 041 413506300

Address: 1172 72ND AVE

Unit #:

Date Opened: 8/9/2007

Record Status: Final

Record Status Date: 4/6/2009

Job Value: $150,000.00

Requestor: DICHOSO KARINA

:

Business Name:

License #:

Inspection Date	Inspector Name	Inspection Type	Status / Result	Result Comments
12/4/2007		FRAME 03M	INSP CANCELLED	CANCEL CALL KELLY WANTS SEWER
12/18/2007	JOSEPH DELAGRANGE	FTG/SLAB/EMBED 01P	INSP CANCELLED	CANCEL @ SITE-TOO WET
12/20/2007	JOSEPH DELAGRANGE	FTG/SLAB/EMBED 01P	APPROVED	OK TO POUR
5/1/2008	JOSEPH DELAGRANGE	SHEARWALL/ROOF 03N	CORRECTION NOTICE	SEE CORRECTION
5/9/2008		ROUGH 03P	PARTIAL APPROVAL	R/ 381-5155, AFTERNOON/ REQ JRD
8/6/2008		FRAME 03M	INSP CANCELLED	CANCEL
8/7/2008		FRAME 03M	INSP CANCELLED	R/ KELLY, 381-5155/ REQ JRD-CANCEL BY PHONE
8/21/2008		FINAL BUILDING 04P	INSP CANCELLED	R/KELLY 381 5155 REQ J/DELEGRANGE REQ PM
8/22/2008	JOSEPH DELAGRANGE	ROUGH 03P	APPROVED	RL CHANNEL @ FLOOR-CEILING OK
9/5/2008		WALLBRD/SHINGLE 03N	PARTIAL APPROVAL	R/KELLY 381-5155 PREFER AM
9/8/2008	JOSEPH DELAGRANGE	WALLBRD/SHINGLE 03N	APPROVED	SHEETROCK OK
12/19/2008		FINAL BUILDING 04P	INSP CANCELLED	F/ KELLY 381-5155
12/22/2008		FINAL BUILDING 04P	INSP CANCELLED	CANCEL
4/6/2009	JOSEPH DELAGRANGE	FINAL BUILDING 04P	APPROVED	FINAL OK

Address: 1174 72ND AVE

Unit #:

- Date Opened: 8/9/2007
- Record Status: Final
- Record Status Date: 4/6/2009
- Job Value: $150,000.00
- Requestor: DICHOSO KARINA
- :
- Business Name:
- License #:

Inspection Date ▲	Inspector Name	Inspection Type	Status / Result	Result Comments
12/4/2007		FRAME 03M	INSP CANCELLED	CANCEL CALL KELLY WANTS SEWER
12/18/2007	JOSEPH DELAGRANGE	FTG/SLAB/EMBED 01P	INSP CANCELLED	CANCEL @ SITE-TOO WET
12/20/2007	JOSEPH DELAGRANGE	FTG/SLAB/EMBED 01P	APPROVED	OK TO POUR
5/1/2008	JOSEPH DELAGRANGE	SHEARWALL/ROOF 03N	CORRECTION NOTICE	SEE CORRECTION
5/9/2008		ROUGH 03P	PARTIAL APPROVAL	R/ 381-5155, AFTERNOON/ REQ JRD
8/6/2008		FRAME 03M	INSP CANCELLED	CANCEL
8/7/2008		FRAME 03M	INSP CANCELLED	R/ KELLY, 381-5155/ REQ JRD-CANCEL BY PHONE
8/21/2008		FINAL BUILDING 04P	INSP CANCELLED	R/KELLY 381 5155 REQ J/DELEGRANGE REQ PM
8/22/2008	JOSEPH DELAGRANGE	ROUGH 03P	APPROVED	RL CHANNEL @ FLOOR-CEILING OK
9/5/2008		WALLBRD/SHINGLE 03N	PARTIAL APPROVAL	R/KELLY 381-5155 PREFER AM
9/8/2008	JOSEPH DELAGRANGE	WALLBRD/SHINGLE 03N	APPROVED	SHEETROCK OK
12/19/2008		FINAL BUILDING 04P	INSP CANCELLED	F/ KELLY 381-5155
12/22/2008		FINAL BUILDING 04P	INSP CANCELLED	CANCEL
4/6/2009	JOSEPH DELAGRANGE	FINAL BUILDING 04P	APPROVED	FINAL OK

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: **L17-0177 Dichoso et al v. Tenants**

PROPERTY ADDRESS: **1172 72nd Avenue, Oakland, CA**
1174 72nd Avenue, Oakland, CA

DATE OF HEARING: **December 21, 2017**

DATE OF DECISION: **March 27, 2018**

APPEARANCES: **Kelly Dichoso, Owner**

SUMMARY OF DECISION

The Landlord Petition is partly granted. 1174 72nd Avenue is exempt from the Rent Adjustment Program as new construction. 1172 72nd Avenue is not exempt from the Rent Adjustment Program.

CONTENTIONS OF THE PARTIES

On July 21, 2017, the owner filed a Landlord Petition for Certificate of Exemption, claiming that the subject property is exempt from the Rent Adjustment Program as new construction. The tenants did not file a response or appear at the hearing.

ISSUES

(1) Is the subject property exempt from the jurisdiction of the Rent Adjustment Program on the basis of new construction?

EVIDENCE

Exemption as New Construction

The owner testified that the subject property is a duplex. It was originally a single-family dwelling (SFD). In 2008, the existing house was raised to add a new secondary

unit to the property. The owner submitted a copy of a Record Detail with Inspection Log.[1] This document states that Building Permit Number RB0703732 was issued on August 9, 2007. The project description for the permit states "raise existing home to add new secondary unit on 1st floor. 600sf; Add 344 sf to rear of 2nd floor. New unit is 1174 72nd Avenue. Save 2 walls per demo RB0704470 & rebuild". The document shows that the permit was finalized on April 6, 2009.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exemption

The Rent Ordinance exempts certain dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. To qualify as a newly constructed dwelling unit, the unit must be entirely newly constructed or created from space that was formerly entirely non-residential.[2]

According to the Record Detail with Inspection Log, a new secondary unit on the first floor of the subject property was completed and final permit approval was obtained in 2009. A final approval by the Building Inspector triggers the issuance of a Certificate of Occupancy, and a "finaled" building permit is the practical equivalent of a Certificate of Occupancy.[3]

The owner testified credibly that a single-family dwelling existed on the property and it was raised to add a secondary unit on the first floor. The address for the secondary unit is 1174 72nd Avenue. The secondary unit was created from empty space and final permit approval was obtained on April 6, 2009. Therefore, the unit at 1174 72nd Avenue is exempt as newly constructed. However, the upstairs unit at 1172 72nd Avenue previously existed as a single-family dwelling. Since the prior use of that unit was residential, it is not exempt from the Rent Ordinance as new construction.

