HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD SPECIAL MEETING
May 25, 2023
5:30 P.M.
CITY HALL, HEARING ROOM #1
ONE FRANK H. OGAWA PLAZA
OAKLAND, CA 94612

AGENDA

PUBLIC PARTICIPATION

The public may observe or participate in this meeting in many ways.

OBSERVE:

• To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10

• To observe the meeting by video conference, please click on the link below:
When: May 25, 2023 05:30 PM Pacific Time (US and Canada)
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PARTICIPATION/COMMENT:

There is one way to submit public comments:
• To participate/comment during the meeting, you must attend in-person.
Comments on all agenda items will be taken during public comment at the beginning of the meeting. Comments for items not on the agenda will be taken during open forum towards the end of the meeting.

If you have any questions, please email hearingsunit@oaklandca.gov.

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD MEETING

1. CALL TO ORDER
2. ROLL CALL
3. PUBLIC COMMENT
    a. Comments on all agenda items will be taken at this time. Comments for items not on the agenda will be taken during open forum.
4. CONSENT ITEMS
    a. Approval of Board Minutes, 5/11/2023 (pp. 3-9)
5. APPEALS*
    a. T23-0019, Barragan et al v. Mead Holding LLC (pp. 74-169)
6. INFORMATION AND ANNOUNCEMENTS
        a. Board Training Session—The Brown Act (pp. 10-73)
7. OPEN FORUM
8. ADJOURNMENT

**Staff appeal summaries will be available at the Rent Program website and the Clerk's office at least 72 hours prior to the meeting pursuant to O.M.C. 2.20.080.C and 2.20.090*

As a reminder, alternates in attendance (other than those replacing an absent board member) will not be able to take any action, such as with regard to the consent calendar.

Accessibility: Contact us to request disability-related accommodations, American Sign Language (ASL), Spanish, Cantonese, Mandarin, or another language interpreter at least five (5) business days before the event. Rent Adjustment Program (RAP) staff can be contacted via email at RAP@oaklandca.gov or via phone at (510) 238-3721. California relay service at 711 can also be used for disability-related accommodations.

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 RAP@oaklandca.gov o llame al (510) 238-3721 o 711 por lo menos cinco días hábiles antes de la reunión.

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 RAP@oaklandca.gov 或致電 (510) 238-3721 或711 California relay service.

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
FULL BOARD MEETING
May 11, 2023
7:00 P.M.
CITY HALL
1 FRANK H. OGAWA PLAZA, HEARING ROOM #1
OAKLAND, CA 94612

MINUTES

1. **CALL TO ORDER**

The Board meeting was administered in-person by B. Lawrence-McGowan from the Rent Adjustment Program (RAP), Housing and Community Development Department. B. Lawrence-McGowan explained the procedure for conducting the meeting. The HRRRB meeting was called to order by Chair Ingram at 7:05 p.m.

2. **ROLL CALL**

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
R. NICKENS, JR.	Tenant	X		
D. WILLIAMS	Tenant	X		
J. DEBOER	Tenant Alt.			X
M. GOOLSBY	Tenant Alt.			X
D. INGRAM	Undesignated	X		
C. OSHINUGA	Undesignated	X		
Vacant	Undesignated			
M. ESCOBAR	Undesignated Alt.	X		
Vacant	Undesignated Alt.			
D. TAYLOR	Landlord	X*		
Vacant	Landlord			
Vacant	Landlord Alt.			
K. SIMS	Landlord Alt.	X		

*Member Taylor joined the meeting at 7:11 pm

Staff Present

Braz Shabrell	Deputy City Attorney
Linda Moroz	Hearing Officer (RAP)
Briana Lawrence-McGowan	Administrative Analyst II (RAP)

3. **PUBLIC COMMENT**

a. No members of the public spoke during public comment.

4. **CONSENT ITEMS**

a. Approval of Board Minutes, 4/13/2023 and Panel Minutes, 4/20/2023: Member R. Nickens moved to approve the Board Minutes from 4/13/2023 and the Panel Minutes from 4/20/2023. Member K. Sims seconded the motion.

The Board voted as follows:

Aye:	D. Ingram, C. Oshinuga, M. Escobar, K. Sims, D. Williams, R. Nickens
Nay:	None
Abstain:	None

The minutes were approved.

5. **APPEALS***

a. T19-0186/T19-0235, Didrickson v. Dang/Commonwealth Company

Appearances:	Ted Dang	Owner
	Carlos & Glenda Didrickson	Tenants

This case involved an owner appeal of a remand decision that partially granted the tenants' petition for decreased housing services. The tenants filed 2 petitions in 2019 that were eventually consolidated. At the first hearing, the list of decreased housing services alleged by the tenants was condensed and limited to three issues based on the fact that other issues had been addressed and decided in prior hearings. The three issues that were addressed in the first hearing were the gas heater, smoke and carbon monoxide detectors, and the electric breaker. At the first hearing in 2019, all three claims were denied, based primarily on the owner's testimony that the issues had all been repaired. The tenants appealed and the case came before the Board in 2020. The Board voted to remand the case to the Hearing Officer to address the issues that were listed in the 2019 Notice of Violation and to determine if they constituted decreased housing services. The parties were permitted to submit additional evidence prior to the remand hearing, which both parties did.

The remand hearing took place in October 2021. The Hearing Officer granted decreased housing service awards for the three items that are listed in the Notice of Violation. This included a leak from the heater, broken patio door handle, and

the electric breaker. The Hearing Officer's finding was based on the Notice of Violation and subsequent re-inspection notices that indicated that the issues had not been abated. The owner now appeals the remand decision regarding the door handle and the leak. The owner appeal does not contest the third item regarding the electric breaker. The following issue was presented to the Board:

1.) Were the Hearing Officer's findings and the remand decision regarding the leak and the door handle supported by substantial evidence?

The owner contended that there are three issues involved in this appeal and that the first one involves the patio door lock. The owner argued that the reason that the lock is broken is because Mr. Didrickson has been using the door although he's not supposed to. The owner contended that the tenant has filed 14 tenant petitions, and that seven Hearing Officers have issued decisions, but the decisions have not been followed. The owner argued that the patio door leads to the roof, and that nobody is allowed to be on the roof—as it's a new roof that replaced an older one because it was leaking into the unit. The owner contended that the deck that Mr. Didrickson was using before had to be removed because it was an illegal deck, the owner was required to remove it, and this area is now the roof. The owner argued that they wanted to seal the patio door so nobody could go onto the roof, which was previously the deck—however, Mr. Didrickson has resisted the owners' efforts to do that and continues to use the roof as the deck. The owner contended that they have pictures that show plants, furniture, and cameras—and that each month, Mr. Didrickson deducts $298.33 because he doesn't have a deck anymore, even though he's still using the roof as the deck.

The owner contended that the second issue is the leak from the heater vent. The owner argued that they have had three contractors check the vent: a heater contractor, handyman, and a sheet metal person—and they could find no leaks. The owner contended that Mr. Didrickson claims to have a video of the leak when it rains, but the owner has not seen the video. The owner argued that part of the problem is that they do not communicate and every time the owner asks Mr. Didrickson for something, a response is never received. The owner argued that the tenants don't tell the owners what maintenance is required and that the tenants' claims are not habitability issues—they're minor maintenance issues.

The owner contended that the third issue is that they don't know what to do. The owner argued that hearing decisions have required the tenants to pay a certain amount—however, they don't pay that amount, they pay what they want, and now they owe over $12,000 in rent. The owner argued that the tenants have claimed several times that every time they use their microwave, and the oven is on, the electric circuit blows and they have no power—however, this was checked on by an electrician and they determined that since the building is an older building and was built in 1950s, if you overload the circuit, the circuit will

pop. The owner contended that in one of the cases that the tenants previously filed, a Hearing Officer came out and turned on several appliances and kept them on for a while and they did not pop—therefore, the tenants were recommended to use a different plug to install the microwave oven. The owner argued that since then, the tenants have not complained and if the electrical problem has continued, the tenants haven't informed him; and that the tenants continue to disregard the prior issued hearing decisions, and that it's not fair.

The tenants contended that in the previous appeal hearing, the Board asked Mr. Dang if he had cured the violations and Mr. Dang was silent about it. The tenants argued that the patio door was broken before they took the deck away and that in previous hearings, Mr. Dang said that the tenants have a right to use the roof as their patio. The tenants contended that one of Mr. Dang's colleagues said if they're on the roof and using it as a patio, since they know it's no longer a patio, it will be their fault if they fall. The tenants argued that the reason the owner removed the deck is because he put up a chimney and didn't have a permit for it, so they called the City building inspector, which resulted in a red tag being placed on the building.

The tenants argued that when the City building inspector came to check the electrical, everything turned off in the apartment except the stove, and that to access the main breaker, they were required to go downstairs into the basement. The tenants contended that a licensed electrician has never came to check on the issue and that during the last hearing, they tried to show a video of the vent leaking but the Hearing Officer at the time didn't allow them to show the video. The tenants argued that the City building inspector supported the tenants' claims and that the owner has no standing in this appeal because he didn't show up to the hearing, nor did he provide a written reason as to why he didn't show. The tenants argued that an appeal requirement is that if you didn't attend the hearing, you should give a written statement in your appeal as to why you didn't, and the owner did not do that.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to affirm the Hearing Officer's decision. Member R. Nickens seconded the motion.

The Board voted as follows:

Aye:	D. Ingram, C. Oshinuga, M. Escobar, K. Sims, D. Taylor, D. Williams, R. Nickens
Nay:	None
Abstain:	None

The motion was approved.

b. T22-0202, Joseph v. Jones

Appearances:	Kim Roehn	Owner Representative
	Michael Joseph	Tenant

This case involved an administrative decision that granted a tenant's petition contesting a single rent increase. Administrative decisions are decisions that are issued without a hearing, usually because the issues can be decided on the papers alone, there's no material facts and dispute, and/or there's a fundamental flaw with the filings. In this case, the tenant petition was contesting a single rent increase and the owner responded by alleging that the unit is exempt from the Rent Adjustment Program as a condo. The administrative decision was issued on the grounds that the owner was allegedly missing documentation with their response—therefore, the owner's response was disregarded. The following issues were presented to the Board:

1.) Was this properly decided as an administrative decision? If the unit is in fact exempt from the Rent Adjustment Program (RAP) as the owner alleges, RAP has no jurisdiction, and the rent increase would not have been unlawful, and the unit would not be subject to the rent increase moratorium.

2.) Was the owner's response insufficient and was the Hearing Officer justified in disregarding the owner's response?

The owner representative contended that the administrative decision is invalid under state and local law, and it is inconsistent with prior RAP decisions. The owner representative argued that the owner is requesting that the administrative decision be reversed in full, and that the tenant's petition be dismissed. The owner representative contended that RAP personnel have a duty to exercise basic due diligence to confirm they are acting within the bounds of their authority under the code and that this consideration is fundamental to party's due process rights. The owner representative argued that under Oakland Municipal Code, rent control rules only apply to covered units, they do not apply to exempt units. The owner representative contended that condominiums are a common and well-known exemption under the code and under California's law, known as Costa Hawkins and that the property at issue here is a condominium. The owner representative argued that the condo has its own assessor's parcel number, was purchased as a single unit by the owner in 1979, and it is alienable and separate from the title to any other dwelling unit under Costa Hawkins—therefore, it's exempt from Oakland's RAP ordinance.

The owner representative argued that the administrative decision is void by law because RAP has no jurisdiction over the unit—and that the owner did in fact submit a properly filed and timely response both by mail and via the online RAP

portal. The owner representative contended that the filing was confirmed as being received by RAP, and that it stated that this is an exempt property both on the response form and in the supporting documentation—which included the business tax certificate, tax documentation, and history showing the unit as a condo—including the grant deed, property tax bills, and proof of service on the tenant. The owner representative argued that despite this, a deficiency notice was issued to the owner stating that none of the above documentation had been filed—which was incorrect.

The owner representative argued that when a unit is exempt, Hearing Officers are required to dismiss the petition—regardless of the submission of those supposedly missing documents, and that RAP does not have authority to take any other action. The owner representative contended that the owner re-filed the executed proof of service for the second time—however, the Hearing Officer then issued an administrative decision, which is a decision without a hearing. The owner representative argued that the decision was in favor of the tenant, striking down the rent increase and citing the City's rent increase moratorium—however, the owner is respectfully requesting for the decision be reversed and for the rent increase be reinstated effective of the date of the original notice. The owner representative contended that the 3% CPI rent increase limit does not apply to exempt units, that the unit was exempt, and that the owner is also requesting that if the Board remands this case for any further action, that a new Hearing Officer be assigned—which is a party's automatic right under California law.

The tenant contended that although the property is a condo, they do not have the expertise and the information required to make a determination about whether the condo is exempt from RAP. The tenant argued that their understanding is that it is currently covered by RAP, that it's not exempt, and that they have no material evidence which proves otherwise. The tenant contended that they were an excellent tenant, paid rent on time, and treated the apartment like it was their home up until they received the rent increase notice. The tenant argued that the rental was set up to maximize the income of the owner—who lives halfway across the country in Texas and has the ability to hire a lawyer.

The tenant contended that the Rent Adjustment Program limits rent increases to the annual CPI, which was 3% in 2022—however, the property manager raised the rent by about 9%, which is three times the CPI. The tenant argued that the rent increase was illegal for that reason, assuming that the condo falls under the Rent Adjustment Program. The tenant contended that this situation forced them to move out and that the prices of rentals in the surrounding area are much lower than what the rent was raised to. The tenant argued that they could get a two-bedroom for the price that the rent was raised to, and that due to the high cost, they were forced to find another place to live.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to vacate the Hearing Officer's Administrative Decision and to remand the case back to the Hearing Officer for a full hearing and to consider the property owner's full response. Member R. Nickens seconded the motion.

The Board voted as follows:

Aye:	D. Ingram, C. Oshinuga, M. Escobar, K. Sims, D. Taylor, D. Williams, R. Nickens
Nay:	None
Abstain:	None

The motion was approved.

6. **INFORMATION AND ANNOUNCEMENTS**

   a. Briana Lawrence-McGowan announced to the Board that beginning on 5/25/2023, the Board will be having special meetings on the 2nd and 4th Thursdays of the month, which will begin at 5:30pm.

   b. Chair Ingram announced to the Board that he's still working with the Office of the City Attorneys on the proposed regulations and that they will be brought back to the Board very soon.

7. **OPEN FORUM**

   a. No members of the public spoke during open forum.

8. **ADJOURMENT**

   a. The meeting was adjourned at 8:18 p.m.

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A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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ACKNOWLEDGEMENTS

The League thanks the following individuals for their work on this publication:

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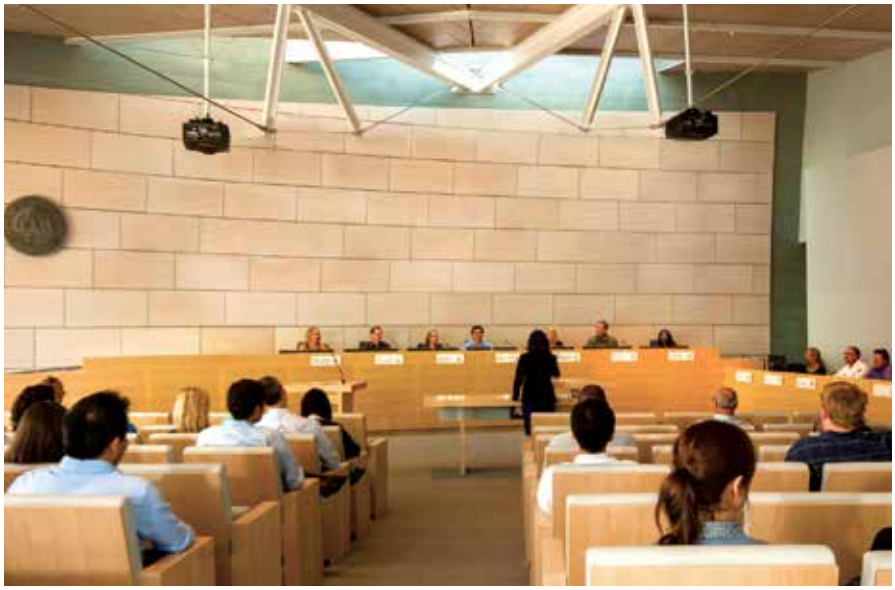

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A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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Chapter 1

IT IS THE PEOPLE'S BUSINESS

Chapter 1

IT IS THE PEOPLE'S BUSINESS

The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the Brown Act's initial section, declaring the Legislature's intent:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."[1]

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

> *"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*[2]

PRACTICE TIP: The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

The Brown Act's other unchanged provision is a single sentence:

> *"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."*[3]

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

Broad coverage

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body

discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, tablets, or smart phones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

Narrow exemptions

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.[4]

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body do not discuss issues related to their local agency's business. Meetings of temporary advisory committees — as distinguished from standing committees — made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.[5]

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents. On the other hand, it requires — with certain specific exceptions to protect the community and preserve individual rights — that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

PRACTICE TIP: Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

Public participation in meetings

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately — such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business — the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises — are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

PRACTICE TIP: Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.[6] Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly;
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation; and
- The right of the press to fully understand and communicate public agency decision-making.

An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

Achieving balance

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action is to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must ensure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

PRACTICE TIP: The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

Historical note

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on "Your Secret Government" that ran in May and June 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted such a bill and Assembly Member Ralph M. Brown agreed to carry it. The Legislature passed the bill and Governor Earl Warren signed it into law in 1953.

The Ralph M. Brown Act, known as the Brown Act, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws — such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

ENDNOTES:

1 California Government Code section 54950

2 California Constitution, Art. 1, section 3(b)(1)

3 California Government Code section 54953(a)

4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).

5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533

6 California Government Code section 54953.7

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at www.leginfo.ca.gov.

Chapter 2

LEGISLATIVE BODIES

Chapter 2

LEGISLATIVE BODIES

The Brown Act applies to the legislative bodies of local agencies. It defines "legislative body" broadly to include just about every type of decision-making body of a local agency.[1]

What is a "legislative body" of a local agency?

A "legislative body" includes:

- **The "governing body** of a local agency" and certain of its subsidiary bodies; "or any other local body created by state or federal statute."[2] This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A "local agency" is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision or other local public agency.[3] A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.[4] The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.[5] Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.[6]

PRACTICE TIP: The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.[7] Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

Q. On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

A. *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate; and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.[8]

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.[9] Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee "shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.[10] "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.[11]
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.[12] These include some nonprofit corporations created by local agencies.[13] If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.[14] When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.[15]

Q: The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?

A: *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

Q: If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

A: *Yes. But, if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital)

PRACTICE TIP: It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a non-exempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the committee exists long enough to have "continuing jurisdiction."

first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.[16]

What is not a "legislative body" for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.[17] Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.[18]
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.[19]

  Q. A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

  A. *No, because the committee has not been established by formal action of the legislative body.*

  Q. During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

  A. *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.[20]
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.[21]
- County central committees of political parties are also not Brown Act bodies.[22]

ENDNOTES:

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127

2 California Government Code section 54952(a) and (b)

3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.

4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550

5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)

6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354, 362

7 California Government Code section 54952.1

8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805

9 California Government Code section 54952(b)

10 79 Ops.Cal.Atty.Gen. 69 (1996)

11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793

12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)

13 California Government Code section 54952(c)(1)(A); International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc. (1999) 69 Cal.App.4th 287, 300; Epstein v. Hollywood Entertainment Dist. II Business Improvement District (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)

14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287, 300 fn. 5

15 "*The Brown Act, Open Meetings for Local Legislative Bodies,*" California Attorney General's Office (2003), p. 7

16 California Government Code section 54952(d)

17 California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.

18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129

19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973)

20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879

21 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513

22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

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Chapter 3

MEETINGS

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The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "… and any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take any action on any item that is within the subject matter jurisdiction of the legislative body."[1] The term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.[2]

Brown Act meetings

Brown Act meetings include a legislative body's regular meetings, special meetings, emergency meetings, and adjourned meetings.

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.[3]
- **"Special meetings"** are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings and are subject to 24-hour posting requirements.[4]
- **"Emergency meetings"** are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.[5]
- **"Adjourned meetings"** are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.[6]

Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:[7]

Individual Contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, so long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.

Community Meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the legislative body's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

> **"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"**
>
> *The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

Q. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

A. *Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.*

Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency; and (2) a legislative body of another local agency.[8] Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

A. *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*

Q. The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

A. *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).[9]

Q. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

A. *She may attend, but only as an observer; she may not participate.*

Social or Ceremonial Events

The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attends the function, but whether business of a specific nature within the subject matter jurisdiction of the body is discussed. So long as no such business is discussed, there is no violation of the Brown Act.

Grand Jury Testimony

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.[10] This is the equivalent of a seventh exception to the Brown Act's definition of a "meeting."

Collective briefings

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.

Retreats or workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or team building and group dynamics.[11]

Q. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

A. *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting … use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."[12] The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a "daisy chain" or a "hub and spoke" sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body's subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members, communicates with a majority of members (the spokes) one-by-one for for discussion, deliberation, or a decision on a proposed action.[13] Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."[14]

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.[15]

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.[16] Such a memo, however, may be a public record.[17]

> **The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"**
>
> **"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"**
>
> **"Well, I've got Bradley and Cohen lined up and another vote leaning. With you I'd be over the top."**
>
> **Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"**

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating

a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

> **The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."**

Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."[18] Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.

> **"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."**
>
> **"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"**
>
> **"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."**

The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two of her colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.

PRACTICE TIP: When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

Q. The agency's website includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?

A. *Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.*

Q. A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?

A. *No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply to all" button that may inadvertently result in a Brown Act violation.

Informal gatherings

Often members are tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.[19] A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an opportunity to attend, hear, or participate in the deliberations of members.

> **Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop's Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.**

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.

Q. The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?

A. *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*

Technological conferencing

Except for certain nonsubstantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But, in an effort to keep up with information age technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.[20] While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either

audio or video, or both."[21] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:[22]

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction;
- Additional teleconference locations may be made available for the public;
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

Q. A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?

A. *She may not participate or vote because she is not in a noticed and posted teleconference location.*

The use of teleconferencing to conduct a legislative body meeting presents a variety of issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[23]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:[24]

- Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party;
- Inspect real or personal property that cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property;

Q. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

A. *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction;
- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction;
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.[25]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[26] A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[27]

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[28]

Endnotes:

1 California Government Code section 54952.2(a)

2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870

3 California Government Code section 54954(a)

4 California Government Code section 54956

5 California Government Code section 54956.5

6 California Government Code section 54955

7 California Government Code section 54952.2(c)

8 California Government Code section 54952.2(c)(4)

9 California Government Code section 54952.2(c)(6)

10 California Government Code section 54953.1

11 "*The Brown Act,*" California Attorney General (2003), p. 10

12 California Government Code section 54952.2(b)(1)

13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95

14 California Government Code section 54952.2(b)(2)

15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518

16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

17 California Government Code section 54957.5(a)

18 California Government Code section 54952.2(b)(2)

19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)

20 California Government Code section 54953(b)(1)

21 California Government Code section 54953(b)(4)

22 California Government Code section 54953

23 California Government Code section 54954(b)

24 California Government Code section 54954(b)(1)-(7)

25 94 Ops.Cal.Atty.Gen. 15 (2011)

26 California Government Code section 54954(c)

27 California Government Code section 54954(d)

28 California Government Code section 54954(e)

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Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location "freely accessible to members of the public."[1] The courts have not definitively interpreted the "freely accessible" requirement. The California Attorney General has interpreted this provision to require posting in a location accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.[2] This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.[3] While posting an agenda on an agency's Internet website will not, by itself, satisfy the "freely accessible" requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[4]

Q. May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city's website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

A. *At a minimum, the Brown Act calls for "substantial compliance" with all agenda posting requirements, including posting to the agency website.[5] Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties which cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.[6] This inquiry requires a fact-specific examination of whether the agency or its legislative body made "reasonably effective efforts to notify interested persons of a public meeting" through online posting and other available means.[7] The Attorney General's opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

awareness, among other factors.[8] The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

The agenda must state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."[9] Special care should be taken to describe on the agenda each distinct action to be taken by the legislative body, and avoid overbroad descriptions of a "project" if the "project" is actually a set of distinct actions that must each be separately listed on the agenda.[10]

PRACTICE TIP: Putting together a meeting agenda requires careful thought.

Q. The agenda for a regular meeting contains the following items of business:

- Consideration of a report regarding traffic on Eighth Street; and
- Consideration of contract with ABC Consulting.

Are these descriptions adequate?

A. *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read "consideration of a contract with ABC Consulting in the amount of $50,000 for traffic engineering services regarding traffic on Eighth Street."*

Q. The agenda includes an item entitled City Manager's Report, during which time the city manager provides a brief report on notable topics of interest, none of which are listed on the agenda.

Is this permissible?

A. *Yes, so long as it does not result in extended discussion or action by the body.*

A brief general description may not be sufficient for closed session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions. Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted. If requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[11]

Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed. Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda — with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency's website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[12]

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.[13] If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[14] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[15]

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.[16] News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces: (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.[17]

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member's official duties, such as for travel, meals, and lodging.

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.[18] However, they are generally consistent with the Brown Act. An item is probably void if not posted.[19] A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and to address the board on those items.[20]

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.[21] Though written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments as those are governed by the California Constitution, Article XIIIC or XIIID, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.[22] As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:[23]

- When a majority decides there is an "emergency situation" (as defined for emergency meetings);
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action "came to the attention of the local agency subsequent to the agenda being posted." This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline; or
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

PRACTICE TIP: Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

> **"I'd like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project," said Chair Lopez.**
>
> **"It's not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I'd like to keep it that way. Do I hear a motion?"**

The desire to stay ahead of schedule generally would not satisfy "a need for immediate action." Too casual an action could invite a court challenge by a disgruntled resident. The prudent course is to place an item on the agenda for the next meeting and not risk invalidation.

> **"We learned this morning of an opportunity for a state grant," said the chief engineer at the regular board meeting, "but our application has to be submitted in two days. We'd like the board to give us the go ahead tonight, even though it's not on the agenda."**

A legitimate immediate need can be acted upon even though not on the posted agenda by following a two-step process:

- First, make two determinations: 1) that there is an immediate need to take action, and 2) that the need arose after the posting of the agenda. The matter is then placed on the agenda.
- Second, discuss and act on the added agenda item.

Responding to the public

The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body's rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.[24] However, caution should be used to avoid any discussion or action on such items.

Council Member Jefferson: I would like staff to respond to Resident Joe's complaints during public comment about the repaving project on Elm Street — are there problems with this project?

City Manager Frank: The public works director has prepared a 45-minute power point presentation for you on the status of this project and will give it right now.

Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.

It is clear from this dialogue that the Elm Street project was not on the council's agenda, but was raised during the public comment period for items not on the agenda. Council Member A properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.

The right to attend and observe meetings

A number of Brown Act provisions protect the public's right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.[25]

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[26] This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[27]

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.[28]

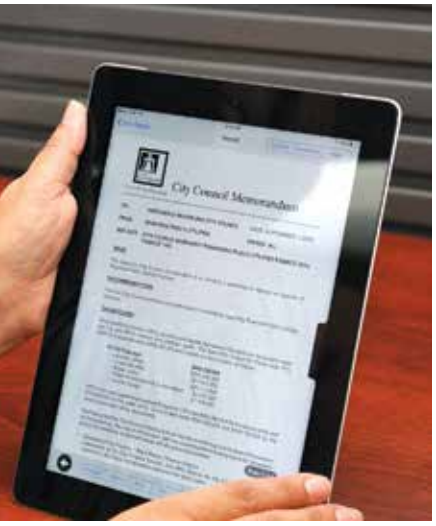
Action by secret ballot, whether preliminary or final, is flatly prohibited.[29]

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.[30]

Q: The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

A: *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt proceedings.[31] Ejection is justified only when audience members actually disrupt the proceedings.[32] If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.[33]



Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.[34] A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.[35]

Q: In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

A: *No. The memorandum is a privileged attorney-client communication.*

Q: In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

A. *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A non-exempt or otherwise privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.[36] A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.[37]

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[38] The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.[39]

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.[40]

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.[41]

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[42]

Q. Must the legislative body allow members of the public to show videos or make a power point presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?

A. *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements.[43]

PRACTICE TIP: Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record, but must respect a speaker's desire for anonymity.

Q. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

A. *No, as long as the criticism pertains to job performance.*

Q. During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

A. *There is no case law on this subject. Some would argue that campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section because it is relevant to the governing of the agency and an implicit criticism of the incumbents.*

The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.[44]

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.[45]

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.[46]

Endnotes:

1 California Government Code section 54954.2(a)(1)

2 78 Ops.Cal.Atty.Gen. 327 (1995)

3 88 Ops.Cal.Atty.Gen. 218 (2005)

4 California Government Code sections 54954.2(a)(1) and 54954.2(d)

5 California Government Code section 54960.1(d)(1)

6 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262

7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432

8 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8

9 California Government Code section 54954.2(a)(1)

10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

11 California Government Code section 54954.1

12 California Government Code sections 54956(a) and (c)

13 California Government Code section 54955

14 California Government Code section 54954.2(b)(3)

15 California Government Code section 54955.1

16 California Government Code section 54956.5

17 California Government Code section 54952.3

18 Education Code sections 35144, 35145 and 72129

19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196

20 California Education Code section 35145.5

21 California Government Code section 54954.6

22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)

23 California Government Code section 54954.2(b)

24 California Government Code section 54954.2(a)(2)

25 California Government Code section 54953.3

26 California Government Code section 54961(a); California Government Code section 11135(a)

27 California Government Code section 54952.2(c)(2)

28 California Government Code section 54953(b)

29 California Government Code section 54953(c)

30 California Government Code section 54953(c)(2)

31 California Government Code section 54957.9.

32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit "insolent" remarks by members of the public absent actual disruption).

33 California Government Code section 54957.9

34 California Government Code section 54957.5

35 California Government Code section 54957.5(d)

36 California Government Code section 54957.5(b)

37 California Government Code section 54957.5(c)

38 California Government Code section 54953.5(b)

39 California Government Code section 54957.5(d)

40 California Government Code section 54953.5(a)

41 California Government Code section 54953.6

42 California Government Code section 54954.3(a)

43 California Government Code section 54954.3(c)

44 California Government Code section 54954.3(b); Chaffee v. San Francisco Public Library Com. (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)

45 California Government Code section 54954.3(a)

46 California Government Code section 54954.3(a)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

Chapter 5

CLOSED SESSIONS

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CLOSED SESSIONS

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.[1]

As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.[2] The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[3]

PRACTICE TIP: Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

In this chapter, the grounds for convening a closed session are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),[4] the Brown Act does not authorize closed sessions for other contract negotiations.

Agendas and reports

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.[5] An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.[6]

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a "safe harbor" from legal attacks. These sample

agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.[7]

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.[8]

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.[9] The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.[10]

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential "minute book" be kept to record actions taken at closed sessions.[11] If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.[12] A court may order the disclosure of minute books for the court's review if a lawsuit makes sufficient claims of an open meeting violation.

PRACTICE TIP: Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

Litigation

There is an attorney/client relationship, and legal counsel may use it to protect the confidentiality of privileged written and oral communications to members of the legislative body — outside of meetings. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.[13]

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.[14] The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.[15] For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.[16]

The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.[17] In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.[18]

Existing litigation

Q. May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?

A. *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.[19]

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.[20] The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

Anticipated initiation of litigation by the local agency

A closed session may be held under the exception for the anticipated initiation of litigation when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

Certain actions must be reported in open session at the same meeting following the closed

session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.[21] Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.[22] Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.[23]

Q. May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

A. *No. However, there are differing opinions over the scope of the phrase "price and terms of payment" in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of "price and terms of payment." Others take a narrower, more literal view of the phrase.*

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern[24] and the names of the parties with whom its negotiator may negotiate.[25]

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.[26]

"Our population is exploding, and we have to think about new school sites," said Board Member Jefferson.

"Not only that," interjected Board Member Tanaka, "we need to get rid of a couple of our older facilities."

"Well, obviously the place to do that is in a closed session," said Board Member O'Reilly. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.

Public employment

The Brown Act authorizes a closed session "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee."[27] The purpose of this exception — commonly referred to as the "personnel exception" — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[28] The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.[29] That authority may be delegated to a subsidiary appointed body.[30]

PRACTICE TIP: Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,[31] and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.[32] The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.[33] If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.[34]

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[35]

Q. Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?

A. *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.[36] An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, "employee" specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager or superintendent. Examples of the latter Include a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[37] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

PRACTICE TIP: The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[38] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[39]

> **"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we've negotiated six months severance pay."**
>
> **"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**
>
> *This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[40] on employee salaries and fringe benefits for both represented ("union") and non-represented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.[41]

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

PRACTICE TIP: Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[42]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[43] The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

Labor negotiations — school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[44]

Public participation under the Rodda Act also takes another form.[45] All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[46] The final vote must be in public.

Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.[47]

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[48] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[49]

PRACTICE TIP: Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

Joint Powers Authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.[50]

License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[51]

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.[52] Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.[53]

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[54]

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.[55]

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

A "trade secret" is defined as information which is not generally known to the public or competitors and which: 1) "derives independent economic value, actual or potential" by virtue of its restricted knowledge; 2) is necessary to initiate a new hospital service or program or facility; and 3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[56]

Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,[57] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[58] hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,[59] discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,[60] and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.[61]

PRACTICE TIP: Meetings are either open or closed. There is nothing "in between."[62]

Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions.[63]

Q. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

A. *No, attendance in closed sessions is reserved exclusively for the agency's advisors.*

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.[64] It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[65] Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.[66]

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is "improper" for officials to disclose information received during a closed session regarding pending litigation,[67] though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.[68] In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.[69]

PRACTICE TIP: There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure: 1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; 2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or 3) is information that is not confidential.[70]

The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

> **"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.**
>
> **"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee. "The city's offer coming your way is not our bottom line."**
>
> *The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.[71] The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

ENDNOTES:

1 California Government Code section 54962

2 California Constitution, Art. 1, section 3

3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).

4 California Government Code section 54957.1

5 California Government Code section 54954.5

6 California Government Code section 54954.2

7 California Government Code section 54954.5

8 California Government Code sections 54956.9 and 54957.7

9 California Government Code section 54957.1(a)

10 California Government Code section 54957.1(b)

11 California Government Code section 54957.2

12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18707

13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).

15 82 Ops.Cal.Atty.Gen. 29 (1999)

16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471

17 "*The Brown Act,*" California Attorney General (2003), p. 40

18 California Government Code section 54956.9(g)

19 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172

20 Government Code section 54956.9(e)

21 California Government Code section 54957.1

22 California Government Code section 54956.8

23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan Incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).

24 73 Ops.Cal.Atty.Gen. 1 (1990)

25 California Government Code sections 54956.8 and 54954.5(b)

26 California Government Code section 54957.1(a)(1)

27 California Government Code section 54957(b)

28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

29 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)

30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

31 California Government Code section 54957(b)(3)

32 88 Ops.Cal.Atty.Gen. 16 (2005)

33 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860

34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).

35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87

36 *Moreno v. City of King* (2005) 127 Cal.App.4th 17

37 California Government Code section 54957

38 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165

39 California Government Code section 54957.1(a)(5)

40 California Government Code section 54957.6

41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not "employees" of the district).

42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)

43 California Government Code section 54957.1(a)(6)

44 California Government Code section 3549.1

45 California Government Code section 3540

46 California Government Code section 3547

47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).

48 California Education Code section 72122

49 California Education Code section 60617

50 California Government Code section 54956.96

51 California Government Code section 54956.7

52 California Government Code section 54957

53 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354

54 California Government Code section 54957.8

55 California Government Code section 54962

56 California Health and Safety Code section 32106

57 California Government Code section 54956.75

58 California Government Code section 54956.81

59 California Government Code section 54956.86

60 California Government Code section 54956.87

61 California Government Code section 54956.95

62 46 Ops.Cal.Atty.Gen. 34 (1965)

63 82 Ops.Cal.Atty.Gen. 29 (1999)

64 Government Code section 54963

65 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also California Government Code section 54963.

66 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

67 80 Ops.Cal.Atty.Gen. 231 (1997)

68 76 Ops.Cal.Atty.Gen. 289 (1993)

69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

Chapter 6

REMEDIES

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REMEDIES

Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act.[1] Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites to the wrong Brown Act section, but adequately advises the public that the Board will meet with legal counsel to discuss potential litigation in closed session;[2]
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendized items are acted on by the governing body during a meeting.[3] The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.

Although just about anyone has standing to bring an action for invalidation,[4] the challenger must show prejudice as a result of the alleged violation.[5] An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.[6]

Applicability to Past Actions

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action.[7] Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a "cease and desist" letter to the legislative body, clearly describing the past action and the nature of the alleged violation.[8] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[9] If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days.[10]

The legislative body's unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.[11] The unconditional commitment must be substantially in the form set forth in the Brown Act.[12] No legal action may thereafter be commenced regarding the past action.[13] However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.[14]

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.[15]

PRACTICE TIP: A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.

Civil action to prevent future violations

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions.

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.[16] Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.[17]

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

Costs and attorney's fees

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.[18] When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.[19]

PRACTICE TIP: Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.[20]

A criminal violation has two components. The first is that there must be an overt act — a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.[21]

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.[22] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[23] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.[24]

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.[25] There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.[26]

Voluntary resolution

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

ENDNOTES:

1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.

2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198

3 California Government Code section 54960.1 (b) and (c)(1)

4 *McKee v. Orange Unified School District* (2003) 110 Cal. App.4th 1310, 1318-1319

5 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561

6 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118

7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)

8 Government Code Sections 54960.2(a)(1), (2)

9 Government Code Section 54960.2(b)

10 Government Code Section 54960.2(a)(4)

11 Government Code Section 54960.2(c)(2)

12 Government Code Section 54960.2(c)(1)

13 Government Code Section 54960.2(c)(3)

14 Government Code Section 54960.2(d)

15 Government Code Section 54960.2(e)

16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6

17 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36

18 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein

19 California Government Code section 54960.5

20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.