ORDER

1. The Landlord Petition L17-0177 is partly granted.

2. The unit at 1174 72nd Avenue is exempt from the City of Oakland Rent Adjustment Ordinance as new construction.

3. The unit at 1172 72nd Avenue is not exempt from the City of Oakland Rent Ordinance.

4. A certificate of exemption for 1174 72nd Avenue shall be issued upon expiration of the appeal period.

---

[1] Exhibit 1

[2] O.M.C. §8.22.030(A)(5)

[3] See Housing Residential Rent and Relocation Board decisions in cases T00-0114 (*Clegg v. Mills College*), T04-0163 (*Garsson v. Collins)*, T05-0110 (*Peacock et al. v. Vulcan)*, and T12-0112 (*Williams v. Taplin*)

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 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: March 27, 2018

Maimoona Sahi Ahmad, Hearing Officer
City of Oakland Rent Adjustment Program

PROOF OF SERVICE
Case Number L17-0177

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
Kelly Dichoso & Sophia Do
3264 Adams St
Alameda, CA 94501

Tenants
Jorge Martin
1172 72nd Ave
Oakland, CA 94621

Jose Alvarenga
1172 72nd Ave
Oakland, CA 94621

Rosita Mendoza
1172 72nd Ave
Oakland, CA 94621

Wilfredo Alvarenga
1172 72nd Ave
Oakland, CA 94621

Cecilia Espinoza
1174 72nd Ave
Oakland, CA 94621

Francisco Espinoza
1174 72nd Ave
Oakland, CA 94621

Francisco Espinoza Jr.
1174 72nd Ave
Oakland, CA 94621

Omar Espinoza
1174 72nd Ave
Oakland, CA 94621

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 7, 2018 in Oakland, CA.

Maxine Visaya
Oakland Rent Adjustment Program

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

CITY OF OAKLAND

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

For date stamp. 2018 MAR 27 PM 3:29

APPEAL

Appellant's Name Kelly Dichoso	■ Owner ☐ Tenant
Property Address (Include Unit Number) 1172/1174 72nd Avenue, Oakland, CA 94621	
Appellant's Mailing Address (For receipt of notices) 3264 Adams Street, Alameda, CA 94501	**Case Number** L17-0177 Dichoso et al v. Tenants. **Date of Decision appealed** March 27, 2018
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 ***are limited to 25 pages from each party.*** *Please number attached pages consecutively. Number of pages attached:* 12 .

You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed.

I declare under penalty of perjury under the laws of the State of California that on May 15, 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	Jorge Martin, Jose Alvarenga, Rosita Mendoza, Wilfredo Alvarenga
Address	1172 72nd Ave,
City, State Zip	Oakland, CA 94621
Name	Cecilia Espinoza, Francisco Espinoza
Address	1174 72nd Ave.
City, State Zip	Oakland CA 94621

Kelly L. Di	5/15/2018
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	**DATE**

For more information phone (510) 238-3721.

05/15/2018

Dear Sir/Madam,

I am writing to appeal the decision regarding Case Number L17-0177 Dichoso et al V. Tenants. The date of the decision is March 27, 2018; however, I received the letter on May 7th, 2018 as is evident in the enclosed copy along with proofof service. I am also attaching a copy of the original letter sent to me.

As per the decision, I have been granted exemption from the Rent adjustment Program for the bottom unit (1174) but not the top unit (1172). Enclosed are pictures of the construction sequence showing that both units are new units. The original plan to lift the house and add a new unit at the bottom was not feasible due to the dilapidated/rotting condition of the existing house. As a result, we saved two walls and everything else in the building was built new with approved permits and inspection.

Based on these facts, please consider granting exemption for the top unit (1172) as well.

Feel free to contact me if you need additional information. Thank you for your help and time.

Regards,
Kelly Dichoso (owner)

510-381-5155

kdichoso@gmail.com

RECEIVED
CITY OF OAKLAND
RENT ARBITRATION PROGRAM

2018 MAY 15 PM 3:28

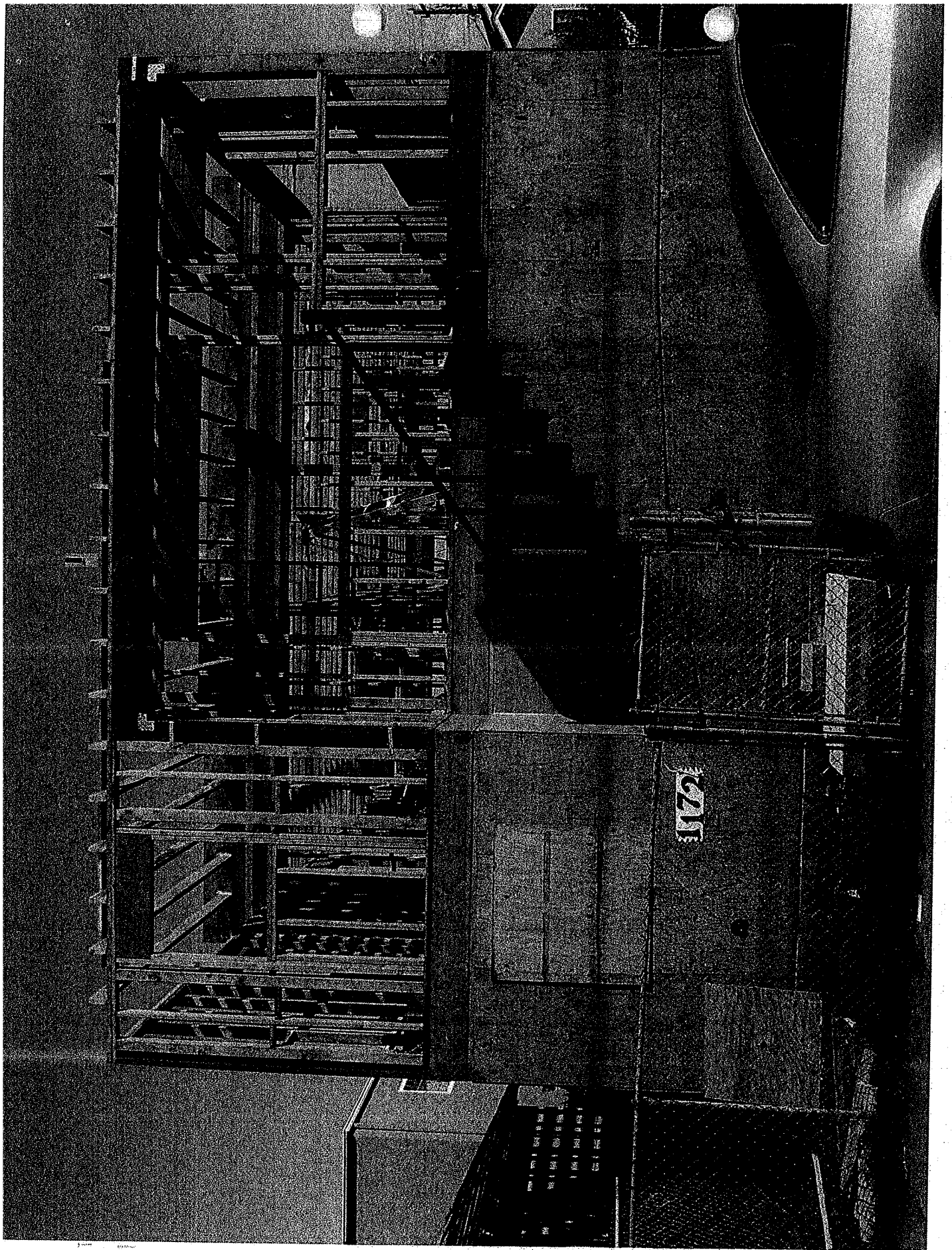
U.S. POSTAGE PITNEY BOWES
ZIP 94612 $ 000.68°
02 4W 0000358051 MAY 07 2018