21 California Government Code section 54959

22 California Government Code section 54952.6

23 61 Ops.Cal.Atty.Gen.283 (1978)

24 California Government Code section 54959

25 California Government Code section 1222 provides that "[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

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CHRONOLOGICAL CASE REPORT

Case No.: T23-0019

Case Name: Barragan et al v. Mead Holding LLC

Property Address: 2031 69th Avenue, Oakland, CA 94621

Parties: Ahmed Said, Mead Holding LLC (Owner)
Reyes Ornelas (Tenant)
Maria Barragan (Tenant)

OWNER APPEAL:

Activity	Date
Tenant Petition filed	January 23, 2023
Property Owner Response filed	February 1, 2023
Tenant Evidence Submission	February 28, 2023
Notice of Incomplete Owner Response mailed	February 28, 2023
Administrative Decision mailed	April 6, 2023
Property Owner Appeal filed	April 18, 2023
Tenant Brief in Support of Petition submitted	May 2, 2023

T23-0019 EL/BL

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250 Frank H. Ogawa Plaza, Suite 5313
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(510) 238-3721
CA Relay Service 711
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For Rent Adjustment Program date stamp.
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TENANT PETITION

Please fill out this form as completely as you can. *Use this form to contest a rent increase, seek a rent decrease, and/or contest an owner exemption from the Rent Adjustment Program. Failure to provide the required information may result in your petition being rejected or delayed. See the last pages of this petition packet ("Important Information Regarding Filing Your Petition") or the RAP website for more information.* ***CONTACT A HOUSING COUNSELOR TO REVIEW YOUR PETITION BEFORE SUBMITTING.*** *To make an appointment email RAP@oaklandca.gov.*

Rental Unit Information

2031 (Street Number) 69th Ave. (Street Name) c (Unit Number) Oakland, CA 94621 (Zip Code)

Move-in Date: 01/2013 Initial Rent at Move-In: $ 1,000 Current Rent: $ 1,500

Is your rent subsidized or controlled by a government agency (such as HUD or Section 8), other than Oakland Rent Adjustment Program? *(See page 5 "Jurisdiction" for more information)*
☐ Yes ☒ No ☐ Not sure

Are you current on rent? ☒ Yes ☐ No* (**Note: You must be current on your rent or lawfully withholding rent in order to file a petition. Checking "No" without providing an adequate explanation may result in your petition being dismissed.*)

If not current on rent, explain why: _____

When (if ever) did the property owner first provide you with the City form, NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")?
☐ I first received the RAP Notice on: _____
☒ was never provided with the RAP Notice
☐ I do not remember if I ever received the RAP Notice

Case number(s) of any relevant prior Rent Adjustment case(s):

Tenant Information *(List each tenant petitioner in unit. If you need more space, attach additional sheet.)*

Maria (First Name) Barragan (Last Name)

Mailing Address (*if different from above*): _____

Primary Telephone: (510) 395-0124 Other Telephone: _____ Email: carmenornelas01@gmail.com

Reyes (First Name) Ornelas (Last Name)

Mailing Address (*if different from above*): _____

Primary Telephone: (510)-472-1072 Other Telephone: _____ Email: _____

Tenant Representative *(Check one)*: ☐ No Representative ☐ Attorney ☐ Non-Attorney

First Name _____ Last Name _____ Firm/Organization (*if any*) _____

Mailing Address: _____

Phone Number: _____ Email: _____

Property Owner Information

Property Owner

Ahmed — First Name

Said — Last Name

Company/LLC/LP *(if applicable)*: Mead Holding LLC

Mailing Address: 2400 Market Suite B Oakland ,ca 94607

Phone Number: (510)-812-3277 Email: Ahmedmead@gmail.com

Property Manager (if applicable)

First Name — Last Name — Name of Management Company

Mailing Address:

Phone Number: Email:

GROUNDS FOR PETITION

Select the grounds for this petition from the list below. *Check all that apply. You must check at least one box. To contest a rent increase, select item(s) from Category A. If you have experienced a decrease in housing services and/or have issues with the condition of your unit, or are being charged for utilities in violation of the law, select item(s) from Category B. For more information on each of the grounds, see Oakland Municipal Code (O.M.C.) Sections 8.22.070 and 8.22.090 (Rent Adjustment Ordinance) and the corresponding Regulations. A copy of the Ordinance and Regulations are available here: www.oaklandca.gov/resources/read-the-oakland-rent-adjustment-program-ordinance.*

A.	**Unlawful Rent Increase(s)** *(Complete section A on page 3)*	☒ (A1) I received a rent increase above the allowable amount.
		☒ (A2) I received a rent increase that I believe is unlawful because I was not given proper notice, was not properly served, and/or was not provided with the required RAP Notice ("Notice to Tenants of the Residential Rent Adjustment Program").
		☐ (A3) I received a rent increase and do not believe I should be required to pay it because a government agency has cited my unit for serious health, safety, fire, or building code violations. ***(You must attach a copy of the citation to your petition.)***
B.	**Decreased Housing Services** *(Complete section B on page 3)*	☐ (B1) The property owner is providing me with fewer housing services than I previously received and/or I am being charged for services originally paid for by the owner. ***(Check this box for petitions based on bad conditions/failure to repair.)***
		☐ (B2) I am being unlawfully charged for utilities.
C.	**Other**	☐ (C1) My rent was not reduced after a prior rent increase period for capital improvements or after an additional tenant for whom the owner was allowed an increase, vacated from the premises.
		☐ (C2) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.
		☐ (C3) The initial rent amount when I first moved in was unlawful because the property owner was not permitted to set the initial rent without limitation. O.M.C. § 8.22.080 (C).

A. Unlawful Rent Increase(s)

(Complete this section if any of the grounds for petition fall under category A, above)

List all rent increases you wish to contest. Begin with the most recent increase and work backwards. If you never received the RAP Notice, you can contest all past increases. See the "Important Information" page at the end of this petition packet for more information on time limits for contesting rent increases. If you need additional space, attach a separate sheet or an additional copy of this form.

- For petitions contesting a rent increase on the grounds that the unit has been cited by a government agency for serious health, safety, fire, or building code violations, **you must attach a copy of the citation** to your petition. Failure to attach a copy of the citation may result in your petition being dismissed.

Date received rent increase notice: (Month/Day/Year)	Date rent increase went into effect: (Month/Day/Year)	Amount of increase: FROM	Amount of increase: TO	Received RAP Notice with notice of rent increase? YES	NO
09/2019	12/2019	$ 1,000	$ 1,300	☐	☒
09/2022	12/2022	$ 1,300	$ 1,500	☐	☒
		$	$	☐	☐
		$	$	☐	☐
		$	$	☐	☐

B. Decreased Housing Services

(Complete this section if any of the grounds for petition fall under category B, above)

List all the conditions that you believe entitle you to a rent decrease. If your petition is based on problems related to your unit, or because the owner has taken away service(s) or is charging for services originally provided by the owner, you must complete this section. If you need more space, attach a separate sheet or an additional copy of this form.

- **You are strongly encouraged to submit documentary evidence** (photographs, inspection reports, correspondence with your landlord, etc.) together with your petition. Evidence may be submitted up to seven calendar days prior to your hearing.
- **You may wish to have a City inspector come inspect your unit** for possible code violations in advance of your hearing. Copies of any inspection report(s) may be submitted in support of your petition. To schedule an inspection, contact the City of Oakland Code Enforcement Unit at (510) 238-3381, or file a complaint online at https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement. *Note: if additional items are cited in an inspection report that were not included in your original petition (below), you must file an additional petition listing those items in order for RAP staff to consider them as a part of your claim.*

	Description of problem or decreased housing service (list separately):	Date problem or decreased service started: (Month/Day/Year)	Date first notified owner or manager of problem: (Month/Day/Year)	Date problem or service was fixed, if ever: (Month/Day/Year)	What is the dollar value of your claimed loss?
1.					$
2.					$
3.					$
4.					$

TENANT VERIFICATION
(Required)

I/We declare under penalty of perjury pursuant to the laws of the State of California that everything I/we said in this Tenant Petition is true and that all of the documents attached to the Petition are true copies of the originals.

MARIA BARRAGAN
Tenant 1 Signature

01/20/23
Date

REYES ORELAS
Tenant 2 Signature

01/20/23
Date

CONSENT TO ELECTRONIC SERVICE
(Highly Recommended)

Check the box below if you agree to have RAP staff and the OTHER PARTY/PARTIES send you documents related to your case electronically. If you agree to electronic service, the RAP may send certain documents only electronically and not by first class mail.

☒ **I/We consent to receiving notices and documents in this matter from the RAP and from the OTHER PARTY/IES electronically at the email address(es) provided in this response.**

MEDIATION PROGRAM

Mediation is an optional process offered by RAP to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. A trained third party will work with the parties prior to the hearing to see if a mutual agreement can be reached. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you agree to mediation in your case.

I agree to have the case mediated by a Rent Adjustment Program staff mediator.

Tenant Signature

Date

INTERPRETATION SERVICES

If English is not your primary language, you have the right to an interpreter in your primary language/dialect at the Rent Adjustment hearing and mediation session. You can request an interpreter by completing this section.

☒ **I request an interpreter fluent in the following language at my Rent Adjustment proceeding:**

- ☒ Spanish (Español)
- ☐ Cantonese (廣東話)
- ☐ Mandarin (普通话)
- ☐ Other: _____

-END OF PETITION-

PERSON(S) SERVED:

Name	Ahmed Said
Address	2400 Market Suite B
City, State, Zip	Oakland, CA 94607

Name	
Address	
City, State, Zip	

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

Israel Lepiz

PRINTED NAME

Israel Lepiz

SIGNATURE

01/20/23

DATE SIGNED

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250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION (PLUS ANY ATTACHMENTS) ON THE PROPERTY OWNER PRIOR TO FILING YOUR PETITION WITH RAP. You must include a copy of the RAP form "NOTICE TO PROPERTY OWNER OF TENANT PETITION" *(the preceding page of this petition packet)* and a completed PROOF OF SERVICE form together with your Petition.

1) *Use this PROOF OF SERVICE form to indicate the date and manner of service and the person(s) served.*
2) *Note: Email is not a form of allowable service on a party of a petition or response pursuant to the Ordinance.*
3) *Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.*
4) *File a completed copy of this PROOF OF SERVICE form with RAP together with your Petition. Your Petition will not be considered complete until this form has been filed indicating that service has occurred.*

On the following date: 01 / 20 / 2023 I served a copy of *(check all that apply)*:

☒ **TENANT PETITION** plus _____ attached pages *(number of pages attached to Petition not counting the Petition form, NOTICE TO PROPERTY OWNER OF TENANT PETITION, or PROOF OF SERVICE)*

☒ **NOTICE TO PROPERTY OWNER OF TENANT PETITION**

☐ Other: _____

by the following means *(check one)*:

☒ **United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☐ **Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

///

///

///

CITY OF OAKLAND

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RENT ADJUSTMENT PROGRAM
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www.oaklandca.gov/RAP

NOTICE TO PROPERTY OWNER OF TENANT PETITION

ATTENTION: IMMEDIATE ACTION REQUIRED

If you are receiving this NOTICE together with a completed TENANT PETITION form, it means that a tenant has filed a case against you with the Oakland Rent Adjustment Program ("RAP") (commonly referred to as the "Rent Board").

- **YOU MUST FILE A RESPONSE WITHIN 35 CALENDAR DAYS AFTER THE PETITION WAS MAILED TO YOU (30 DAYS IF DELIVERED IN-PERSON).**

- TO RESPOND:

1) Complete a **PROPERTY OWNER RESPONSE** form found on the RAP website. (https://www.oaklandca.gov/services/respond-to-a-tenant-petition-for-the-rent-adjustment-program)
2) Serve a copy of your **PROPERTY OWNER RESPONSE** form on the tenant (or the tenant's representative listed on the petition) by mail or personal delivery.
3) Complete a **PROOF OF SERVICE** form (which is attached to the Response form and also available on the website) and provide a copy to the tenant (or tenant's representative) together with your **PROPERTY OWNER RESPONSE** form.
4) Submit your **PROPERTY OWNER RESPONSE** form and completed **PROOF OF SERVICE*** form to RAP through RAP's online portal, via email, or by mail.

**Note: The Response will not be considered complete until a PROOF OF SERVICE is filed indicating that the tenant has been served with a copy.*

DOCUMENT REVIEW: The tenant is required to serve on you all documents the tenant filed in this case in addition to the petition. Additionally, all documents are available for review at RAP.

FOR ASSISTANCE: Contact a RAP Housing Counselor at (510) 238-3721 or by email at RAP@oaklandca.gov. Additional information is also available on the RAP website and on the PROPERTY OWNER RESPONSE form.

IMPORTANT INFORMATION REGARDING FILING YOUR PETITION

TIME TO FILE YOUR PETITION

Your Tenant Petition form must be received by the Rent Adjustment Program within the required time limit for filing. RAP staff cannot grant an extension of time to file your Petition.

- For Petitions contesting a rent increase, you have 90 days from the date of notice of increase or from the first date you received the RAP Notice (whichever is later) to file a Petition. If you did not receive a RAP Notice with the rent increase you are contesting but have received one in the past, you have 120 days to file a Petition. If you have never received a RAP Notice, you may contest all rent increases.
- For Petitions claiming decreased housing services, you have 90 days from either the date you first became aware of the decreased service or the date you first received the RAP Notice (whichever is later) to file a Petition. If the decreased housing service is ongoing, you may file a Petition at any time. See O.M.C. §§ 8.22.090 (A)(2)-(3) for more information.

CONTACT A HOUSING COUNSELOR TO REVIEW YOUR PETITION BEFORE SUBMITTING

To make an appointment, email RAP@oaklandca.gov or call (510) 238-3721. Although the Housing Resource Center is temporarily closed for drop-in services, assistance is available by email or telephone.

DOCUMENTS SUBMITTED IN SUPPORT OF PETITION

All attachments submitted together with your Petition must be numbered sequentially. You may submit additional evidence in support of your Petition up to seven days before your hearing[1]. You must serve a copy of any documents filed with RAP on the other party and submit a PROOF OF SERVICE form.

REMINDER: Once a petition and its attachments are submitted to the RAP they become public records. Please redact any private information (such as social security numbers, bank account numbers, credit card numbers and similar financial data) from the documents you submit as part of this petition. If you have any questions, you may contact RAP staff at (510) 238-3721 or by email at RAP@oaklandca.gov.

Additionally, all documents submitted to the RAP, including but not limited to emails, petitions, attachments, potential evidence, text messages, screenshots, etc., are a part of the file in your case and all parties to a case are entitled to have access to this information.

SERVICE ON PROPERTY OWNER

You are required to serve ALL the following documents on the property owner and/or the property owner's representative:

1. Copy of RAP form entitled "NOTICE TO PROPERTY OWNER OF TENANT PETITION" (*included in petition packet and available on RAP website*).
2. Copy of completed Petition form and attachments.
3. Completed PROOF OF SERVICE form (*included in petition packet and available on RAP website*).

You may serve the property owner and/or the owner's representative by mail or personal delivery. A copy of the completed PROOF OF SERVICE form must be submitted to RAP together with your Petition. Your Petition will not be considered complete until a PROOF OF SERVICE form is filed indicating that the owner has been served. Note that you cannot serve a Petition by email, even if you have an agreement to electronic service between the parties, because the Ordinance requires service by mail or in person.

[1] Note that certain documents are required to be submitted with the Petition. See petition for details.

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250 Frank H. Ogawa Plaza, Suite 5313
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OAKLAND

CASE NUMBER T - 23-0019

EL/BL

PROPERTY OWNER RESPONSE TO TENANT PETITION

Please fill out this form as completely as you can. *Use this form to respond to the Tenant Petition you received. By completing this response form and submitting it in the required time for filing, you will be able to participate in the hearing. Failure to provide the required information may result in your response being rejected or delayed. See "Important Information Regarding Filing Your Response" on the last page of this packet for more information, including filing instructions and how to contact the Rent Adjustment Program ("RAP") with questions. Additional information is also available on the RAP website.* ***CONTACT A HOUSING COUNSELOR TO REVIEW YOUR RESPONSE BEFORE SUBMITTING.*** *To make an appointment email RAP@oaklandca.gov .*

Rental Unit Information

2031 (Street Number) | 69th Avenue (Street Name) | C (Unit Number) | Oakland, CA | 94621 (Zip Code)

Is there more than one street address on the parcel? ☐ Yes ☒ No If yes, list all addresses: _____

Type of unit(s) (*check one*): ☐ Single family home ☐ Condominium ☒ Apartment, room, or live-work

Number of units on property: 6

Date acquired property: 11/22/2000

Case number(s) of any relevant prior Rent Adjustment case(s): _____

Tenant Information

Name of Tenant Petitioner(s): Maria Barragan & Reyes Ornelas

Date tenant(s) moved into rental unit: **Jan, 2013** Initial rent amount: $ **1,000** Is/are tenant(s) current on rent? ☒ Yes ☐ No

Property Owner Information

Ahmed (First Name) | Said (Last Name)

Company/LLC/LP (*if applicable*): Mead Holding LLC

Mailing address: 2400 Market St, Suite B Oakland Ca, 94607

Primary Telephone: (510) 812-3277 Other Telephone: (510) 326-6215 Email: ahmedmead@gmail.com

Property Owner Representative *(Check one)*: ☒ No Representative ☐ Attorney ☐ Non-attorney

First Name | Last Name | Firm/Organization (*if any*)

Mailing Address: _____

Phone Number: _____ Email: _____

GENERAL FILING REQUIREMENTS

To file a Response to a Tenant Petition, the property owner must be current on the following requirements and submit supporting documentation of compliance. Property Owner Responses that are submitted without proof of compliance with the below requirements will be considered incomplete and may limit your participation in the hearing.

Requirement	Documentation
☐ Current Oakland business license	*Attach proof of payment of your most recent Oakland business license.*
☐ Payment of Rent Adjustment Program service fee ("RAP Fee")	*Attach proof of payment of the current year's RAP Fee for the subject property.*
☐ Service of the required City form entitled "NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM" ("RAP Notice") on all tenants	*Attach a signed and dated copy of the first RAP Notice provided to the petitioning tenant(s) or check the appropriate box below.* ☐ I first provided tenant(s) with the RAP Notice on (*date*):_____. ☒ I have never provided a RAP Notice. ☐ I do not know if a RAP Notice was ever provided.

PROPERTY OWNER CLAIM OF EXEMPTION

If you believe that the subject property is exempt from the Rent Adjustment Ordinance (pursuant to O.M.C. § 8.22.030), check each box below that is the claimed basis of exemption. Attach supporting documentation together with your response form. If you do not claim any exemption, proceed to the "Response to Tenant Petition" section on the following page.

☐ The unit is a single-family residence or condominium exempted by the Costa Hawkins Rental Housing Act (Civil Code 1954.50, et seq.). ***If claiming this exemption, you must answer the following questions. Attach a separate sheet if necessary.***

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. At the time the prior tenant vacated were there any outstanding violations of building housing, fire or safety codes in the unit or building?
5. Is the unit separately alienable, meaning it can be sold separately from any other unit on the parcel?
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. *(Attach documentation.)*

☐ The unit was newly constructed and issued a Certificate of Occupancy on or after January 1, 1983. *(Attach copy of Certificate of Occupancy.)*

☐ The unit is located in a motel, hotel, or rooming/boarding house, which the tenant petitioner has occupied for less than 30 days.

☐ The unit is in a building that was previously issued a certificate of exemption from RAP based on substantial rehabilitation. *(Attach copy of Certificate of Exemption.)*

☐ The unit is an accommodation in a hospital, convent, monastery, extended care facility, convalescent home, non-profit home for the aged, or dormitory owned and operated by an educational institution. *(Attach documentation.)*

RESPONSE TO TENANT PETITION

Use the chart(s) below to respond to the grounds stated in the Tenant Petition. *Enter your position on each claim in the appropriate section(s) below. You may attach any documents, photographs, or other tangible evidence that support your position together with your response form. If you need more space, attach additional copies of this page or state your response in a separate sheet attached to this form.*

A. Unlawful Rent Increase(s)

Complete this section if any of the grounds for the Tenant Petition fall under Category A on the Tenant Petition.

List all rent increases given within the past five years, starting with the most recent increase.

Date tenant given notice of rent increase:	Date rent increase went into effect:	Amount of Increase:		Did you provide a RAP Notice with the notice of rent increase?		Reason for Increase (CPI, banking, or other):
(mm/dd/yy)	(mm/dd/yy)	FROM	TO	YES	NO	
		$	$	❑	❑	
		$	$	❑	❑	
		$	$	❑	❑	
		$	$	❑	❑	
		$	$	❑	❑	

If the Tenant Petition is based on either of the following grounds, state your response in the space below or in a separate sheet attached to this form.

	Tenant Petition Grounds	Owner Response
(A2)	Tenant did not receive proper notice, was not properly served, and/or was not provided with the required RAP form with rent increase(s).	
(A3)	A government agency has cited the unit for serious health, safety, fire, or building code violations.	

B. Decreased Housing Services

Complete this section if any of the grounds for the Tenant Petition fall under Category B on the Tenant Petition.

	Tenant Petition Grounds	Owner Response
(B1)	The owner is providing tenant(s) with fewer housing services and/or charging for services originally paid for by the owner.	
(B2)	Tenant(s) is/are being unlawfully charged for utilities.	

C. Other

Complete this section if any of the grounds for the Tenant Petition fall under Category C on the Tenant Petition.

	Tenant Petition Grounds	Owner Response
(C1)	Rent was not reduced after a prior rent increase period for capital improvements.	
(C2)	Owner exemption based on fraud or mistake.	
(C3)	Tenant's initial rent amount was unlawful because owner was not permitted to set initial rent without limitation (O.M.C. § 8.22.080 (C)).	

OWNER VERIFICATION
(Required)

I/We declare under penalty of perjury pursuant to the laws of the State of California that everything I/we said in this response is true and that all of the documents attached to the response are true copies of the originals.

Property Owner 1 Signature — Date: 1/31/23

Property Owner 2 Signature — Date

CONSENT TO ELECTRONIC SERVICE
(Highly Recommended)

Check the box below if you agree to have RAP staff and the OTHER PARTY/IES send you documents related to your case electronically. If you agree to electronic service, the RAP may send certain documents only electronically and not by first class mail.

❑ **I/We consent to receiving notices and documents in this matter from the RAP and from the OTHER PARTY/IES electronically at the email address(es) provided in this response.**

MEDIATION PROGRAM

Mediation is an optional process offered by RAP to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. A trained third party will work with the parties prior to the hearing to see if a mutual agreement can be reached. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing. If no settlement is reached, the case will go to a formal hearing with a Rent Adjustment Hearing Officer, who will then issue a hearing decision.

Mediation will only be scheduled if both parties agree to mediate. Sign below if you agree to mediation in your case.

I agree to have the case mediated by a Rent Adjustment Program staff mediator.

Property Owner Signature — Date

INTERPRETATION SERVICES

If English is not your primary language, you have the right to an interpreter in your primary language/dialect at the Rent Adjustment hearing and mediation session. You can request an interpreter y completing this section.

❑ **I request an interpreter fluent in the following language at my Rent Adjustment proceeding:**

- ❑ Spanish (Español)
- ❑ Cantonese (廣東話)
- ❑ Mandarin (普通话)
- ❑ Other: _____

-END OF RESPONSE-

CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR RESPONSE (PLUS ANY ATTACHMENTS) ON THE TENANT(S) PRIOR TO FILING YOUR RESPONSE WITH RAP.

1) *Use this PROOF OF SERVICE form to indicate the date and manner of service and the person(s) served.*
2) *Note: Email is not a form of allowable service on a party of a petition or response pursuant to the Ordinance.*
3) *Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.*
4) *File a completed copy of this PROOF OF SERVICE form with RAP together with your Response. Your Response will not be considered complete until this form has been filed indicating that service has occurred.*

On the following date: 1 / 31 / 2023 I served a copy of *(check all that apply)*:

☐ **PROPERTY OWNER RESPONSE TO TENANT PETITION** plus _____ attached pages *(number of pages attached to Response not counting the Response form or PROOF OF SERVICE)*

☐ Other: _____

by the following means *(check one)*:

☒ **United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☐ **Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

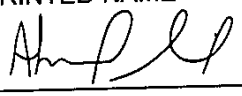
Name	**Maria Barragan**
Address	**2031 69th ave #C**
City, State, Zip	**Oakland, Ca, 94621**

Name	
Address	
City, State, Zip	

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

Ahmed Said

PRINTED NAME



SIGNATURE

1/31/23

DATE SIGNED

IMPORTANT INFORMATION
REGARDING FILING YOUR RESPONSE

TIME TO FILE YOUR RESPONSE

Your Property Owner Response form must be received by the Rent Adjustment Program within 35 days after the Tenant Petition was mailed to you (30 days if the Petition was delivered in-person). RAP staff cannot grant an extension of time to file.

CONTACT A HOUSING COUNSELOR TO REVIEW YOUR RESPONSE BEFORE SUBMITTING

To make an appointment, email RAP@oaklandca.gov or call (510) 238-3721. Although the Housing Resource Center is temporarily closed for drop-in services, assistance is available by email or telephone.

DOCUMENTS SUBMITTED IN SUPPORT OF RESPONSE

All attachments submitted together with your Response must be numbered sequentially. You may submit additional evidence in support of your Response up to seven days before your hearing.[1] You must serve a copy of any documents filed with RAP on the other party and submit a PROOF OF SERVICE form.

REMINDER: Once a petition and its attachments are submitted to the RAP they become public records. Please redact any private information (such as social security numbers, bank account numbers, credit card numbers and similar financial data) from the documents you submit as part of this petition. If you have any questions, you may contact RAP staff by phone at (510) 238-3721 or by email at RAP@oaklandca.gov.

Additionally, all documents submitted to the RAP, including but not limited to emails, petitions, attachments, potential evidence, text messages, screenshots, etc., are a part of the file in your case and all parties to a case are entitled to have access to this information.

SERVICE ON TENANT(S)

You are required to serve a copy of your Property Owner Response form (plus any attachments) on the tenant or the tenant's representative and submit a PROOF OF SERVICE form together with your Response.

(1) Serve a copy of your Response on the tenant(s) by mail or personal delivery.
(2) Complete a PROOF OF SERVICE form (*included in this Response packet and available on RAP website*) indicating the date and manner of service and the person(s) served.
(3) Provide the tenant with a completed copy of the PROOF OF SERVICE form together with the document(s) being served.
(4) File a completed copy of the PROOF OF SERVICE form together with your Response when submitting to RAP.

You may serve the tenant(s) and/or the tenant's representative by mail or personal delivery. A copy of the completed PROOF OF SERVICE form must be submitted to RAP together with your Response. Your Response will not be considered complete until a PROOF OF SERVICE form is filed indicating that the tenant has been served. Note that you cannot serve a Response by email, even if you have an agreement to electronic service between the parties, because the Ordinance requires service by mail or in person.

FILING YOUR RESPONSE

Although RAP normally does not accept filings by email or fax, RAP is temporarily accepting Responses via email during the COVID-19 local state of emergency. You may also fill out and submit your Response online through the RAP website or deliver the Response to the RAP office by mail. 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. If you send your

[1] Note that certain documents are required to be submitted with the Response. See Response form for details.

Response by mail, a postmark date does not count as the date it was received. Remember to file a PROOF OF SERVICE form together with your Response.

Via email: hearingsunit@oaklandca.gov

Mail to: City of Oakland
Rent Adjustment Program
250 Frank H. Ogawa Plaza, Ste. 5313
Oakland, CA 94612-0243

File online: https://www.oaklandca.gov/services/respond-to-a-tenant-petition-for-the-rent-adjustment-program

In person: TEMPORARILY CLOSED
City of Oakland
Dalziel Building, 250 Frank H. Ogawa Plaza Suite
5313 Reception area
Use Rent Adjustment date-stamp to stamp your documents to verify timely delivery and place them in RAP self-service drop box.

AGREEMENT TO ELECTRONIC SERVICE

If you have agreed to electronic service from the RAP by signing the Consent to Electronic Service on page 4 of the response, you have agreed to receive electronic service from the Rent Adjustment Program only, and not from the other parties to the case.

AFTER RESPONSE IS FILED

In most cases, RAP will schedule a hearing to determine whether the Tenant Petition should be granted or denied. You will be mailed a Notice of Hearing indicating the hearing date. If you are unable to attend the hearing, contact RAP as soon as possible. The hearing will only be postponed for good cause.

FILE/DOCUMENT REVIEW

Either party may contact RAP to review the case file and/or to request copies of any documents pertaining to the case at any time prior to the scheduled hearing.

FOR MORE INFORMATION

Additional information on the petition and hearing process is located on the RAP website and in the Residential Rent Adjustment Program Ordinance and Regulations (see Oakland Municipal Code 8.22.010 *et seq.*). For more information on rent increases, including the list of the annual allowable CPI rates and calculators for certain justifications, see: https://www.oaklandca.gov/resources/learn-more-about-allowable-rent-increases, or you can refer to the Guide on Oakland Rental Housing Law at https://cao-94612.s3.amazonaws.com/documents/Guide-to-Oakland-Rental-Housing-Law-1.pdf. You may also contact a RAP Housing Counselor with questions at any time by emailing RAP@oaklandca.gov or calling (510) 238-3721.

CITY OF OAKLAND

BUSINESS TAX CERTIFICATE

ACCOUNT NUMBER
00038967

The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland and/or any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 5.04.190(A), of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

EXPIRATION DATE
12/31/2022

DBA SAID AHMED M

BUSINESS LOCATION 2031 69TH AVE
OAKLAND, CA 94621-3404

BUSINESS TYPE M Rental - Apartment

Starting January 1, 2021, Assembly Bill 1607 requires the prevention of gender-based discrimination of business establishments. A full notice is available in English or other languages by going to: https://www.dca.ca.gov/publications

AHMED SAID
PO BOX 23562
OAKLAND, CA 94623-0544

A BUSINESS TAX CERTIFICATE IS REQUIRED FOR EACH BUSINESS LOCATION AND IS NOT VALID FOR ANY OTHER ADDRESS.

ALL OAKLAND BUSINESSES MUST OBTAIN A VALID ZONING CLEARANCE TO OPERATE YOUR BUSINESS LEGALLY. RENTAL OF REAL PROPERTY IS EXCLUDED FROM ZONING.

PUBLIC INFORMATION ABOVE THIS LINE TO BE CONSPICUOUSLY POSTED!

Tenant Evidence Submission

Exhibit	Document Description	Page Numbers
T1	Rent Increase Notice (9/24/2022)	2-3
T2	Rent Increase Notice (12/1/2019)	4-10
T3	Rent Payment Receipts	11-19
T4	Property Owner-Tenant Communications	20-22

Exhibit T1

Mead Holding llc

Notice of Rent Increase

Ahmed Said

2400 Market Suite B

Oakland Ca, 94607

Address: 2031 69th ave, Apt C Oakland Ca, 94621

Dear tenant,

On this 24th day of September 2022, the Landlord known as Ahmed Said is increasing your rent to $1,500. (One-Thousand Five-Hundred Dollars and No Cents) from its current rate of $1,300. This rental increase will be effective December 1st, 2022.

The increase in rent will be applied due to high inflation rates that include increasing property and city tax, water, PG&E, as well as maintenance in addition to other factors. Please take into consideration that rent has remained $1,300 without any increases for years. If you have any questions, comments, or concerns, please feel free to call, text, or email me.

Best Regards,

Ahmed Said

Ahmedmead@gmail.com

(510) 812-3277

Exhibit T2

60-DAY NOTICE TO CHANGE THE TERMS OF YOUR RENTAL AGREEMENT

To: All occupants, Resident(s) and all others in possession of Apt. No. C, located at (Street Address) 2031 64th Ave in the city of Oakland, California

PLEASE TAKE NOTICE that in accordance with the governing State and local laws and ordinances, that sixty (60) days after service upon you of this notice or beginning _____, 20____, whichever is later, the terms of your rental agreement for the above described property are hereby changed as follows:

☒ **YOUR MONTHLY RENT** shall be increased from $ 1092.01 per month to $ 1300.00 per month, an increase of $_____ per month.

☐ **YOUR SECURITY DEPOSIT** shall be increased from $_____ to $_____, an increase of $_____.

☐ **TOTAL AMOUNT DUE** and payable by the above stated time period:

New Monthly Rent:	$_____
Security Deposit Increase:	$_____
Other:	$_____
Total Due:	$ 1300.00

☐ **OTHER CHANGES:**

_____

_____

_____

Except for the above changes, all other terms of your Rental Agreement shall remain in full force and effect.

Dated: (Month/Day) December 1, 20 12

_____, OWNER(S)

By: _____, AGENT

A' Meads Properties

Notice Of Rent Increase

Ahmed Said
PO Box 23562
Oakland CA 94623

Address: 2031 69th Ave Apt C Oakland, CA 94621

To All Occupants,

On this 12th day of September, 2019 the Landlord known as Ahmed Said is increasing your rent to $1,300.00. (One-Thousand Three-Hundred Dollars and No Cents) from its current rate of $1,000.00. This rental increase will be effective December 1, 2019.

The rental increases will be applied due to high inflation rates that include the increase of property and city tax, water, garbage, and other maintenance in addition to many other factors. Please take into consideration that rent has been $1,000.00 for the past 10+ years with no increases. The California State Law allows property owners to defer applying annual rent increases for up to 10 years. If you have any questions, comments, or concerns, please feel free to call, text, or email me.

Best Regards,

Ahmed Said

ahmedmead@gmail.com

(510)812-3277

Signature: _____ Date: 9/12/19

Learn More About CPI & Allowable Rent Increases

based on the regional Consumer Price Index (CPI). These annual rent increases are known as CPI increases or annual general rent increases.

The annual CPI rate for rent increases effective July 1, 2019 through June 30, 2020, is 3.5%. The rate is not applied to rent increases that take effect earlier than July 1, 2019.

July 1, 2019: 3.5%
July 1, 2018: 3.4%
July 1, 2017: 2.3%
July 1, 2016: 2.0%
July 1, 2015: 1.7%
July 1, 2014: 1.9%
July 1, 2013: 2.1%
July 1, 2012: 3.0%

July 1, 2011: 2.0%
July 1, 2010: 2.7%
July 1, 2009: 0.7%
July 1, 2008: 3.2%
July 1, 2007: 3.3%
May 1, 2006: 3.3%
May 1, 2005: 1.9%
May 1, 2004: 0.7%
May 1, 2003: 3.6%
July 1, 2002: 0.6%
March 1, 1995 – June 30, 2002: 3% per year

The "CPI rate" takes effect on each July 1 and remains in effect through June 30 of the following year. A property owner can raise rent above the CPI rate, based on certain justifications.

Banking
Increased housing service costs
Capital improvements
Uninsured repair costs
Fair return

Banking

Banking refers to deferred allowed annual rent increases. Annual rent increases that were not applied either fully or completely, can be applied in future years. Property owners may defer applying annual rent increases up to 10 years. Rent increases that were not imposed within 10 years expire. If challenged, evidence of the rental history of the subject unit is required.

Banking Rent Increase Calculator Instructions

Banking Rent Increase Calculator

Increased housing service costs

Housing service costs are expenses for services provided by the property owner. The costs are related to the use of a rental unit. These costs are also known as "operating expenses".

If a tenant challenges a rent increase, the landlord must present evidence to prove all claimed expenses. Staff will compare the most recent two years of operating expenses to determine if a rent increase is justified. The calculation in both years must provide a reasonable comparison of all expenses. You may not isolate any single expense.

Expenses considered include:

Property taxes
Business license/taxes, and insurance,
Utilities (electricity, gas, water, garbage)
Maintenance and repairs
Managerial costs
Other legitimate annually recurring expenses to operate the rental property, except debt service

Increased Housing Costs Rent Increase Calculator

Capital improvements

Capital improvements include improvements to the property. A landlord may apply a rent increase to reimburse themselves for property improvements that benefit the tenants. Reimbursement is limited to 70% of the cost of the improvement amortized over its useful life. Property owners must also show that these costs were paid. Examples include: copies of receipts, invoices, bid contracts or other documentation.

Capital Improvements Rent Increase Calculator

Uninsured repair costs

Uninsured repair costs are losses that are not reimbursed to the property owner. These losses are related to damage from fire, earthquake, or other disasters. These costs must be associated with repairs to meet state or local laws. An increase for uninsured repairs is calculated the same way as an increase for capital improvements.

Fair return

A property owner may submit evidence to show that without the requested rent increase he or she is being denied a fair return on the investment. A property owner must show that the return on the investment is less than the return for an investment of similar risk.

The property owner is required to provide three things.

Proof of the amount of investment
Evidence of the return from other investments of similar risk
An analysis of the rate of return from the rental property, including any appreciation in the value of the property.

Rent increases that exceed the CPI increase may be justified for one or more of the reasons listed. Owners may used more than one justification to increase the rent at the same time.

CPI, banking, and capital improvements can be passed through as a rent increase in a single petition.

Exhibit T3

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 08/03/21 No. 276753

RECEIVED FROM Maria Barragn $1,300.00

One thousand three hundred 00/100 DOLLARS

FOR RENT
FOR 2031 69th ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

CASH ✓
CHECK
MONEY ORDER
CREDIT CARD

FROM _____ TO _____

BY Ahmed

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 09/03/21 No. 276754

RECEIVED FROM Maria Barragn $1,300.00

One thousand three hundred 00/100 DOLLARS

FOR RENT
FOR 2031 69th Ave Apt C Oakland CA 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

CASH ✓
CHECK
MONEY ORDER
CREDIT CARD

FROM _____ TO _____

BY Ahmed

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 10/03/21 No. 276755

RECEIVED FROM Maria Barragn $ 1300.00

One thousand three hundred 00/100 DOLLARS

FOR RENT
FOR 2031 69th ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

CASH ✓
CHECK
MONEY ORDER
CREDIT CARD

FROM _____ TO _____

BY Ahmed

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 11/03/21 No. 276756

RECEIVED FROM Maria Barragn $1,300.00

One thousand three hundred 00/100 DOLLARS

FOR RENT
FOR 2031 69th ave Apt C Oakland CA 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

CASH ✓
CHECK
MONEY ORDER
CREDIT CARD

FROM _____ TO _____

BY Ahmed

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 12/03/21 No. 276757

$1,300.00

RECEIVED FROM Maria Barraza

One thousand three hunded 00/100 DOLLARS

○ FOR RENT
○ FOR 2021 69th ave APT C OAKland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

● CASH ○ CHECK ○ MONEY ORDER ○ CREDIT CARD

FROM _____ TO _____

BY Ahmed

3-11

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 01/03/22 No. 276758

$1,300.00

RECEIVED FROM Maria Barraza

One thasand three hunded 00/100 DOLLARS

○ FOR RENT
○ FOR 2021 69th Ave APT C OAKland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

● CASH ○ CHECK ○ MONEY ORDER ○ CREDIT CARD

FROM _____ TO _____

BY Ahmed

3-11

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 02/03/22 No. 276759

$1,300.00

RECEIVED FROM Maria Barraza

One thasand three hundred 00/100 DOLLARS

○ FOR RENT
○ FOR 2021 69th ave APT C oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

● CASH ○ CHECK ○ MONEY ORDER ○ CREDIT CARD

FROM _____ TO _____

BY Ahmed

3-11

A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 612-3277

RECEIPT DATE 03/03/22 No. 276760

$1,300.00

RECEIVED FROM Maria Barraza

One thasand three hunded 00/100 DOLLARS

○ FOR RENT
○ FOR 2021 69th ave APT C oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