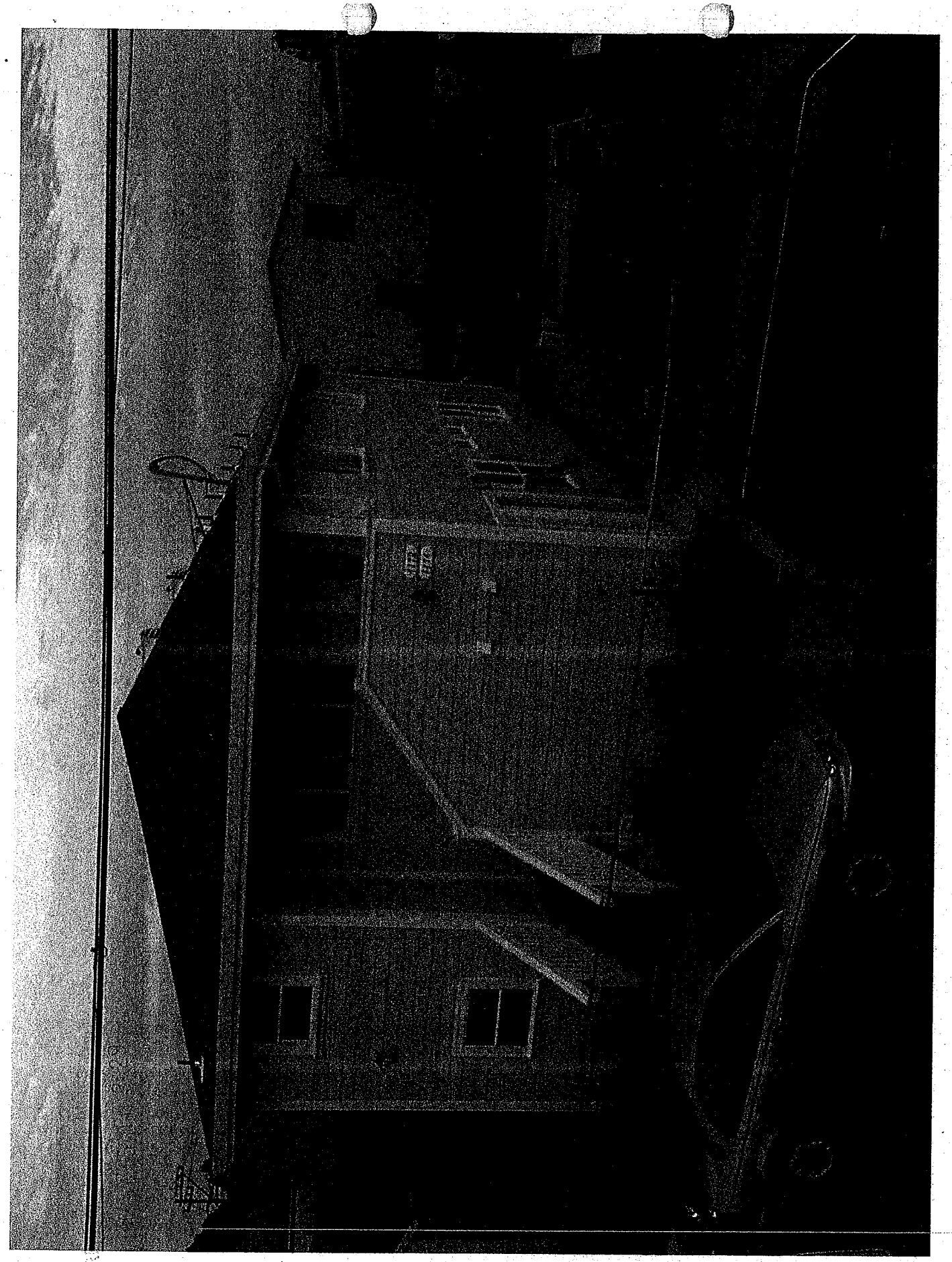
Kelly Dichoso & Sophia Do
3264 Adams St
Alameda, CA 94501

CITY OF OAKLAND
HOUSING AND COMMUNITY DEVELOPMENT
DEPARTMENT
RENT ADJUSTMENT PROGRAM
P.O. BOX 70243
OAKLAND, CA 94612-0243

94612$3555 0003

000139 Pg. 2





I. TYPES OF MEETINGS

A. REGULAR MEETINGS

ALL LOCAL BODIES MUST TAKE FORMAL ACTION (BY A MOTION AND VOTE) TO ESTABLISH A REGULAR TIME AND PLACE FOR HOLDING "REGULAR" MEETINGS (E.G., THE FIRST WEDNESDAY OF EVERY MONTH)

WHENEVER POSSIBLE, REGULAR MEETINGS SHOULD BE HELD ON WEEKDAY EVENINGS TO BEST ENABLE PUBLIC PARTICIPATION

B. SPECIAL MEETINGS

ANY MEETING THAT DEVIATES FROM THE USUAL DAY, TIME OR PLACE OF A REGULAR MEETING IS A ***SPECIAL*** MEETING

- REGULAR AND SPECIAL MEETINGS HAVE DIFFERENT NOTICE REQUIREMENTS (SEE SECTION II)

C. EMERGENCY MEETINGS

THESE ARE MEETINGS THAT CAN ONLY BE CALLED IN SPECIFIC EMERGENCY SITUATIONS WHICH ARE VERY RARE ("CRIPPLING DISASTERS"; WORK STOPPAGES").