● CASH ○ CHECK ○ MONEY ORDER ○ CREDIT CARD

FROM _____ TO _____

BY Ahmed

3-11

RECEIPT

DATE 04/03/22 No. 276718

RECEIVED FROM Maria Barragn $1,300.00

One thasand three hundred 00/100 DOLLARS

○ FOR RENT
○ FOR 2031 69th ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

● CASH
○ CHECK
○ MONEY ORDER
○ CREDIT CARD

FROM _____ TO _____

BY Ahmad Said

3-11

A & S PROPERTIES
Ahmad SAID
MANAGER
TEL: (510) 812-3277

RECEIPT

DATE 05/03/22 No. 276719

RECEIVED FROM Maria Barragn $1,300.00

One thasand three hundred 00/100 DOLLARS

○ FOR RENT
○ FOR 2031 69th ave Apt C Oakland CA, 94621

ACCOUNT	
PAYMENT	
BAL. DUE	

● CASH
○ CHECK
○ MONEY ORDER
○ CREDIT CARD

FROM _____ TO _____

BY Ahmad Said

3-11

A & S PROPERTIES
Ahmad SAID
MANAGER
TEL: (510) 812-3277

RECEIPT

DATE 06/03/22 No. 276720

RECEIVED FROM Maria Barragn $1,300.00

One thasand three hundred 00/100 DOLLARS

○ FOR RENT
○ FOR 2031 69th ave Apt C Oakland CA, 94621

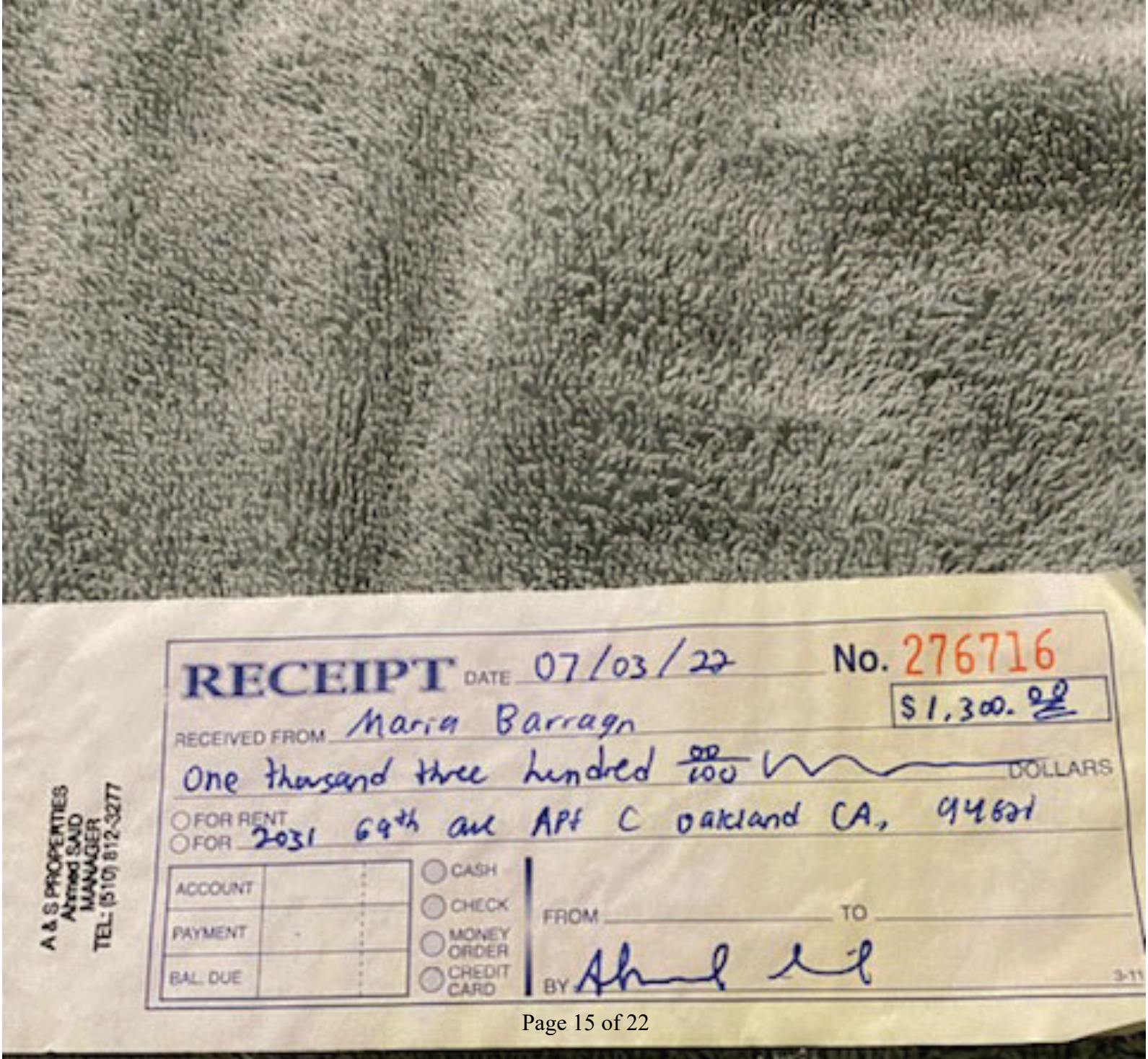
ACCOUNT	
PAYMENT	
BAL. DUE	

● CASH
○ CHECK
○ MONEY ORDER
○ CREDIT CARD

FROM _____ TO _____

BY Ahmad Said

3-11



A & S PROPERTIES
Ahmed SAID
MANAGER
TEL: (510) 812-3277

RECEIPT DATE 07/03/22 No. 276716

$1,300.00

RECEIVED FROM Maria Barragn

One thousand three hundred 00/100 DOLLARS

○ FOR RENT
○ FOR 2031 64th ave Apt C Oakland CA, 94621

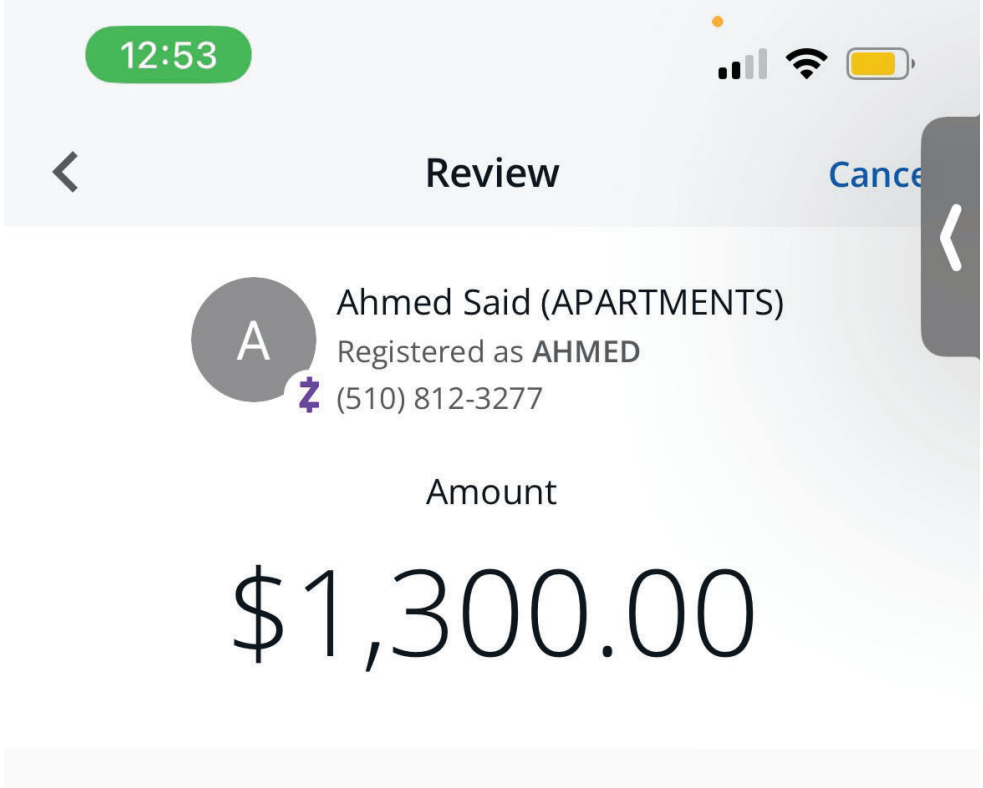
ACCOUNT	
PAYMENT	
BAL. DUE	

○ CASH
○ CHECK
○ MONEY ORDER
○ CREDIT CARD

FROM _____ TO _____

BY Ahmed Said

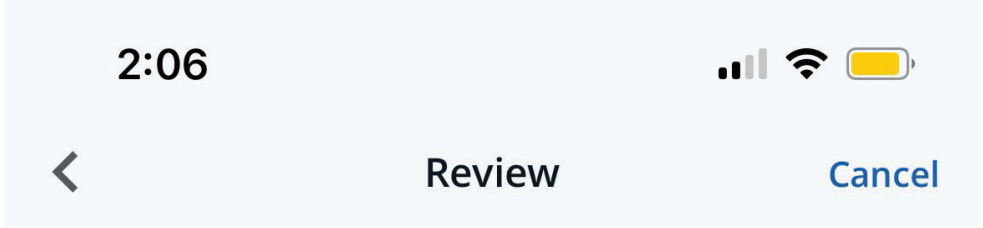
3-11

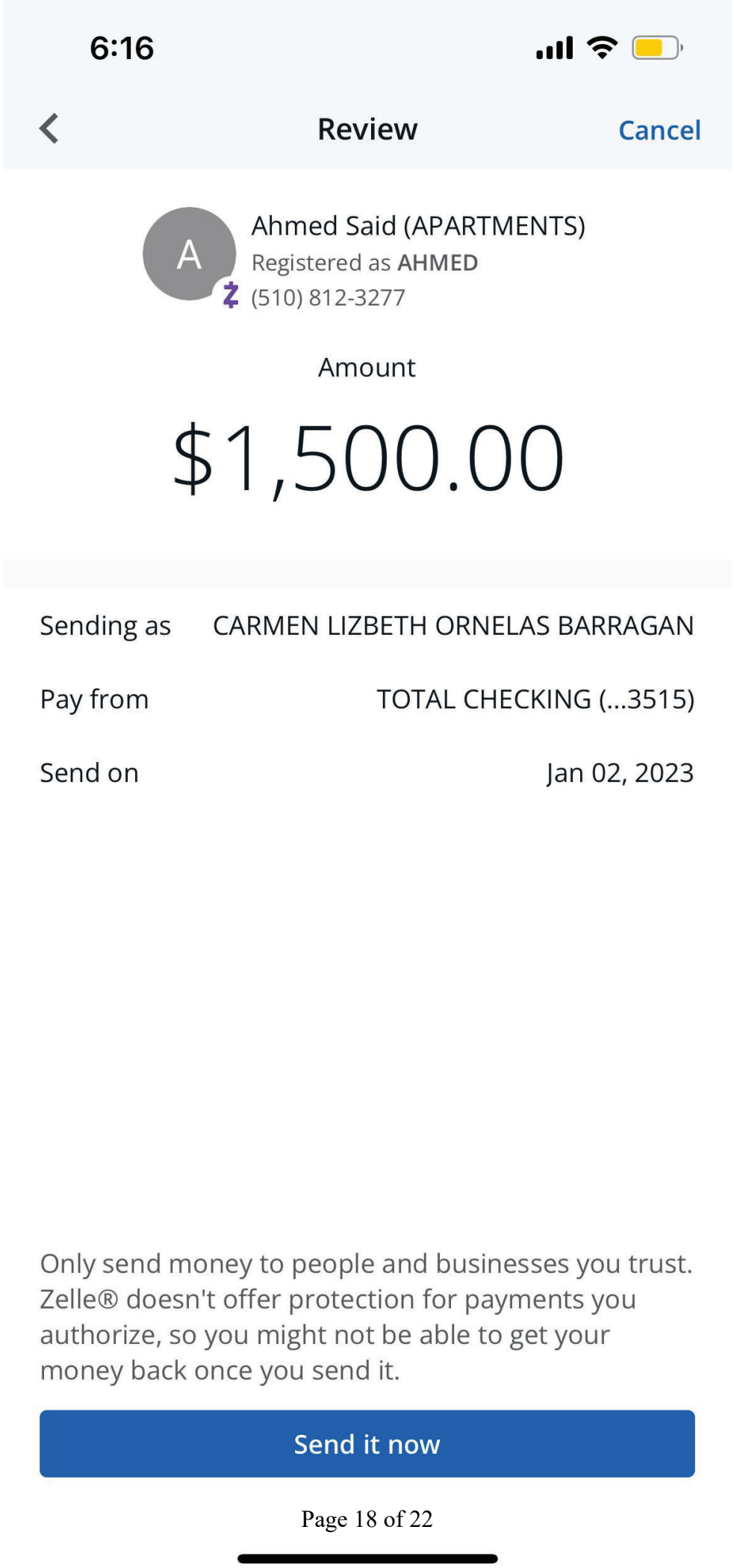


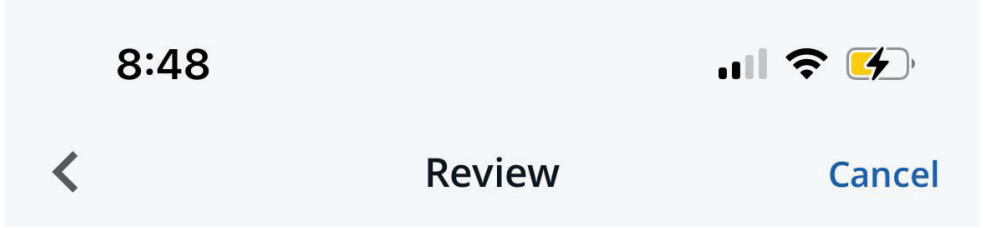
Sending as	CARMEN LIZBETH ORNELAS BARRAGAN
Pay from	TOTAL CHECKING (...3515)
Send on	Nov 1, 2022
Memo	2031 69th Ave #C Oakland Ca

Only send money to people and businesses you trust. Zelle® doesn't offer protection for payments you authorize, so you might not be able to get your money back once you send it.

Send it now


2:06
Review
Cancel
A
Ahmed Said (APARTMENTS)
Registered as AHMED
(510) 812-3277
Amount
$1,500.00
Sending as
CARMEN LIZBETH ORNELAS BARRAGAN
Pay from
TOTAL CHECKING (...3515)
Send on
Dec 02, 2022
Memo
2031 69th ave #C Oakland Ca 94621
Only send money to people and businesses you trust. Zelle® doesn't offer protection for payments you authorize, so you might not be able to get your money back once you send it.
Send it now


6:16
Review
Cancel
A
Ahmed Said (APARTMENTS)
Registered as AHMED
(510) 812-3277
Amount
$1,500.00
Sending as
CARMEN LIZBETH ORNELAS BARRAGAN
Pay from
TOTAL CHECKING (...3515)
Send on
Jan 02, 2023
Only send money to people and businesses you trust. Zelle® doesn't offer protection for payments you authorize, so you might not be able to get your money back once you send it.
Send it now



A

Ahmed Said (APARTMENTS)
Registered as **WEST OAKLAND INVESTMENTS LLC, OAKLAND, CA**
(510) 812-3277

Amount

$1,500.00

Sending as	CARMEN LIZBETH ORNELAS BARRAGAN
Pay from	TOTAL CHECKING (...3515)
Send on	Feb 03, 2023
Memo	2031 69th ave apt C Oakland Ca 94621

Only send money to people and businesses you trust. Zelle® doesn't offer protection for payments you authorize, so you might not be able to get your money back once you send it.

Send it now

Exhibit T4

Mead Holding llc

Rent Payment Method

Ahmed Said

2400 Market st Suite B,

Oakland Ca, 94607

To all tenants,

Starting November 1st, 2022, we will no longer be accepting monthly rental payments by cash.

You have the following methods of payment to choose from:

1. Online payment via Zelle
2. CashApp

For any comments or concerns, please feel free to contact me via phone, or email.

Ahmed Said

(510) 812-3277

ahmedmead@gmail.com

x Ahmed Said Date 10/1/22

To Whom It May Concern,

Maria Barragn has been residing at 2031 69th ave, Oakland Ca, 94621 for 10 years. She is a wonderful tenant, and pays on time every month. She also cleans up around the building and makes the property a better place.

X_____

(Tenant)

X_____ 7/5/22

(Landlord)

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: Tenant Evidence Submission (Case No. T23-0019)
(insert name of document served)
☐ And Additional Documents

and (*write number of attached pages*) 22 attached pages (*not counting the Petition or Response served or the Proof of Service*) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (*check one*):

☑ a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☐ b. 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 listed below.

☐ c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Ahmed Said
Address	2400 Market St., Suite B
City, State, Zip	Oakland, CA 94607

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 2/28/2023 (insert date served).

Gregory Ching

PRINT YOUR NAME

SIGNATURE

February 28, 2023

DATE

CITY OF OAKLAND

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

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

NOTICE OF INCOMPLETE OWNER RESPONSE

CASE NUMBER: **T23-0019**

CASE NAME: **Barragen et al v. Mead Holding LLC**

PROPERTY ADDRESS: **2031 69th Avenue, Unit C Oakland, CA 94621**

The Rent Adjustment Program (hereinafter "RAP") received a *Property Owner Response* from you on February 1, 2023

To be complete and considered filed, a response by a property owner must include:[1]

a. Proof of payment of the City of Oakland Business License Tax;

b. proof of payment of the Rent Program Service Fee;[2]

c. Evidence that the Owner has provided the RAP Notice to all Tenants affected by the petition or response.[3]

d. A substantially completed petition on the form prescribed by the RAP signed under oath;

e. For a rent increase, organized documentation clearly showing the rent increase justification and detailing the calculations to which the documentation pertains. For an exemption, organized documentation showing your right to the exemption.

f. For all owner responses, the Owner must provide proof of service by first class mail or in person of the response and any supporting documents on the tenants of all units affected by the petition. (Note that if the supporting documents exceed 25 pages, the Owner is not required to serve the supporting documents on the affected tenants provided that the owner petition was served as required and the petition or attachment indicates

[1] See O.M.C. § 8.22.090 (B).
[2] See O.M.C. § 8.22.500.
[3] This can be done initially by affirming that all notices have been sent but may require additional evidence if the statement is contested.

that the additional documents are or will be available at the RAP and that the Owner will provide copies of the supporting documents to the tenant upon written request within 10 days.)

The response that you attempted to file was incomplete. The chart below indicates what is missing from your filing:

Name of Document	Needed
Proof of service of the response (and attachments where required) by first class mail or in person on all tenants in units affected by the response	X
Proof of payment of Business License Tax.	X
Proof of payment of the RAP Fee.	X

You have 30 days from the date of the mailing of this letter to provide a completed response. If you do not do so, your response will be dismissed. Since your response is incomplete, the RAP cannot accept the response, and any scheduled hearing will be postponed, if scheduled to occur in less than 30 days.

If you have any questions or concerns, consult RAP by email or phone. The email address is blothlen@oakalndca.gov, and the telephone number is 510-238-3721.

Brittni Lothlen

Dated: February 28, 2023

City of Oakland
Rent Adjustment Program

PROOF OF SERVICE

Case Number: T23-0019

Case Name: Barragen et al v. Mead Holding LLC

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 in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:

Documents Included
Notice of Incomplete Owner Response

Owner
Ahmed Said
Mead Holding LLC
2400 Market Street, Suite B
Oakland, CA 94607

Tenant
Reyes Ornelas
2031 69th Avenue, Unit C
Oakland, CA 94621

Tenant
Maria Barragan
2031 69th Avenue, Unit C
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 **February 28, 2023** in Oakland, California.

Brittni Lothlen

Brittni Lothlen
Oakland Rent Adjustment Program

CITY OF OAKLAND

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

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
CA Relay Service 711

ADMINISTRATIVE DECISION

CASE NUMBER	**T23-0019**
CASE NAME:	**Barragan et al v. Mead Holding LLC**
PROPERTY ADDRESS:	**2031 69th Avenue, Unit C Oakland, CA**
PARTIES:	**Maria Barragan, Tenant**

SUMMARY OF DECISION

The Tenant's Petition is granted.

INTRODUCTION

Reason for Administrative decision: An Administrative Decision is issued without a hearing. The purpose of a hearing is to allow the parties to present testimony and other evidence to allow the resolution of disputes of material fact. However, in this case, sufficient uncontested facts have been presented to issue a decision without a hearing, and no material facts are disputed. Therefore, an administrative decision, without a hearing, is being issued.

BACKGROUND

On January 23, 2023, the Tenant filed the petition herein. The petition contests rent increases alleged from $1,000.00 to $1,300.00, effective December 1, 2019, and from $1,300.00 to $1,500.00, effective December 2022, on the grounds that the rent increase exceeds the legally allowable amount.

The petition, completed under penalty of perjury, indicates that that Tenant was never given a RAP Notice,[1] including with the Notices of Rent Increase challenged.