- CALL THE CITY ATTORNEY BEFORE YOU TRY TO SCHEDULE ONE

II. AGENDA (PUBLIC NOTICE) REQUIREMENTS

A. REGULAR MEETINGS

1. FOR ALL OAKLAND LOCAL BODIES *(EXCEPT CITY COUNCIL, PORT BOARD, ETHICS COMMISSION AND THEIR STANDING COMMITTEES)*

AT LEAST ***72 HOURS*** PRIOR TO MEETING:

- ***POST*** AGENDA IN A PUBLIC LOCATION

- ***FILE*** AGENDA AND ALL AGENDA-RELATED MATERIALS WITH THE CITY CLERK

2. FOR CITY COUNCIL, PORT BOARD, PUBLIC ETHICS COMMISSION AND THEIR STANDING COMMITTEES

AT LEAST ***TEN DAYS*** PRIOR TO MEETING:

- ***POST*** AGENDA ON-LINE AND IN A PUBLIC LOCATION
- ***FILE*** AGENDA AND ALL AGENDA-RELATED MATERIALS WITH THE CITY CLERK AND MAIN LIBRARY

CAN ***SUPPLEMENT*** AGENDA AT LEAST 72 HOURS BEFORE MEETING ONLY TO:

- ADD AN ITEM DUE TO AN URGENCY UPON 2/3 VOTE (OR UNANIMOUS VOTE IF LESS THAN 2/3 MEMBERS PRESENT) BASED ON SPECIFIC FINDINGS
- DELETE OR WITHDRAW AN ITEM (STILL MUST TAKE PUBLIC COMMENT ON ITEM)
- PROVIDE ***ADDITIONAL*** WRITTEN INFORMATION IF PREVIOUSLY UNKNOWN TO STAFF OR NOT CONSIDERED TO BE RELEVANT AT TIME 10-DAY AGENDA FILED
- CORRECT ERRORS, OMISSIONS, OR CHANGE A STATED FINANCIAL AMOUNT
- CONSIDER RECOMMENDATIONS, REFERRALS, MINUTES, MODIFICATIONS OR ACTIONS TAKEN BY STANDING COMMITTEES
- AGENDIZE MAYOR'S SUSPENSION OF AN ORDINANCE UNDER CHARTER SECTION 216
- CONTINUE AN ITEM TO THE NEXT REGULAR MEETING (STILL MUST TAKE PUBLIC COMMENT ON THE CONTINUED ITEM)

B. SPECIAL MEETINGS

1. FOR *ALL* OAKLAND LOCAL BODIES

AT LEAST 48 HOURS (EXCLUDING SAT., SUN. AND HOLIDAYS) BEFORE THE TIME OF THE MEETING:

- ***POST*** AGENDA IN A PUBLIC LOCATION (AND ON-LINE FOR CITY COUNCIL, PORT BOARD, ETHICS COMMISSION AND THEIR STANDING COMMITTEES)
- ***FILE*** AGENDA AND ALL AGENDA-RELATED MATERIALS WITH THE CITY CLERK
- ***DELIVER*** AGENDA TO EACH MEMBER OF THE LOCAL BODY, TO EACH LOCAL NEWSPAPER, TO EACH AGENDA SUBSCRIBER, AND TO EACH MEDIA ORGANIZATION THAT HAS PREVIOUSLY REQUESTED NOTICE IN WRITING

IF MEETING IS CALLED FOR A MONDAY, ABOVE NOTICE REQUIREMENTS CAN BE MADE BY 12:00 P.M. (NOON) THE PRECEDING FRIDAY.

IF SPECIAL MEETING IS HELD AT A LOCATION OTHER THAN THE REGULAR MEETING PLACE, ABOVE NOTICE REQUIREMENTS MUST BE MADE AT LEAST TEN (10) DAYS PRIOR TO THE MEETING DATE.

C. SUBMITTING AGENDA-RELATED MATERIALS AT A MEETING

1. MATERIALS GENERATED BY STAFF

ALL AGENDA-RELATED MATERIALS MUST BE FILED WITH THE CLERK'S OFFICE BY THE AGENDA-POSTING DEADLINES SET FORTH ABOVE UNLESS THE LOCAL BODY, BY A 2/3 VOTE OF MEMBERS PRESENT, ADOPTS FINDINGS THAT THE ADDITIONAL INFORMATION WAS NOT KNOWN TO STAFF OR CONSIDERED TO BE RELEVANT AT THE TIME OF THE FILING DEADLINE

- STAFF MUST BRING ENOUGH COPIES FOR MEMBERS OF THE PUBLIC TO THE MEETING

2. MATERIALS GENERATED BY MEMBERS OF THE PUBLIC

MATERIALS SUBMITTED AT THE MEETING BY MEMBERS OF THE PUBLIC MUST BE MADE AVAILABLE FOR INSPECTION NO LATER THAN THE CONCLUSION OF THE MEETING

3. AGENDA SUBSCRIBERS

ANY PERSON MAY REQUEST THAT A LOCAL BODY MAIL TO HIM OR HER A COPY OF THE AGENDA OR AGENDA-RELATED MATERIALS. THE REQUEST MUST BE MADE IN WRITING AND MUST BE RENEWED ANNUALLY. A LOCAL BODY MAY CHARGE FOR THE COST OF DUPLICATION AND MAILING.

- IF AVAILABLE, ASK IF THE AGENDA SUBSCRIBER WILL ACCEPT AN ELECTRONIC COPY OF THE AGENDA AND RELATED MATERIAL

- THE FAILURE OF AN AGENDA SUBSCRIBER TO TIMELY RECEIVE A COPY OF AN AGENDA OR AGENDA RELATED MATERIAL SHALL NOT CONSTITUTE GROUNDS FOR THE INVALIDATION OF ANY ACTION

III. SUFFICIENCY OF AGENDA DESCRIPTIONS

A. GENERAL RULE:

AN AGENDA SHALL CONTAIN A BRIEF, GENERAL DESCRIPTION OF EACH ITEM OF BUSINESS TO BE TRANSACTED OR DISCUSSED

- THE DESCRIPTION SHALL AVOID ABBREVIATIONS AND ACRONYMS NOT COMMONLY KNOWN OR USED
- THE DESCRIPTION MAY REFER TO EXPLANATORY DOCUMENTS IN THE AGENDA-RELATED MATERIAL
- THE DESCRIPTION MUST BE SUFFICIENTLY SPECIFIC TO ALERT A PERSON OF AVERAGE INTELLIGENCE AND EDUCATION WHOSE INTERESTS ARE AFFECTED BY THE ITEM THAT HE OR SHE MAY HAVE REASON TO ATTEND THE MEETING OR SEEK MORE INFORMATION

IV. EXCUSE OF SUNSHINE REQUIREMENTS

THE OAKLAND SUNSHINE ORDINANCE IMPOSES ADDITIONAL AGENDA REQUIREMENTS BEYOND THOSE REQUIRED BY THE BROWN ACT, SUCH AS MINIMUM FILING AND POSTING DEADLINES BEFORE MEETINGS (SEE SECTION II). NO ACTION CAN BE TAKEN ON AN ITEM UNLESS THESE ADDITIONAL REQUIREMENTS ARE MET.

HOWEVER, THE SUNSHINE ORDINANCE WILL ALLOW A LOCAL BODY TO ***EXCUSE*** ITS ADDITIONAL NOTICE REQUIREMENTS AND TAKE ACTION ***ONLY IF:***

A. THE MINIMUM REQUIREMENTS OF THE BROWN ACT HAVE BEEN MET;

B. THE LOCAL BODY, BY A 2/3 VOTE OF THOSE PRESENT, DETERMINES IT WAS NOT "REASONABLY POSSIBLE" TO MEET THE ADDITIONAL NOTICE REQUIREMENTS AND:

1. THERE IS A NEED TO TAKE IMMEDIATE ACTION ON AN ITEM TO AVOID A "SUBSTANTIAL ADVERSE IMPACT" IF THE ITEM WERE DEFERRED TO A SUBSEQUENT MEETING;

2. THERE IS A NEED TO TAKE IMMEDIATE ACTION WHICH RELATES TO STATE OR FEDERAL LEGISLATION OR THE LOCAL BODY'S ELIGIBILITY FOR A GRANT OR GIFT; OR

3. THE ITEM RELATES TO A PURELY CEREMONIAL OR COMMENDATORY ACTION.

- THE MOST COMMON SITUATION REQUIRING AN EXCUSE OF NOTICING REQUIREMENTS IS THE FAILURE TO TIMELY POST AND/OR FILE A COPY OF THE AGENDA.

- IT IS IMPORTANT FOR ANY MOTION OR DISCUSSION ON ANY MOTION TO STATE: 1) WHY IT WAS NOT "REASONABLY POSSIBLE" TO MEET THE ADDITIONAL NOTICE REQUIREMENTS; AND 2) WHY ACTION ON THE ITEM CAN'T WAIT TO A SUBSEQUENT MEETING AND WHAT "SUBSTANTIAL ADVERSE IMPACT" WOULD OCCUR IF ACTION WERE DEFERRED TO A SUBSEQUENT MEETING.

V. WHAT IS A "QUORUM?"

A QUORUM IS THE MINIMUM NUMBER OF MEMBERS IT TAKES TO CONVENE A MEETING AND TAKE ACTION

IN THE ABSENCE OF ANY SPECIAL REQUIREMENT, A QUORUM IS USUALLY A MAJORITY OF THE NUMBER OF POSITIONS OR "SEATS" ON A BODY, E.G.:

- A SEVEN-MEMBER BOARD HAS A QUORUM OF FOUR
- AN EIGHT-MEMBER BOARD HAS A QUORUM OF FIVE
- A THREE-MEMBER SUBCOMMITTEE HAS A QUORUM OF TWO

A PUBLIC BODY CANNOT MEET OR TAKE ACTION UNLESS IT HAS A QUORUM!

A. OPTIONS IF NO QUORUM:

1. CANCEL THE MEETING; PREPARE AND DISTRIBUTE A NEW AGENDA FOR THE NEXT MEETING

2. ADJOURN THE MEETING TO A DATE WITHIN FIVE DAYS OF THE ORIGINALLY NOTICED MEETING
   (See Section X: "Canceling Or Continuing A Meeting")

3. CONTINUE TO MEET AS A COMMITTEE OF THE PARENT BODY ("COMMITTEE OF THE WHOLE')

   - UNLESS THERE IS A MATTER OF URGENCY, THE BEST PRACTICE IS TO CANCEL THE MEETING AND PREPARE AND DISTRIBUTE A NEW AGENDA FOR ANOTHER MEETING. THIS ENSURES MAXIMUM PUBLIC NOTICE FOR THE NEW MEETING.

   - IF THE PARENT BODY CHOOSES TO CONTINUE MEETING AS A "COMMITTEE OF THE WHOLE", BE AWARE THAT NO ACTION MAY BE TAKEN ON BEHALF OF THE PARENT BODY.

IF A MEMBER DECLARES THAT HE OR SHE CANNOT VOTE ON AN ITEM BECAUSE HE OR SHE HAS A FINANCIAL CONFLICT OF INTEREST, THAT MEMBER MAY NOT BE COUNTED AS PART OF THE QUORUM PRESENT FOR AS LONG AS THAT ITEM IS BEING CONSIDERED. E.G.:

- ON A FIVE-MEMBER BOARD, THREE MEMBERS ARE PRESENT. WHEN AN ITEM PERTAINING TO A LOCAL DEVELOPMENT IS

CALLED, ONE OF THE THREE MEMBERS DECLARES HE HAS A FINANCIAL CONFLICT OF INTEREST IN THE MATTER AND LEAVES THE MEETING CHAMBERS. THE BOARD ***CANNOT TAKE ACTION*** SINCE THE CONFLICTED MEMBER HAS DEPRIVED THE BOARD OF A QUORUM FOR THAT ITEM.

VI. WHEN DOES A "MEETING" OCCUR?

ALL MEETINGS MUST BE PRECEDED BY THE TIMELY POSTING AND DISTRIBUTION OF A MEETING AGENDA TO AVOID VIOLATING OPEN MEETING LAWS

A MEETING CAN OCCUR IN TWO WAYS:

A. BY A MAJORITY SHOWING UP TOGETHER

A MEETING CAN OCCUR WHENEVER A MAJORITY OF THE MEMBERS OF A LOCAL BODY SHOW UP TOGETHER TO "HEAR, DISCUSS, DELIBERATE OR TAKE ACTION ON" ANY MATTER WITHIN ITS SUBJECT MATTER JURISDICTION

- RETREATS, WORKSHOPS, "TEAM-BUILDING" AND "GOAL-SETTING" SESSIONS ALL COUNT AS "MEETINGS" IF A MAJORITY ATTEND, EVEN IF NOTHING IS DECIDED OR THERE IS NO ACTION TAKEN

- EXCEPTIONS EXIST FOR CONFERENCES AND PARTIES SPONSORED BY THIRD PARTIES; PURELY SOCIAL OCCASIONS (I.E., HOLIDAY PARTIES -- JUST DON'T "TALK SHOP"!)