The Owner filed an Owner Response on February 1, 2023. A Notice of Incomplete Owner Response was sent to the Respondent on February 28, 2023.[2] The Respondent was given 35 days to file the necessary documents and a proof of service of their petition. To date, no new documents were filed, no proof of service was filed, and the response was not completed. Therefore, the response cannot be considered filed and complete. Accordingly, any documentation submitted with the response is inadmissible.[3]

RATIONALE FOR ADMINISTRATIVE DECISION

2019 Rent Increase

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve a RAP Notice at the start of a tenancy[4] and with any notice of rent increase or change in any term of the tenancy.[5] An owner may cure the failure to give notice at the start of the tenancy. However, a notice of rent increase is not valid if the effective date of increase is less than six months after the Tenant first receives the required RAP notice.[6]

It is undisputed that the Tenant moved into the subject unit in 2013. The petition was filed under penalty of perjury and states that the Tenant was not given a RAP Notice including with the Notices of Rent Increase challenged. Accordingly, there is no evidence that the Tenant received the RAP Notice at the inception of the tenancy or with the rent increases challenged. Therefore, it is found that the Tenant has not been provided with a RAP Notice. Accordingly, the Notice of Rent Increase from $1,000.00 to $1,300.00, is invalid. Accordingly, the legal rent for the subject unit remained at $1,000.00.

2022 Rent Increase

Oakland City Council Ordinance 13589 CMS, adopted on March 27, 2020, states as follows at Section 4: .

[1] Notice to Tenants of the Residential Rent Adjustment Program.
[2] O.M.C. Section 8.22.090(B)
[3] O.M.C. Section 8.22.070(C). Santiago v. Vega, Case
[4] O.M.C. Section 8.22.060.
[5] O.M.C. Section 8.22.070.
[6] O.M.C. Section 8.22.060(C)

Rent Increase Moratorium.
For rental units regulated by Oakland Municipal Code 8.22.010 et seq, any notice of rent increase in excess of the CPI Rent Adjustment, as defined in Oakland Municipal Code Section 8.22.020, shall be void and unenforceable if the notice is served or has an effective date during the Local Emergency, unless required to provide a fair return. Any notice of rent increase served during the Local Emergency shall include the following statement in bold underlined 12-point font: "**During the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic, your rent may not be increased in excess of the CPI Rent Adjustment (3-5% until June 30, 2020), unless required for the landlord to obtain a fair return. You may contact the Rent Adjustment Program at (510.) 238—37.21 for additional information and referrals.**"

When the Rent Increase Moratorium was enacted, the CPI Rent Adjustment was 3-5%. The Moratorium clearly states that this CPI is in effect "until June 30, 2020." As of July 1, 2022, the CPI Rent Adjustment is 3%. The Local Emergency remains in the City of Oakland. Therefore, increasing the Tenant's base rent above 3%, or $30.00, violates the Moratorium. Therefore, the Owner's Notice of Rent Increase of $200.00 is invalid. Additionally, the Notice of Rent Increase did not include the required statement in bold, underlined 12-point font, and is likewise on this basis invalid as well.

Notwithstanding, whether the Tenant was served the RAP Notice with the 2022 Rent Increase, the increase would still be invalid since the amount of the increase violated the Moratorium. Accordingly, the legal rent for the subject unit remained at $1,000.00.

ORDER

1. Petition T23-0019 is granted.

2. The legal rent for the subject unit remains $1,000.00.

3. The 2019 and 2022 rent increases are not valid. The legal rent for the subject unit remains at $1,000.00. If the Tenant paid an amount over the legal rent for the subject unit, the parties are instructed to calculate the total rent overpayment and deduct the credit amount in thirty or fewer monthly installments from the Tenant's monthly rent after this decision becomes final. The decision becomes final if no party files an appeal within 20 days after the decision is mailed to the parties.

4. The Remote Settlement Conference and Hearing, scheduled for April 12, 2023, is canceled.

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 seventeen (17) calendar days of electronic service or twenty (20) days if served by first-class mail. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day. The date and service method are shown on the attached Proof of Service.

Dated: April 5, 2023

Élan Consuella Lambert
Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number: T23-0019

Case Name: Barragen et al v. Mead Holding LLC

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 in a City of Oakland mail collection receptacle for mailing on the below date at 250 Frank H. Ogawa Plaza, Oakland, California, addressed to:

Documents Included
Administrative Decision

Owner
Ahmed Said
Mead Holding LLC
2400 Market Street, Suite B
Oakland, CA 94607

Tenant
Reyes Ornelas
2031 69th Avenue, Unit C
Oakland, CA 94621

Tenant
Maria Barragan
2031 69th Avenue, Unit C
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 **Apirl 6, 2023** in Oakland, California.

Brittni Lothlen

Brittni Lothlen
Oakland Rent Adjustment Program

CITY OF OAKLAND	**CITY OF OAKLAND** **RENT ADJUSTMENT PROGRAM** 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612-0243 (510) 238-3721 CA Relay Service 711 www.oaklandca.gov/RAP	For Rent Adjustment Program date stamp.

APPEAL

Appellant's Name Ahmed Said	☒ **Owner** ☐ **Tenant**
Property Address (Include Unit Number) 2031 69th Avenue, Unit C, Oakland, Ca 94621	
Appellant's Mailing Address (For receipt of notices) 2400 Market St Suite B, Oakland, Ca 94607	**Case Number** T23-0019
	Date of Decision appealed April 18th, 2023
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.)*

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.*)

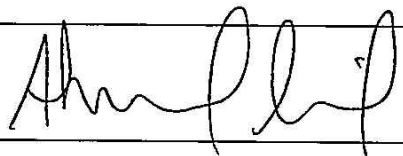
g) ☐ **The decision denies the Owner a fair return on the Owner's investment.** (*You may appeal on this ground only when your underlying petition was based on a fair return claim. You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.*)

h) ☒ **Other.** *(In your explanation, you must attach a detailed explanation of your grounds for appeal.)*

Supporting documents (in addition to this form) must *not* exceed 25 pages, and must be received by the Rent Adjustment Program, along with a proof of service on the opposing party, within 15 days of the filing of this document. Only the first 25 pages of submissions from each party will be considered by the Board, subject to Regulations 8.22.010(A)(4). *Please number attached pages consecutively. Number of pages attached:* 25 .

• **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 April 18th, 2023, 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	Maria Barragan
Address	2031 69th Avenue, Unit C
City, State Zip	Oakland, Ca 94621
Name	Reyes Ornelas
Address	2031 69th Avenue, Unit C
City, State Zip	Oakland, Ca 94621

	4/18/23

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE **DATE**

CITY OF OAKLAND

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: Appeal to Tenants' Submission (Case No. T23-0019)
(insert name of document served)
☐ And Additional Documents

and (*write number of attached pages*) 25 attached pages (*not counting the Petition or Response served or the Proof of Service*) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (*check one*):

☒ a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☐ b. 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 listed below.

☐ c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Maria Barragan
Address	2031 69th Avenue, Unit C
City, State, Zip	Oakland, Ca, 94621

Name	Reyes Ornelas
Address	2031 69th Avenue, Unit C
City, State, Zip	Oakland, Ca, 94621

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

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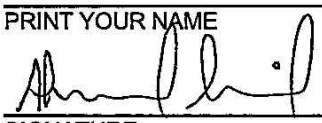
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on __/__/____ (insert date served).

Ahmed Said

PRINT YOUR NAME



SIGNATURE

04/18/23

DATE

Appeal to Tenant Submission

Pages 1-6	Response to appeal decision
Page 7	Email/photo of letter to tenant
Pages: 8-9	Copies of Roofing Work Order & Invoice
Pages 10-13	Picture of roof/work completed
Page 14	Extension cord
Page 15	New Balcony Door
Pages 16-20	Texts & photos of tenants not meeting their end of agreement
Pages 21-22	Unpermitted structure built without consent
Pages 23-25	Article for allowable increases per city website

Response to Appeal Decision
Case Number: T23-0019
Case Name: Barragen et al v. Mead Holding LLC

F) I was denied a sufficient opportunity to present my claim because a decision was made without giving me an opportunity to be heard.

BACKGROUND

Where does it show that Reyes and Maria were paying $1,000 for monthly rent when they moved in? The reason we are appealing this is because the tenants and I had an agreement when they first moved in that the monthly rent would be $1,300, but if they were to pull out the garbage bins every Monday for all 6 units, and keep the front and backyard clean, then they would pay $1,000, **only if** they were able to hold up their end of the agreement.
Also, we provided the tenants (Maria and Reyes Ornelas) a storage room for free, and they grew frustrated when we **requested** that extra storage space to expand the laundry room for the building. We then notified them through text that we were going to need that area to expand the laundry room for all tenants, which we did.

1. When the service was no longer being provided as agreed upon, we wrote to all tenants informing them to pull out their own garbage bins, and that we'd clean around the property.
2. The tenants had an extra refrigerator attached to our house meter using an extension cord without our consent. The extension cord poses a high risk as it could have led to a fire endangering the lives of those around them, and an increase in our monthly electricity bill.
3. The tenants also had 7 people living in the unit which cost us more water, but we never complained.
4. Since 2031 69th avenue is a commercial property, the fire department conducts an annual inspection in search of any violations that put individuals at risk. The tenants built a structure on the balcony without consent, and that structure was cited as a violation by the fire department.
5. Each unit has ONE parking spot allocated to them for their use, allowing them to park up to one vehicle in the parking lot. The Barragen family have violated this several times as they park their vehicles in prohibited areas, given that there is a parking spot already provided to them. All tenants with more than 1 vehicle must use street parking.
6. Capital improvements to a building shall be passed on to the tenant as a prorated charge. A landlord is able to increase the rent due to capital improvements made

to the building. In November 2022, we changed the roof, windows, balcony door, and made repairs for a total of $40,000. In the article titled "Learn More About Allowable Rent Increases", uninsured repair costs are losses that are not reimbursed to the property owner related to disasters. We made several upgrades to the property in preparation for the record breaking rainstorms to ensure our tenants' living space(s) were tolerable.

Rent Increase Moratorium

1. At the inception of their tenancy, we provided the tenants with an RAP notice. The tenants claiming that they were not able to retain the notice that was provided to them may be due to the fact that they moved in 10 years ago. A final decision was made that "the rent increase" in 2019 is invalid. This decision was unfair because the rent was not increased, it was set back at its original amount.

2. **In response to page 5 of 22**:

- As stated before, the rent was not increased. The monthly rent was set back to its original amount that we agreed to when they moved in, at $1,300.00 well before the rent increase moratorium was in effect. In 2019, we provided the tenants with a 60 day notice that the rent would return to its original amount of $1,300 because they were no longer providing their services. We presented the tenants with an official 60 day notice because we are aware that notifying tenants for any purpose must be done in writing.

H) Other

- I have been denied a fair investigation because the tenants and I had an initial agreement when they first moved in that the rent due each month would be $1,300. We had a verbal agreement that their rent payable for each month would be $1,000 **IF** they provided those services. Once the services weren't provided any longer, we provided the tenants with a notice over 60 days prior to the amount going into effect. We **DID NOT** increase the rent to $1,300, rather the rent was set back to its original amount that we agreed to when they first moved in.
- According to page 3 of the Proof of Service from the tenant, it is stated that the notice of rent increase is not in bold, or 12 point font, which is false. We specifically bolded the notice of rent increase statement, and used 12 point font on both letters. We issued the tenants two letters: one in English, and another in Spanish because Spanish is their primary language. Providing a letter in both languages was to ensure effective communication. Nothing was withheld from them because we did nothing wrong.

Increased housing service costs

- Attached below is a breakdown of operating expenses due to keep the building running, and to allow all utilities to function and meet the needs of our tenants. Please refer to the **Increased housing service costs** attached on pages 23-25.

2022 Expenses

1. PG&E Monthly Bill: $400.00
   PG&E bill Annually: $3,600

2. EBMUD Monthly Bill: $450.00
   EBMUD Bill Annually: $5,400.00

3. Waste Management Monthly Bill: $376.23
   Waste Management Annually: $4,514.76

4. Property Tax Monthly: $1,298.64
   Property Tax Annually: $15,583.78

5. City Tax Monthly: $159.30
   City Tax Annually: $1,911.64

6. Rent Adjustment Program: $101 per unit
   (6 units) : $606.00

7. Property Insurance Monthly: $208.33
   Property Insurance Annually: $2,500

8. Mortgage Expense Monthly: $2,800
   Mortgage Expenses Annually: $33,600

9. Pest Control Per Month: $100
   Pest Control Per Year: $1,200

10. Landscaping Per Month: $100
    Landscaping Per Year: $1,200

11. MGMT fees Per month: $400
    MGMT fees per year: $4,800

12. Software Subscription month: $50.00
    Software Subscription Per Year: $600

Monthly Expenses Total: $6,393.00
Annual Expenses Total: $75,516.18

-How can the rent be set at $1,000 after 10 years without any increases? During the pandemic, city officials allowed tenants to withhold rent for months, or even years at a time, but landlords were still expected to pay City tax, RAP fee, and other taxes. It's unfortunate that city officials sitting behind a desk are able to make final decisions for a landlord, or any business owner without taking the full story into account.
-On September 24, 2022, we notified the tenants through letters in both Spanish and English that the rent would be increased from $1,300 to $1,500 due to increased operating expenses, giving them over 60 days. According to the City of Oakland article titled "Learn More About Allowable Rent Increases", rent increases that exceed the CPI increase may be justified for:

1. CPI, banking, and capital improvements can be passed through as a rent increase in a single petition.
2. Landlords cannot apply a rent increase based on a CPI increase with an increase based on increased housing service costs or fair return. Increased housing service costs or fair housing justifications replace the CPI increase. Refer to the attachment on pages 23-25.

In response to page 22 of 22: In July 2022, Maria Barragan requested a letter from me claiming that she needed a letter of proof from her landlord for immigration purposes. I was only doing Ms. Barragan a favor so that she wouldn't encounter any issues regarding her immigration status. She fraudulently used immigration as an excuse to receive a recommendation letter from me, that is now being used against me.

Closing Statement: We ask that you please do not make a decision without speaking to us. We are appealing because we did everything within the law, and our zoom meeting scheduled for Wednesday, April 12th regarding the landlord/tenant hearing was canceled without proper notice. We were on zoom for 30 minutes for the scheduled hearing, but heard nothing back from the hearing officer. A final decision was sent through the mail without speaking to the landlord, so we ask that if our appeal is not granted, you may discuss further with my attorney.

- Name: Josh P. Davis
- Phone: (510) 207-2472

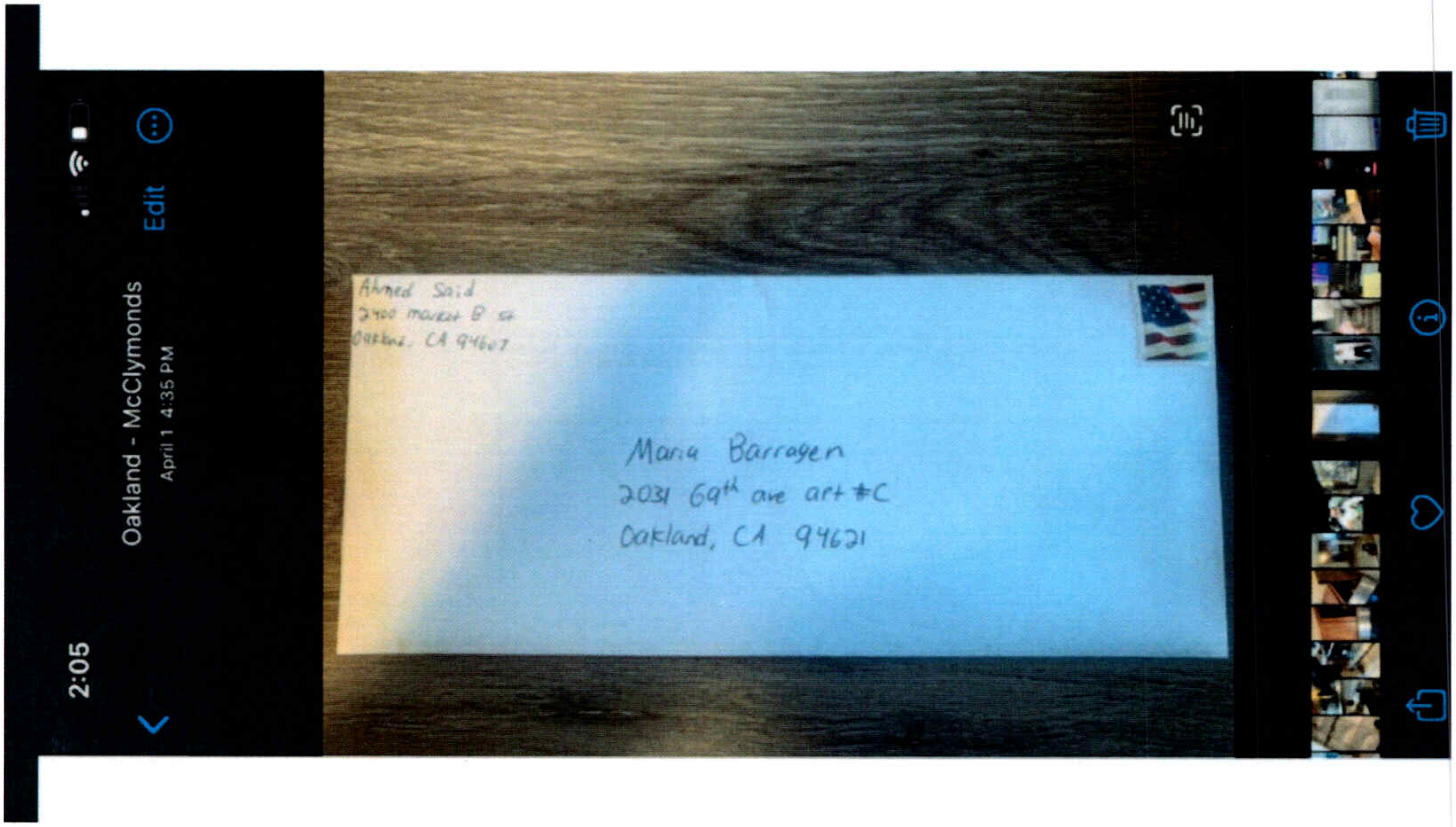
WILLIAM E. TAGGART, JR.
A PROFESSIONAL CORPORATION

300 FRANK OGAWA PLZ., STE. 370
OAKLAND, CA 94612

JOSH P. DAVIS
ATTORNEY AT LAW

TEL: (510) 893-9999
FAX: (510) 893-9980

jdavis@wjtlaw.com



4/15/23, 11:39 AM Gmail - Re: T23-0019, Barragan v. Mead Holding LLC

Gmail

Ahmed Said <ahmedmead@gmail.com>

Re: T23-0019, Barragan v. Mead Holding LLC

Ahmed Said <ahmedmead@gmail.com>
To: "Lothlen, Brittni" <BLothlen@oaklandca.gov>

Sat, Mar 4, 2023 at 11:36 AM

We mailed the tenant a letter. Whether they received it or not, or act like they did not receive it, we sent it
[Quoted text hidden]

Mead Property Mgmt
2400 Market St suite B
Oakland, CA 94607
Phone - (510) 812-3277

To:
Migael

Phone - (510) 200-1509

Work Order #	7-1
Status	**Assigned**
Created On	11/14/2022
Estimate Requested On	11/15/2022
Estimate Amount	$26,600.00
Estimated On	11/16/2022
Scheduled On	11/18/2022
Completed On	11/23/2022
Job Site	2031 69th ave 2031 69th ave Oakland, CA 94621
Pet(s)	--

Tenant(s)

No Current Tenant

Tenant Availability

Date	Time
--	--

Description

Need to replace the roof for the property because the raining season is approaching. Migael will be available to start the work around November 18th.