B. BY A SERIES OF COMMUNICATIONS

A MEETING CAN ALSO OCCUR JUST BY A SERIES OF COMMUNICATIONS INVOLVING A MAJORITY OF MEMBERS, EVEN IF EACH COMMUNICATION TAKES PLACE AT A DIFFERENT TIME OR LOCATION

1. "CHAIN" MEETING

ON A FIVE MEMBER COMMITTEE, MEMBER "A" CALLS MEMBER "B" TO TALK ABOUT COMMITTEE BUSINESS. UNKNOWN TO MEMBER "A", MEMBER "B" CALLS MEMBER "C" THE NEXT DAY TO TELL WHAT MEMBER "A" TOLD MEMBER "B" -- A MEETING HAS OCCURRED

2. "HUB & SPOKE" MEETING

ON A SEVEN MEMBER COMMITTEE, MEMBER "A" CALLS MEMBER "B" TO TALK ABOUT COMMITTEE BUSINESS. MEMBER "B" THEN CALLS MEMBER "C"

AND THEN CALLS MEMBER "D" -- A MEETING HAS OCCURRED

- ***BE ALERT:*** SOMETIMES THE "HUB" CAN BE A CITY STAFF PERSON WHO CONTACTS A MAJORITY OF MEMBERS

VII. PUBLIC SPEAKER REQUIREMENTS

A. RIGHT TO COMMENT AT A PUBLIC MEETING

MEMBERS OF THE PUBLIC ARE ENTITLED TO SPEAK ONCE ***BEFORE OR DURING*** CONSIDERATION OF AN ITEM

- NOT ***AFTER*** A VOTE IS TAKEN

EVERY MEETING AGENDA MUST ALSO PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO COMMENT ON ITEMS OF INTEREST TO THE PUBLIC THAT ARE WITHIN THE LOCAL BODY'S JURISDICTION (i.e., "OPEN FORUM")

- THIS IS ***IN ADDITION TO*** THE PUBLIC'S RIGHT TO COMMENT ON EVERY AGENDA ITEM
- BE SURE TO ANNOUNCE WHEN PUBLIC SPEAKERS ARE RECOGNIZED TO SPEAK ON AN ITEM

B. SPEAKER TIME LIMITS

CITY POLICY PROVIDES A MINIMUM OF ***TWO MINUTES*** PER SPEAKER, PER ITEM, SUBJECT TO THE DISCRETION OF THE CHAIRPERSON

THE CHAIRPERSON MAY REDUCE SPEAKING TIME ONLY AFTER PUBLICLY ANNOUNCING THE REASONS FOR ANY REDUCTION. ACCEPTABLE REASONS INCLUDE:

- CONSTRAINTS ON THE TIME ALLOCATED OR ANTICIPATED FOR THE MEETING
- THE NUMBER AND COMPLEXITY OF AGENDA ITEMS
- NUMBER OF PERSONS WISHING TO SPEAK

SPEAKER TIME LIMITS MUST BE REASONABLE AND UNIFORMLY APPLIED

- CAN'T FAVOR CERTAIN SPEAKERS WITH MORE TIME, ALTHOUGH OKAY FOR LONGER STAFF PRESENTATIONS
- SPEAKING RULES CAN VARY DURING SO-CALLED "QUASI-ADJUDICATORY" PROCEEDINGS (E.G., FORMAL COMPLAINT HEARINGS, CERTAIN LAND USE DECISIONS, FORMAL

APPEALS TO THE CITY COUNCIL). CHECK WITH LEGAL COUNSEL FOR GUIDANCE.

C. REGULATING THE CONTENT OF SPEECH

A LOCAL BODY MAY ***NOT*** PROHIBIT CRITICISM OF ITS POLICIES, PROCEDURES, DECISIONS, MEMBERS OR STAFF

HOWEVER, A LOCAL BODY ***CAN*** RESTRICT (I.E., RULE OUT OF ORDER) ACTUAL DISRUPTIONS. THESE INCLUDE:

- SPEAKING BEYOND ALLOTTED TIME
- UNDULY REPETITIOUS
- EXTENDED IRRELEVANT DISCUSSION
- PHYSICAL INTIMIDATION OR THREATS

A LOCAL BODY MAY REQUEST MEMBERS OF THE PUBLIC TO FILL-OUT A SPEAKERS CARD TO HELP KEEP ACCURATE MINUTES

HOWEVER, A LOCAL BODY MAY ***NOT*** REQUIRE MEMBERS OF THE PUBLIC TO SIGN A REGISTER AS A CONDITION OF ATTENDING A MEETING

D. NO BARRIERS TO ATTENDANCE

NO LOCAL BODY MAY CONDUCT A MEETING IN A FACILITY THAT IS INACCESSIBLE TO PERSONS WITH DISABILITIES, WHERE THE PUBLIC MUST PAY OR PURCHASE SOMETHING TO GAIN ENTRANCE, OR TO WHICH ACCESS IS SO LIMITED AS TO CONSTITUTE A DENIAL OF THE PUBLIC'S RIGHT TO ATTEND OR SPEAK AT A MEETING

VIII. ROBERTS' RULES OF ORDER

MOST LOCAL BODIES ARE GOVERNED BY THE ROBERTS' RULES OF ORDER

MOSTLY THE RULES DEAL WITH HANDLING "MOTIONS". A "MOTION" IS MERELY A PROPOSAL FOR THE LOCAL BODY TO DO SOMETHING.

A. FIVE THINGS TO DO WITH A MOTION:

1. MAKE A MOTION

a. ANYONE, INCLUDING THE CHAIR, CAN MAKE A MOTION

- DON'T ALLOW SOMEONE SIMPLY TO SAY "SO MOVED" AFTER SOMEONE STOPS TALKING; MAKE THEM STATE EXACTLY WHAT THE MOTION IS
- CHAIR SHOULD WAIT TO SEE IF SOMEONE WANTS TO MOVE FIRST

b. A MOTION MUST BE ***RELEVANT*** TO THE TOPIC

c. EVERY MOTION REQUIRES A ***SECOND***

- ONCE SECONDED, THE CHAIR SHOULD RE-STATE OR REPEAT THE MOTION TO MAKE SURE EVERYONE UNDERSTANDS WHAT IS BEING PROPOSED

d. ONCE SECONDED, THE MOTION BECOMES THE "PROPERTY" OF THE LOCAL BODY AND CAN BE DISPOSED OF ONLY BY AN ACTION OF THE LOCAL BODY

2. AMEND A MOTION

a. TECHNICALLY, CAN ONLY AMEND BY ADDING AND/OR STRIKING WORDS, E.G.:

Motion: "I move we commission a statue of the President for the town square."

Proper Amendment: "I move to amend the motion that it be a **bronze** statue of the President for the town square."

b. MOST OF THE TIME, AMENDMENTS THAT ARE ***ACCEPTABLE*** TO THE MAKER AND THE PERSON SECONDING THE MOTION ARE HANDLED AS SO-CALLED "FRIENDLY" AMENDMENTS, E.G.:

Member: "Will the maker of the motion be willing to amend her motion to postpone the commissioning of any statue until the town square is renovated next year?"

- If the maker of the motion and the person seconding the motion are agreeable to the "friendly amendment", the Chair announces that the motion is amended by "unanimous consent" (see below) and ready to be considered unless more amendments are proposed.

c. IF AN AMENDMENT IS ***NOT*** ACCEPTABLE TO THE MAKER AND THE PERSON SECONDING THE MOTION, THE AMENDMENT IS THEN VOTED ON FIRST, E.G.:

Chair: "There is an amendment and a second to postpone the commissioning of any statue until the town square is renovated. (Vote taken.)

- IF THE AMENDMENT **PASSES**, A FINAL VOTE IS TAKEN ON THE MOTION AS IT HAS BEEN AMENDED

- IF THE AMENDMENT **FAILS**, A FINAL VOTE IS TAKEN ON THE ORIGINAL (UNDERLYING) MOTION

3. CHALLENGE A MOTION (Two most common ways)

a. Motion to "table":

ONLY MEANS TO SET AN ITEM ASIDE **TEMPORARILY**, CANNOT BE USED TO "KILL" MOTIONS OR DISCUSSION, E.G.:

Member: "Madam Chair, I notice that the Mayor just walked into the chambers and would like to make an announcement. I move we table this discussion on the motion about the statue to hear from him." (Motion to table is in order.)

Member: "Madam Chair, I move we table this discussion on the motion about the statue indefinitely." (Motion is not in order; must dispose of the motion by vote or withdrawal by unanimous consent.)

b. Motion to "call the question":

THIS MOTION CALLS FOR THE IMMEDIATE TERMINATION OF DEBATE ON A PENDING MOTION

- MOTION IS NON-DEBATABLE; MAY NOT BE AMENDED AND REQUIRES A 2/3 VOTE OF MEMBERS PRESENT
- MOTION APPLIES ***ONLY*** TO THE DEBATE OF THE LOCAL BODY; THIS MOTION CANNOT BE USED TO TERMINATE RIGHT OF THE PUBLIC TO SPEAK

4. DEBATE A MOTION

DEBATE ON A MOTION SHOULD ALWAYS FLOW "THROUGH THE CHAIR" AND NEVER "MEMBER-TO-MEMBER"

ANY TIME LIMITS SHOULD BE AGREED TO IN ADVANCE

a. Points Of Order/Points Of Privilege

POINTS OF ORDER AND PRIVILEGE PERTAIN TO THE RIGHTS AND PRIVILEGES OF THE BODY AND ITS MEMBERS

THEY ARE NOT RELATED TO PENDING MOTIONS BUT BECAUSE OF THEIR IMPORTANCE THEY TAKE PRECEDENCE

THE CHAIR DECIDES WHETHER A POINT OF ORDER OR PRIVILEGE EXISTS

Member: "Point of order, Madam Chair, could you ask the speaker to use the microphone, I can't hear him."

POINTS OF "PERSONAL" PRIVILEGE ARE OFTEN RAISED WHEN A MEMBER OBJECTS TO REFERENCES ABOUT HIM OR HER

- THEY SHOULD BE RECOGNIZED VERY SPARINGLY AND ONLY WHEN THERE IS A COMPELLING NEED TO MAKE A CLEAR RECORD ON AN IMPORTANT MATTER

Member: "Point of privilege, Mr. Chair, I did not say I supported taxes and let me explain why. . ." (This point of privilege should ***not*** be recognized; have the member wait his turn to speak again.)

Member: "Point of privilege, Mr. Chair, City staff announced my vote on the motion as a 'no' when in fact I voted 'yes'". (This point of privilege should be recognized.)

5. VOTE ON A MOTION

AFTER PUBLIC COMMENT AND DEBATE, A MAJORITY OF MEMBERS PRESENT MUST VOTE TO ADOPT THE PENDING MOTION

- BE AWARE OF SUPER-MAJORITY VOTE REQUIREMENTS FOR SOME TYPES OF MOTIONS AND ANY SPECIAL BY-LAW REQUIREMENTS

- ON A 5-MEMBER BOARD, 3 MEMBERS CONSTITUTE A QUORUM; IF 3 MEMBERS ARE PRESENT, ONLY 2 VOTES ARE REQUIRED TO ADOPT A MOTION

VOTING CAN OCCUR IN SEVERAL WAYS:

a. Voice Vote

USUALLY THE MOST COMMON METHOD

Chair: "All in favor say 'aye'"

- ANY MEMBER CAN DEMAND A "ROLL CALL" VOTE

b. Roll Call/Show Of Hands/Open Ballot

A WAY TO PUT PEOPLE "ON RECORD" FOR VOTING FOR OR AGAINST AN ITEM

LAW REQUIRES ANY WRITTEN BALLOT TO BE RETAINED AND MADE IMMEDIATELY AVAILABLE FOR PUBLIC INSPECTION

c. Unanimous Consent

MAJORITY SHOWS ITS AGREEMENT BY SILENCE

Chair: "Without objection, the minutes will be approved."

- ANY OBJECTION REQUIRES ANOTHER VOTING METHOD
- UNANIMOUS CONSENT SHOULD ONLY BE SOUGHT FOR ROUTINE OR NON-CONTROVERSIAL ITEMS

HOW ARE ABSTENTIONS COUNTED?

- ABSTENTIONS DO NOT COUNT IN TALLYING THE VOTE; WHEN MEMBERS ABSTAIN, THEY ARE IN EFFECT ONLY ATTENDING THE MEETING TO AID IN CONSTITUTING A QUORUM.