Vendor Instructions

Company Name: MEX SOLUTIONS
Phone Number: (510) 200-1509

Created By: Bessery Said
Authorized By:
Signed By:
Dated By: 11/25/22
Invoice #:

Technician's Notes:

MEX SOLUTIONS

ROOFING INVOICE

LIC # 944015
2685 D ST
HAYWARD CA 94541
(650) 520-4816

		DATE: 11/25/22	PROPOSAL NO:
OWNER/BUYER NAME: Ahmed Said		OWNER S:	
OWNER S CITY STATE & POSTAL CODE: 2031 69th AVE		OWNER S HOME PHONE: (510) 812-3277	OWNER S WORK PHONE:
PROJECT NAME:		PROJECT ADDRESS:	
PROJECT CITY STATE & POSTAL CODE: Oakland, Ca 94621		PROJECT PHONE:	PROJECT PHONE 2:
CONSTRUCTION TO BEGIN:	CONTRACT COMPLETION DATE:	DATE OF PLANS:	ARCHITECT: / ENGINEER:

We hereby propose to furnish the following work:

We did an inspection on the roof, and determined that it needed to be changed. We replaced the entire roof. It has a 25 year warranty.

PROPOSED PAYMENT: Owner agrees to pay Contractor a PROPOSED total cash price of $ 26,600.00 Dollars. OWNER represents that this agreement is a cash transaction wherein no financing is contemplated and contractor acts in reliance on said representation.

THE PAYMENT SCHEDULE WILL BE AS FOLLOWS:

1. Down payment of $ $7,000.00 . 2. Payment schedule as follows:

$7,000.00 on 11/20, and the remaining $12,600 due when the work is complete

THIS IS A BID PROPOSAL WITH A GENERAL DESCRIPTION OF THE PROJECT AND COST. IF THE BID PROPOSAL IS ACCEPTED, A MORE FORMALIZED CONTRACT WILL BE PREPARED PROVIDING DETAILED TERMS AND CONDITIONS INCLUDING ALL YOUR RIGHTS AND YOUR RIGHT TO CANCEL.

ACCEPTANCE OF PROPOSAL

You are hereby authorized to return a formal contract between us to accomplish the work described in the above proposal, for which the undersigned agrees to pay the amount stated in said proposal and according to the terms thereof.

Gerardo Godinez	11/25/22		
Contractor/Seller Signature	Date	Owner/Buyer Authorized Signature	Date
Contractor/Seller Signature	Date	Owner/Buyer Authorized Signature	Date

Oakland - Hegenberger

November 19, 2022 at 12:14:59 PM · 28,954 of 31,102

Oakland - Hegenberger

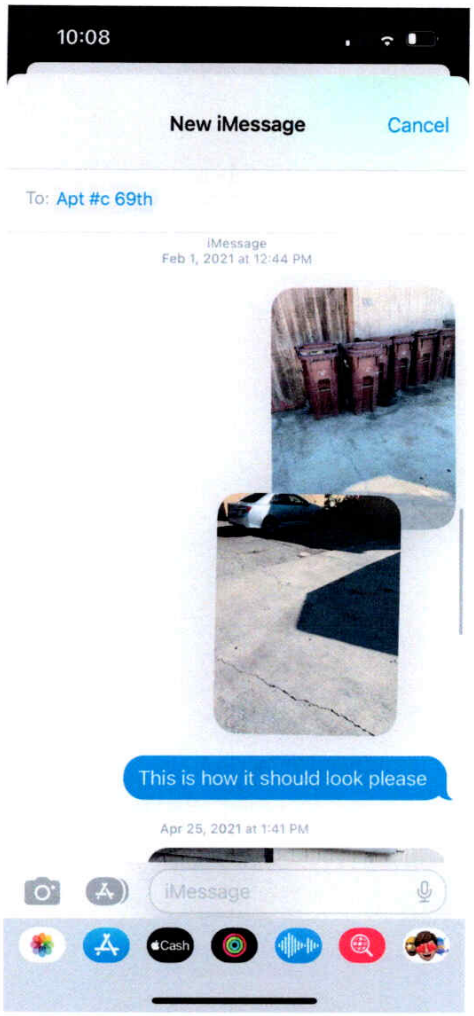
November 21, 2022 at 11:29:38 AM · 28,975 of 31,102

Edit

11/23/22, 2:58 PM
28,998 of 31,102

Save Shared Photo

Oakland - Hegenberger
December 6, 2022 at 2:27:39 PM · 29,122 of 31,102


10:08
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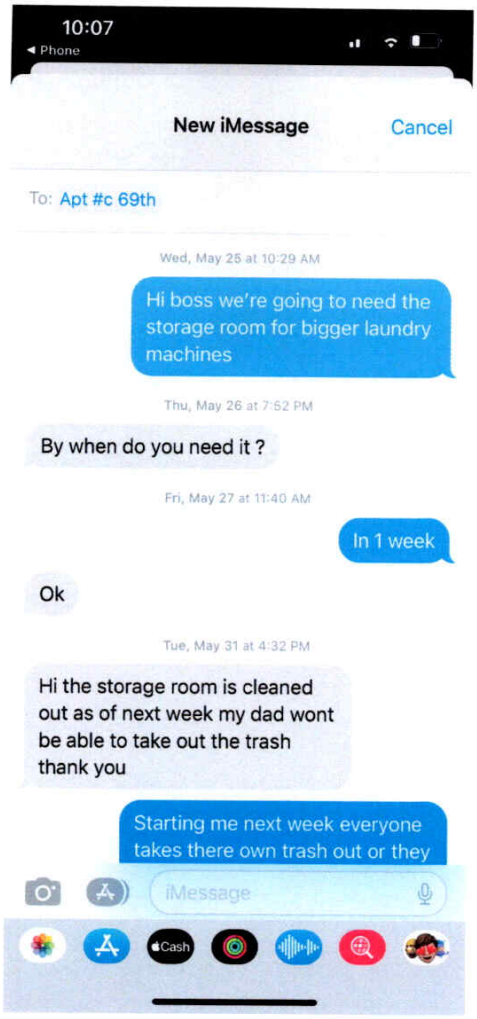
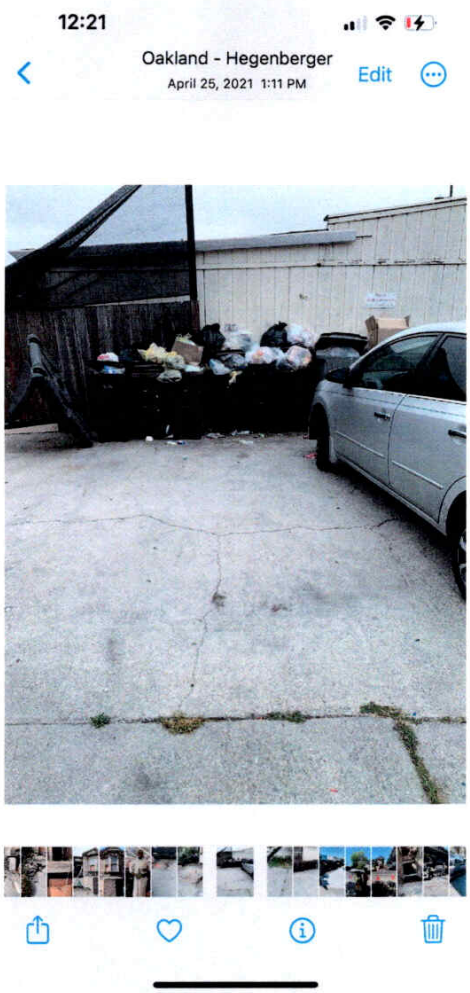
Cancel
To: Apt #c 69th
iMessage
Feb 1, 2021 at 12:44 PM
This is how it should look please
Apr 25, 2021 at 1:41 PM
iMessage
Cash


10:07
Phone
New iMessage
Cancel
To: Apt #c 69th
Wed, May 25 at 10:29 AM
Hi boss we're going to need the storage room for bigger laundry machines
Thu, May 26 at 7:52 PM
By when do you need it ?
Fri, May 27 at 11:40 AM
In 1 week
Ok
Tue, May 31 at 4:32 PM
Hi the storage room is cleaned out as of next week my dad wont be able to take out the trash thank you
Starting me next week everyone takes there own trash out or they
iMessage
Cash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Oakland - Hegenberger
April 25, 2021 1:11 PM
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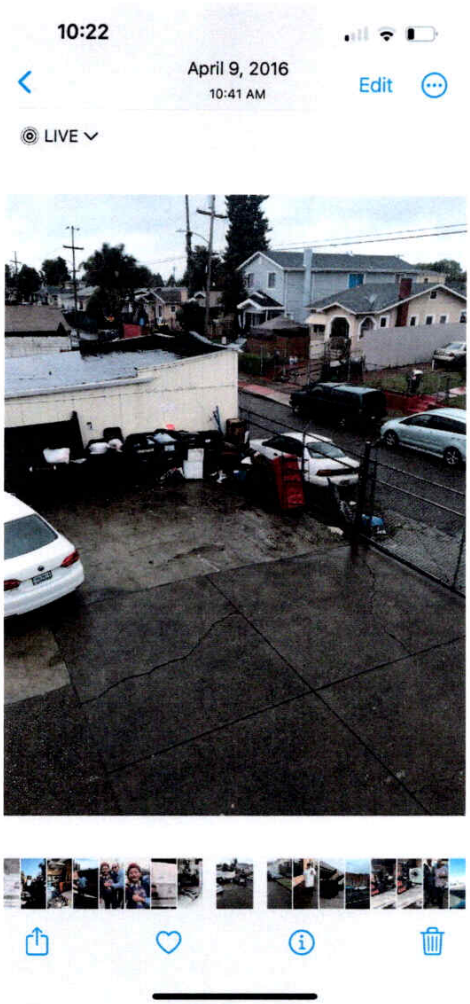
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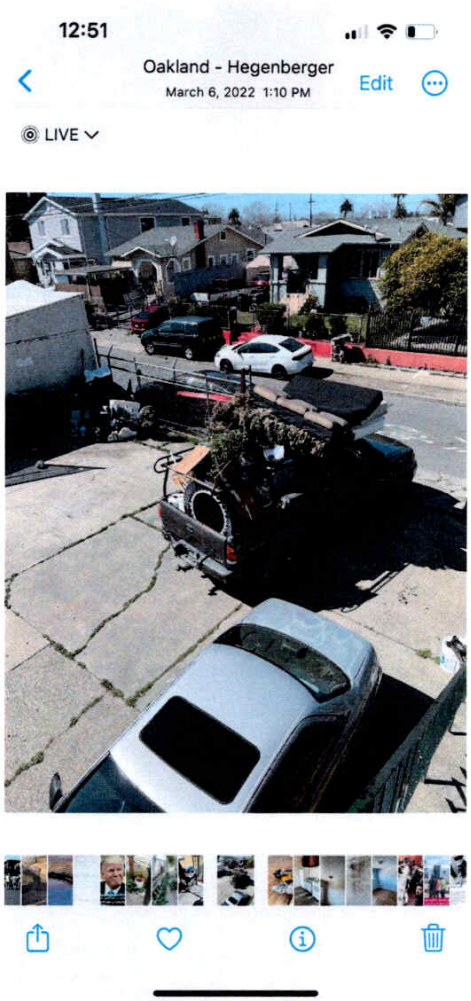
April 9, 2016
10:41 AM
Edit
LIVE


12:51
Oakland - Hegenberger
March 6, 2022 1:10 PM
Edit
LIVE

2031 69th Ave
Oakland, California
Google Street View
Nov 2017
See latest date

aca-prod.accela.com/OAKLAND/Cap/CapDetail.aspx?Module=Enforcement&TabName=Enforcement&capID1=17CAP&capID2=00000&capID3=35213&agencyCode=OAKLAND&IsToShowInspection=

Reports (1) Login

Global Search...

Home Building Planning Enforcement Fire

File a Complaint/Register a Property Search Complaint Records

Record 1704847:
Housing Habitability Complaint
Record Status: Violation Verified

Record Info Custom Component

2031 69TH AVE *
94621

Case Description:
Apartment building - Possibly structural support and bracing was done without permits.

More Details

000151

Page 22 of 25

The "CPI rate" takes effect on each July 1 and remains in effect through June 30 of the following year. A property owner can raise rent above the CPI rate, based on certain justifications.

- Banking
- Increased housing service costs
- Capital improvements
- Uninsured repair costs
- Fair return

Banking

Banking refers to deferred allowed annual rent increases. Annual rent increases that were not applied either fully or completely, can be applied in future years. Property owners may defer applying annual rent increases up to 10 years. Rent increases that were not imposed within 10 years expire. If challenged, evidence of the rental history of the subject unit is required.

- Banking Rent Increase Calculator Instructions
- Banking Rent Increase Calculator

Increased housing service costs

Housing service costs are expenses for services provided by the property owner. The costs are related to the use of a rental unit. These costs are also known as "operating expenses".

If a tenant challenges a rent increase, the landlord must present evidence to prove all claimed expenses. Staff will compare the most recent two years of operating expenses to determine if a rent increase is justified. The calculation in both years must provide a reasonable comparison of all expenses. You may not isolate any

single expense.

Expenses considered include:

1. Business license and insurance,
2. Utilities (electricity, gas, water, garbage)
3. Maintenance and repairs
4. Managerial costs
5. Other legitimate annually recurring expenses to operate the rental property, except debt service

- Increased Housing Costs Rent Increase Calculator

Capital improvements

Capital improvements include improvements to the property. A landlord may apply a rent increase to reimburse themselves for property improvements that benefit the tenants. Reimbursement is limited to 70% of the cost of the improvement amortized over its useful life. Property owners must also show that these costs were paid. Examples include: copies of receipts, invoices, bid contracts or other documentation.

- Capital Improvements Rent Increase Calculator Instructions
- Capital Improvements Rent Increase Calculator

Uninsured repair costs

Uninsured repair costs are losses that are not reimbursed to the property owner. These losses are related to damage from fire, earthquake, or other disasters. These costs must be associated with repairs to meet state or local laws. An increase for uninsured repairs is calculated the same way as an increase for capital improvements.

Fair return

A property owner may submit evidence to show that without the requested rent increase he or she is being denied a fair return on the investment. A property owner must show that the return on the investment is less than the return for an investment of similar risk.

The property owner is required to provide three things.

1. Proof of the amount of investment
2. Evidence of the return from other investments of similar risk
3. An analysis of the rate of return from the rental property, including any appreciation in the value of the property.

Rent increases that exceed the CPI increase may be justified for one or more of the reasons listed. Owners may used more than one justification to increase the rent at the same time.

- CPI, banking, and capital improvements can be passed through as a rent increase in a single petition.
- Landlords cannot apply a rent increase based on a CPI increase with an increase based on increased housing service costs or fair return. Increased housing service costs or fair housing justifications replace the CPI increase.

Rent increases that exceed the CPI increase may be valid for one or more of the reasons. Owners may combine more than one justification to increase the rent at the same time.

- Owners can combine CPI, banking, and capital improvements for a rent increase in one petition.
- Landlords cannot combine CPI with increased housing service costs or fair return.
- Increased housing service costs or fair housing justifications replace the CPI increase.

Gregory T. Ching (SBN 330719)
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CENTRO LEGAL DE LA RAZA
3400 E. 12th Street
Oakland, CA 94601
Telephone: (510) 437-1554
Facsimile: (510) 255-6069

Attorney for Tenant-Respondent Maria Barragan

OAKLAND RENT ADJUSTMENT PROGRAM

BARRAGAN, ET AL., Tenant-Respondent, vs. MEAD HOLDING LLC, Property Owner-Appellant.	Case No.: T23-0019 **TENANT-RESPONDENT MARIA BARRAGAN'S REPLY BRIEF IN SUPPORT OF TENANT PETITION**

Tenant-Respondent Maria Barragan hereby submits this brief in response to Appellant Mead Holding LLC's appeal brief.

I. FACTS AND PROCEDURAL HISTORY

In notices dated September 12, 2019, and December 1, 2019, Tenant-Respondent Maria Barragan ("Tenant") received a rent increase from Appellant Ahmed Said (doing business as Mead Holding LLC) ("Owner"), which imposed an increase from $1,000.00 per month to $1,300.00 per month (the "2019 Rent Increase"). On September 24, 2022, Tenant received another rent increase notice from Owner, raising Tenant's rent from $1,300 per month to $1,500 per month (the "2022 Rent Increase"). Tenant has paid the corresponding demanded amounts for both the 2019 and 2022 Rent Increases, as demonstrated in the Tenant Evidence Submission in this action. Neither the 2019 Rent Increase nor the 2022 Rent Increase included proper notice, and both were in excess of the allowable CPI Rent Adjustment.

Upon learning of the illegality of the rent increases, Tenant timely filed a Tenant Petition in the above-captioned action. Tenant served on Owner and timely filed with the Rent Adjustment Program the Tenant Evidence Submission on February 28, 2023. The Tenant Evidence Submission included copies of the 2019 Rent Increase Notice, the 2022 Rent Increase Notice, Tenant rent payment receipts, and signed correspondence from Owner.

Owner filed two separate Owner Responses in this action prior to this appeal. The first submitted response was dated January 31, 2023. Analyst Brittni Lothlen sent a Notice of Incomplete Owner Response to Owner and to all affected Parties to this action on February 28, 2023, noting that Owner did not provide proper proof of service, proof of payment of the Business License Tax, and proof of payment of the RAP fee. Owner filed a second Response, with proof of service dated March 31, 2023.

On April 5, 2023, Hearing Officer Elan Consuella Lambert issued a decision granting the Tenant Petition. In coming to her decision, the Hearing Officer noted that there was no evidence that Tenant received the required RAP Notice either at the inception of her tenancy or with the 2019 Rent Increase. The Hearing Officer also noted that the 2022 Rent Increase did not abide by the requirements of Oakland City Council Ordinance 13589 C.M.S. (the "Oakland Moratorium" or "Rent Increase Moratorium") because the 2022 Rent Increase Notice imposed an increase in excess of the relevant CPI Rent Adjustment of 3%, and because the Notice did not include the required moratorium statement.

II. LEGAL ARGUMENT

Owner has asserted a number of arguments that misunderstand the requirements for rent increases under the Oakland Municipal Code. Owner mischaracterizes the nature of the 2019 Rent Increase, and premises such mischaracterization on false allegations. Owner also attempts to confuse the issues by raising arguments and allegations for the first time that should have been raised in Owner's Responses and not on Appeal. These arguments and allegations go beyond the scope of the Petition and this Appeal.

/ / /

A. Owner Was Not Denied a Sufficient Opportunity to Be Heard

Owner argues that the decision was issued without giving Owner a sufficient opportunity to be heard. This argument is premised on an incorrect understanding of the law.

First, Owner was not denied a sufficient opportunity to be heard because Owner had sufficient time to file an Owner Response and assert any defenses he may have had at that time. In fact, Owner filed two (2) separate Owner Responses: the first, on January 31, 2023; and, after receiving the Notice of Incomplete Owner Response, a second on March 31, 2023. Owner had over 60 days to present counterarguments, as the Tenant Petition was filed on January 20, 2023. A property owner's filed response to a tenant petition will be considered by the hearing officer. Owner's two filed Owner Responses constitute an opportunity to be heard. The fact that Owner is unhappy that his two Responses were insufficient to defend against Tenant's meritorious claims, and that the Hearing Officer held that the Petition could be decided by Administrative Decision, does not constitute a denial of a sufficient opportunity to be heard. Owner was heard through his Responses.

Second, a hearing is not required in all RAP cases. The Oakland Municipal Code empowers Hearing Officers with the authority to issue a decision without a hearing. Oakland Mun. Code § 8.22.110(F). A Hearing Officer may issue such an administrative decision where, among other things: the petition or response forms have not been properly completed or submitted; the petition or response forms have not been filed in a timely manner; the required prerequisites to filing a petition or response have not been met; or when, "[t]he petition and response forms raise no genuine dispute as to any material fact, and the petition may be decided as a matter of law." *Id.*: Oakland Rent Adjustment Program Mun. Regulations, § 8.22.110(G). In this case, Owner did not properly complete the Owner Response initially, did not file the second Response in a timely manner, did not include the required prerequisites to filing an Owner Response, and most importantly, failed to raise a genuine dispute as to any material fact, for all of the reasons that will be discussed below. As a result, the Hearing Officer was well within her authority to issue a decision without a hearing.