IX. ACTION ON ITEMS NOT APPEARING ON THE AGENDA

A MEETING AGENDA MUST SET FORTH ALL THE ITEMS THAT A LOCAL BODY INTENDS TO TAKE ACTION ON. HOWEVER, THERE ARE SOME CIRCUMSTANCES IN WHICH THE LAW PERMITS A LOCAL BODY TO TAKE ACTION EVEN IF THE ITEM IS NOT LISTED ON THE MEETING AGENDA

A. THE MATTER IS A "BIG" EMERGENCY

A LOCAL BODY CAN DETERMINE BY A MAJORITY VOTE OF THOSE PRESENT THAT A WORK STOPPAGE, "CRIPPLING DISASTER" OR OTHER ACTIVITY EXISTS WHICH SEVERELY IMPAIRS PUBLIC HEALTH OR SAFETY

- THE LAW STRICTLY REGULATES THIS EXCEPTION TO NOTICE REQUIREMENTS AND SHOULD ONLY BE EXERCISED UPON THE ADVICE OF THE CITY ATTORNEY

B. THE MATTER IS "URGENT"

A LOCAL BODY CAN DETERMINE BY A 2/3 VOTE OF THE TOTAL MEMBERSHIP OF THE LOCAL BODY (OR A UNANIMOUS VOTE IF LESS THAN 2/3 OF THE TOTAL MEMBERSHIP IS PRESENT) THAT THERE IS A NEED TO TAKE ***IMMEDIATE ACTION*** WHICH CAME TO THE ATTENTION OF THE LOCAL BODY AFTER THE AGENDA WAS POSTED AND THAT THE NEED TO TAKE IMMEDIATE ACTION:

1. IS NEEDED TO TAKE IMMEDIATE ACTION ON AN ITEM TO AVOID A "SUBSTANTIAL ADVERSE IMPACT" IF THE ITEM WERE DEFERRED TO A SUBSEQUENT MEETING;

2. THERE IS A NEED TO TAKE IMMEDIATE ACTION WHICH RELATES TO STATE OR FEDERAL LEGISLATION OR THE LOCAL BODY'S ELIGIBILITY FOR A GRANT OR GIFT; OR

3. THE ITEM RELATES TO A PURELY CEREMONIAL OR COMMENDATORY ACTION.

- BE AWARE THAT THE ABOVE EXCEPTIONS CAN ONLY BE EXERCISED AT A REGULAR MEETING -- ITEMS CANNOT BE ADDED TO THE AGENDA OF A ***SPECIAL*** MEETING

- IT IS IMPORTANT FOR ANY MOTION OR DISCUSSION ON ANY MOTION TO STATE: 1) WHY THERE IS A NEED TO TAKE IMMEDIATE ACTION; 2) WHEN THE MATTER FIRST CAME TO THE ATTENTION OF THE LOCAL BODY; AND 3) WHAT "SUBSTANTIAL ADVERSE IMPACT" WOULD OCCUR IF ACTION WERE DEFERRED TO A SUBSEQUENT MEETING

X. CANCELING AND ADJOURNING MEETINGS TO A SUBSEQUENT DATE

SOMETIMES A REQUIRED NUMBER OF MEMBERS SIMPLY DOES NOT SHOW UP FOR A MEETING; OR A MEMBER LEAVES AND DEPRIVES THE BOARD OF A QUORUM; OR THE NEED FOR A MEETING DISAPPEARS

HOW YOU HANDLE THIS SITUATION OFTEN DEPENDS ON WHEN YOU FIND OUT ABOUT IT:

A. CANCELING A MEETING

IF YOU KNOW IN ADVANCE THAT A NOTICED MEETING MUST BE CANCELLED (E.G., LACK OF A QUORUM OR NO BUSINESS TO DISCUSS), SEND OUT A NOTICE OF CANCELLATION IN THE SAME MANNER THAT YOU WOULD SEND OUT AN AGENDA

- IF LESS THAN 48 HOURS BEFORE THE MEETING, CONSIDER FAXING, EMAILING OR CALLING FELLOW MEMBERS, AGENDA SUBSCRIBERS AND LOCAL MEDIA

B. ADJOURNING A MEETING TO A NEW DATE

ALL REGULAR AND SPECIAL MEETINGS MAY BE ADJOURNED TO A FUTURE DATE

1. WITHIN FIVE DAYS

A REGULAR OR SPECIAL MEETING CAN BE ADJOURNED TO A SUBSEQUENT MEETING WITHOUT HAVING TO CREATE A NEW AGENDA

a. Procedure

SIMPLY POST A "NOTICE OF ADJOURNMENT" ON OR NEAR THE DOOR OF THE PLACE WHERE THE MEETING WAS HELD WITHIN 24 HOURS AFTER THE TIME OF THE ADJOURNMENT

THE "NOTICE OF ADJOURNMENT" SHOULD IDENTIFY WHICH ITEMS ARE BEING CONTINUED TO THE SUBSEQUENT MEETING AND THE NEW DATE AND TIME

2. BEYOND FIVE DAYS

IF THE SUBSEQUENT MEETING IS MORE THAN FIVE DAYS FROM THE ORIGINAL MEETING, THEN CREATE, POST AND DISTRIBUTE A NEW MEETING AGENDA

XI. CURE AND CORRECTIONS

THE ACTIONS A LOCAL BODY TAKES AT A MEETING MAY BE CHALLENGED ON THE BASIS THAT THE NOTICE PROVIDED FOR THAT MEETING DID NOT MEET THE REQUIREMENTS OF THE BROWN ACT OR THE SUNSHINE ORDINANCE

ANY LOCAL BODY WHOSE ACTIONS ARE CHALLENGED MAY "CURE AND CORRECT" THE ALLEGED VIOLATION BY PLACING THE CHALLENGED ACTION ON A SUBSEQUENT MEETING AGENDA TO AFFIRM OR SUPERSEDE THE ACTION AFTER FIRST TAKING ANY NEW PUBLIC TESTIMONY

A. PROCEDURE

THE AGENDA SHOULD STATE THAT THE ACTION IS BEING TAKEN TO "CURE AND CORRECT" THE LOCAL BODY'S ACTIONS TAKEN AT THE (PREVIOUS MEETING DATE) PERTAINING TO (DESCRIBE AGENDA ITEM)

TWO MOTIONS SHOULD BE CONSIDERED: 1) WHETHER TO "CURE AND CORRECT" THE CHALLENGED ACTION, AND, IF SO, 2) WHETHER TO AFFIRM OR SUPERSEDE THE CHALLENGED ACTION AFTER FIRST TAKING ANY NEW PUBLIC TESTIMONY

- CONSULT WITH THE CITY ATTORNEY'S OFFICE TO ENSURE THE AGENDA DESCRIPTION IS ADEQUATE