Furthermore, the Rent Adjustment Program generally falls within those requirements of California civil law. There are a variety of well-established legal principles that allow a judge or fact finder to reach a decision without a hearing, and some even without evidence. Examples include decisions on motions for judgment on the pleadings, motions for summary judgment, and motions for summary adjudication. *See, e.g.*, Cal. Code Civ. P. §§ 438, 437c. Merely filing a Response, especially one that fails to raise any genuine dispute over any material fact, does not guarantee either a tenant or a property owner a hearing. The Hearing Officer's Administrative Decision does not constitute a denial of Owner's opportunity to be heard.

B. The 2022 Rent Increase

The 2022 Rent Increase was plainly and facially unlawful, and properly invalidated by the Hearing Officer. The 2022 Rent Increase, which required an increase in Tenant's rental payments from $1,300 per month to $1,500 per month, did not meet multiple requirements under the Oakland Municipal Code.

First, the 2022 Rent Increase Notice did not include a RAP Notice, which is required under Oakland law. Oakland Mun. Code § 8.22.070(H). Tenant provided sufficient evidence to the Hearing Officer to demonstrate this deficiency. *See* Tenant Evidence Submission, Exh. T1. Owner does not dispute this fact, and has not disputed this deficiency in either the first Owner Response; the second, delinquent, Owner Response, or in Owner's Appeal. As such, the 2022 Rent Increase Notice is invalid.

Second, the 2022 Rent Increase Notice did not include the rent increase moratorium statement in bold, underlined, 12-point font as required by the Oakland Moratorium. *See id.* Owner contends that "According to page 3 of the Proof of Service from the tenant [sic], it is stated that the notice of rent increase is not in bold, or 12 point font, which is false. We specifically bolded the notice of rent increase statement, and used 12 point font on both letters." *See* Owner Appeal, p. 3. Owner misunderstands the Administrative Decision and the Oakland Moratorium. Under the Oakland Moratorium, Owner is required to provide the following statement in bold, underlined, 12-point font:

> **"During the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic, your rent may not be increased in excess of the CPI Rent Adjustment (3-5% until June 30, 2020), unless required for the landlord to obtain a fair return. You may contact the Rent Adjustment Program at (510) 238-3721 [sic] for additional information and referrals."**

Oakland Moratorium, § 4. Owner did not include this statement in the 2022 Rent Increase. Instead, the only text that were provided in bolded font were "Notice of Rent Increase," "Address," and "Mead Holding LLC" letterhead. *See* Tenant Evidence Submission, Exh. T1.

Third, the 2022 Rent Increase Notice provided for a $200 increase, which equates to an increase of over 15%. Tenant Evidence Submission, Exh. T1. This is well above the 3% CPI Rent Adjustment allowed by the City of Oakland for the relevant time period.

Fourth, the 2022 Rent Increase Notice stated that the increase was justified "due to high inflation rates that include increasing property and city tax, water, PG&E, as well as maintenance in addition to other factors." *See* Tenant Evidence Submission, Exh. T1. Owner confirms such rationale in the Owner Appeal, stating that Tenant's rent "would be increased from $1,300 to $1,500 due to increased operating expenses." *See* Owner Appeal, p. 5. Owner argues that such an increase is justifiable, as the Oakland Municipal Code allows rent increases to exceed the CPI Rent Adjustment. *Id.* The Oakland Moratorium, however, prohibits rent increases in excess of the CPI Rent Adjustment on the basis of increased operating expenses during the Local Emergency. Oakland Moratorium, § 4. Further analysis of Owner's misinterpretation of rent increases in excess of the CPI Rent Adjustment is discussed in Section D, *infra*.

For the foregoing reasons, the 2022 Rent Increase was properly found invalid.

C. The 2019 Rent Increase

The 2019 Rent Increase was plainly and facially unlawful, and was properly held by the Hearing Officer to be invalid. The 2019 Rent Increase required an increase in Tenant's rental payments from $1,000 per month to $1,300 per month, in excess of the allowable CPI Rent Adjustment; the rent increase did not meet requirements under the Oakland Municipal Code; and the rent increase was not a rent set back.

1. The 2019 Rent Increase Did Not Include the RAP Notice

It is undisputed that the 2019 Rent Increase did not include the legally required RAP Notice. *See* Tenant Evidence Submission, Exh. T2. Owner provided only the rent increase notice, itself, along with a printout from the Rent Adjustment Program website. Tenant has provided sufficient evidence to demonstrate this deficiency. Owner does not dispute the fact that no RAP notice was included with the 2019 Rent Increase, and has not disputed this fact in either the Owner Response; the second, delinquent, Owner Response; or in the Owner Appeal.

In his Appeal filing, Owner states, "At the inception of their tenancy, we provided the tenants with a RAP notice. The tenants claiming that they were not able to retain the notice that was provided to them may be due to the fact that they moved in 10 years ago." This statement is problematic for several reasons.

First, the allegation that Owner provided Tenant with a RAP Notice at the inception of their tenancy is false. Tenant has stated in her Petition, under penalty of perjury, that she was never provided with a RAP Notice. *See* Tenant Petition, T23-0019. Tenant has not wavered from this assertion. Owner, on the other hand, has repeatedly changed his story, and has provided no evidence to support his false statement at any stage of this case. In the Owner Response dated January 31, 2023, Owner, under penalty of perjury, affirmatively checked the box stating: "I have never provided a RAP Notice." *See* Owner Response (Jan. 31, 2023). In the second Owner Response, Owner, under penalty of perjury, affirmatively checked the box stating: "I do not know if a RAP Notice was ever provided." *See* Owner Response (Mar. 31, 2023). Owner now claims to have provided a RAP Notice at the inception of Tenant's tenancy, contradicting Owner's prior assertions and without providing any evidence to support his claim. Owner Appeal, p. 3. Owner has contradicted himself, under oath, and has not provided any evidence to support this claim. Accordingly, the Hearing Officer correctly found that Tenant was not given a RAP Notice at the beginning of her tenancy.

Second, Owner misunderstands the notice requirement. While a RAP Notice is required to be provided at the inception of a tenancy, a RAP Notice is also required to be provided with

each rent increase notice. Oakland Mun. Code § 8.22.070(H). Even if Owner had provided Tenant with a RAP Notice at the inception of her tenancy, Owner would still be required to provide additional RAP Notices concurrently with rent increase notices. Owner did not provide the required RAP Notice with the 2019 Rent Increase and has not disputed this fact. Tenant Evidence Submission, Exh. T2. Tenant has provided sufficient evidence for the Hearing Officer to find that Owner failed in his duty to provide the required notice.

2. The Increase Amount Exceeded That Allowed by Law

The 2019 Rent Increase imposed an increase from $1,000 per month to $1,300 per month, which equates to an increase of 30%. This rent increase is illegal on its face. The 2019 CPI Rent Adjustment was 3.5%. Moreover, the Oakland Municipal Code restricts rent increases based on CPI Rent Adjustments to no more than 10% in any 12-month period, and no more than 30% over any period of five years. § 8.22.070(A)(2)-(3). A rent increase of 30% is clearly improper, and the 2019 Rent Increase was correctly held to be invalid.

3. The 2019 Rent Increase was an Increase and Not a Set Back

Owner's contention that the 2019 Rent Increase should be considered a rent "set back" is without merit. Tenant denies Owner's account of an agreement of services in exchange for a rent reduction. Owner did not raise this issue in either of his two Owner Responses, and has provided no evidence to support such an allegation. In fact, Owner, himself, contradicts this characterization of the rent increase in the actual 2019 Rent Increase Notice.

In his Appeal, Owner provides that "the tenants and I had an agreement when they first moved in that the monthly rent would be $1,300, but if they were to pull out the garbage bins every Monday for all 6 units, and keep the front and backyard clean, then they would pay $1,000." Owner Appeal, p. 2. Owner states that such agreement was "verbal." *Id.* at p. 3.

Tenant denies the existence of such an agreement. Tenant's rental rate when she moved into the property in 2013 was $1,000 per month. Tenant has never agreed to a reduced rental rate from $1,300 to $1,000 per month in exchange for services to Owner or at the subject property. Tenant has never agreed to a reduced rental rate in exchange for services to Owner or

at the subject property, either verbally or in writing. Owner has provided no evidence to support his claim that such an agreement existed, and Owner did not raise this argument at the proper time: in his Owner Response to the Tenant Petition.

Owner also states that: "In 2019, we provided the tenants with a 60 day notice that the rent would return to its original amount of $1,300 because they were no longer providing their services." *See* Owner Appeal, p. 3, ¶ 2. The 2019 Rent Increase Notice, however, includes no such language about the alleged services. Instead, the 2019 Rent Increase Notice states: "The rental increases will be applied *due to high inflation rates that include the increase of property and city tax, water, garbage, and other maintenance in addition to many other factors.*" Tenant Evidence Submission, Exh. T2 (emphasis added). The 2019 Rent Increase Notice does not include any mention of services, of an agreement, or of a set back. Moreover, the 2019 Rent Increase Notice uses almost the exact same language that Owner used in the 2022 Rent Increase. *See id.* at Exh. T1 ("The increase in rent will be applied due to high inflation rates that include increasing property and city tax, water, PG&E, as well as maintenance in addition to other factors"). Owner is attempting to characterize the 2019 Rent Increase as a rent set back, however all evidence demonstrates that the 2019 Rent Increase was merely an unlawful rent increase.

Owner further contradicts his set back argument, stating in the 2019 Rent Increase Notice, "Please take into consideration that rent has been $1,000 for the past 10+ years with no increases. The California State Law allows property owners to defer applying *annual rent increases* for up to 10 years." *Id.* at Exh. T2 (emphasis added). Owner was clearly attempting to bank multiple years' worth of rent increases into a single, illegal rent increase. The fact that Owner could have increased rent lawfully during that time period does not allow Owner to do so illegally by increasing Tenant's rent by an unlawful amount and without proper notice. Owner is either being misleading, or mischaracterizing the 2019 Rent Increase by asserting that it was based on a set back rather than what it actually was: an illegal rent increase.

D. Owner Is Not Allowed to Implement Rent Increases Over CPI and Banking Without Following Proper Procedure

Owner contends that he should be allowed to increase rent beyond CPI for a number of ill-defined reasons. Owner reasons that "Capital improvements to a building shall be passed on to the tenant as a prorated charge. A landlord is able to increase the rent due to capital improvements to the building." Owner Appeal, p. 2-3, ¶ 6. Owner later states that "[R]ent increases that exceed the CPI increase may be justified" for a series of reasons. *Id.* p. 5. Yet again, Owner misunderstands legal rent increases allowed under the Oakland Municipal Code and the Oakland Moratorium.

The Oakland Municipal Code does allow for property owners to increase rent by an amount in excess of the CPI Rent Adjustment for reasons including capital improvements, uninsured repair costs, and increased housing costs. Oakland Mun. Code § 8.22.070(C). A property owner who seeks an increase based on any ground other than the CPI Rent Adjustment or Banking, however, "must first petition the Rent Program and receive approval for the Rent Increase before the Rent Increase can be imposed." *Id.* Property owners "may increase rents only for increases based on the CPI Rent Adjustment or Banking, or by filing a petition to increase rent in excess of that amount." *Id.* at § 8.22.065(A). While a property owner is not prohibited from increasing a tenant's rent in excess of the relevant CPI Rent Adjustment, the property owner must follow proper procedures in order to do so. "Any rent increase not based on the CPI Rent Adjustment or Banking that is not first approved by the Rent Adjustment Program is void and unenforceable." *Id.*

Furthermore, the Oakland Moratorium specifically prevents almost all types of rent increases in excess of the CPI Rent Adjustment. *See* Oakland Moratorium, § 4 ("[A]ny rent increase in excess of the CPI Rent Adjustment . . . shall be void and unenforceable if the notice is served or has an effective date during the Local Emergency, unless required to provide a fair return.").

In the present case, Owner did not file a petition with the Oakland Rent Adjustment Program before either the 2019 or 2022 Rent Increases. Owner did not receive approval from the Rent Adjustment Program to impose a rent increase in excess of the CPI Rent Adjustment before either the 2019 or 2022 Rent Increases. Owner instead took it upon himself to increase Tenant's rent by an unconscionable amount on two separate occasions without following established and legally required procedures.

E. Owner's Appeal Includes Allegations and Arguments That Lie Beyond the Scope of the Underlying Petition and this Appeal

Matters on appeal are limited in their scope. The Rent Adjustment Program Regulations contain an enumerated list of grounds for appeal. *See, e.g.,* Oakland Rent Adjustment Program Regulations; Oakland Municipal Code § 8.22.120. As a general rule, Appeals should not conduct evidentiary hearings or consider the introduction of new evidence. *See* Oakland Rent Adjustment Program Regulations.

Here, Owner attempts to include a number of arguments and accompanying evidence that lie well beyond the scope of the underlying Petition, and bear no relevance to this case. Specifically, the following allegations are irrelevant with regard to whether or not the 2019 and 2022 Rent Increases were proper and legal: whether or not Owner requested that tenants at the property pull out their own garbage bins, whether or not Owner decided to begin cleaning around the property, whether or not Tenant had an extra refrigerator, the number of persons living within the subject property, whether or not a fire department violation occurred, and whether or not Tenant's family used multiple parking spaces. Owner Appeal, p. 2, ¶¶ 1-5. Tenant reserves the right to challenge or dispute Owner's allegations.

Additionally, Owner's table of Increased Housing Service Costs is similarly irrelevant for the purposes of this appeal. The issue of whether or not Owner incurred increased costs falls outside of the scope of the Tenant Petition and of this Appeal. Furthermore, Owner has provided no evidence to support his claim that he incurred increased housing costs aside from

the table, itself. Owner Appeal, p. 4. Tenant reserves the right to challenge or dispute Owner's contention regarding increased housing costs.

Owner did not raise these allegations or arguments in either of his two Owner Responses, and they should not be considered in, and are not relevant to, this Appeal.

F. Owner's Allegation of Fraud Is False and Improper

Tenant included in her Tenant Evidence Submission a letter, dated July 5, 2022 and signed by Owner. *See* Tenant Evidence Submission, Exh. T4. The purpose of including the letter in the Tenant Evidence Submission was to provide further evidence that Tenant was current on her rental payments.

In his Owner Appeal, Owner alleges that Tenant "fraudulently used immigration as an excuse to receive a recommendation letter from me, that is now being used against me." Owner Appeal, p. 5.

Tenant denies defrauding Owner. Tenant did not request the letter for any purposes other than those that Tenant made Owner aware of at the time of her request. Tenant was truthful in her request, and has been honest and consistent throughout the entirety of this action. Unless Owner is admitting to having committed fraud by lying in his letter, no fraud occurred. Tenant reserves the right to pursue Owner on any and all claims related to Owner's baseless allegation of fraud.

G. The April 12, 2023 Hearing Was Not Canceled Without Proper Notice

Owner contends that the Hearing for the underlying Petition was "canceled without proper notice." Owner Appeal, p. 5. As discussed in Section A, *supra*, the Hearing Officer did not act improperly in issuing a ruling by Administrative Decision. The cancelation of the Hearing was properly noticed in the Hearing Officer's decision, served on the Parties on April 6, 2023, by Analyst Brittni Lothlen. *See* T23-0019 Administrative Decision, p. 4, ¶ 4.

III. CONCLUSION

For the reasons set forth herein, the Appeals Board should find affirm the Hearing Officer's decision to grant the Tenant Petition.

Dated: May 2, 2023

CENTRO LEGAL DE LA RAZA

By: Gregory Ching
Gregory T. Ching
Attorney for Tenant-Respondent Maria Barragan

CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612-0243
(510) 238-3721
CA Relay Service 711
www.oaklandca.gov/RAP

For Rent Adjustment Program date stamp.

PROOF OF SERVICE

NOTE: YOU ARE REQUIRED TO SERVE A COPY OF YOUR PETITION OR RESPONSE (PLUS ANY ADDITIONAL DOCUMENTS) ON THE OPPOSING PARTIES.

- Use this PROOF OF SERVICE form to indicate the date and manner in which service took place, as well as the person(s) served.
- Provide a copy of this PROOF OF SERVICE form to the opposing parties together with the document(s) served.
- File the completed PROOF OF SERVICE form with the Rent Adjustment Program together with the document you are filing and any attachments you are serving.
- Please number sequentially all additional documents provided to the RAP.

PETITIONS FILED WITHOUT A PROOF OF SERVICE WILL BE CONSIDERED INCOMPLETE AND MAY BE DISMISSED.

I served a copy of: TENANT-RESPONDENT MARIA BARRAGAN'S REPLY BRIEF IN SUPPORT OF TENANT PETITION IN PETITION CASE NO.:T23-0019 (12 pages)
(insert name of document served)
☐ And Additional Documents

and (*write number of attached pages*) 0 attached pages (*not counting the Petition or Response served or the Proof of Service*) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (*check one*):

☒ a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☐ b. 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 listed below.

☐ c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

PERSON(S) SERVED:

Name	Ahmed Said
Address	2400 Market St. Suite B
City, State, Zip	Oakland, CA 94607

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

To serve more than 8 people, copy this page as many times as necessary and insert in your proof of service document. If you are only serving one person, you can use just the first and last page.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 05/02/2023 (insert date served).

Israel Lepiz
PRINT YOUR NAME

Israel Lepiz
SIGNATURE

05/02/23
DATE

CITY OF OAKLAND
Rent Adjustment Program

MEMORANDUM

Date: May 18, 2023

To: Members of the Housing, Rent Residential & Relocation Board (HRRRB)

From: Braz Shabrell, Deputy City Attorney

Re: Appeal Recommendation in T23-0019, Barragan et al. v. Mead Holding LLC

Appeal Hearing Date: May 25, 2023

Property Address: 2031 69th Avenue, Oakland, CA 94621

Appellant/Owner: Ahmed Said, Mead Holding LLC

Respondent/Tenants: Maria Barragan, Reyes Ornelas

BACKGROUND

On January 23, 2023, tenants Maria Barragan and Reyes Ornelas filed a Tenant Petition contesting the following two rent increases:

- $1,000 to $1,300, effective December 2019
- $1,300 to $1,500, effective December 2022

The Petition indicated that the tenants had never received a copy of the RAP Notice, either at the beginning of their tenancy or with either increase. The tenants submitted 22 pages of documentation in support of their Petition, including copies of the rent increase notices and proof of rent payment.

On February 1, 2023, owner Ahmed Said of Mead Holding LLC filed a response to the Tenant Petition, but did not allege any defenses in the response form. The owner attached a copy of a business license (expired), but did not include any evidence that the owner had paid the RAP service fee. The response also indicated that the owner had never provided the tenants with a copy of the RAP Notice.

On February 28, 2023, RAP staff mailed the owner a Notice of Incomplete Owner Response, indicating that the owner was missing a proof of service, proof of payment of the business license tax, and proof of payment of the RAP fee. The Notice indicated that the owner had 30 days to submit a completed response.

RULING ON THE CASE

On April 5, 2023, hearing officer Élan Consuella Lambert issued an Administrative Decision, granting the Tenant Petition without a hearing. The rent increases were found to be invalid because the tenants never received the required RAP Notice, and because the second increase in 2022 was above CPI and did not include the notice language required by the Oakland rent increase moratorium.

GROUNDS FOR APPEAL

On April 18, 2023, the owner filed an appeal of the Administrative Decision on the grounds that the owner was denied a sufficient opportunity to respond to the tenants' claim. Among other things, the owner alleged that the increase from $1,000 to $1,300 was not an increase, but rather the tenants' initial rent was $1,300 and was discounted to $1,000 in exchange for the tenants taking out the garbage and cleaning around the property. The owner also alleged increased housing service costs and other claims irrelevant to the case.

ISSUES

1. Was it proper to issue an administrative decision granting the Tenant Petition?

APPLICABLE LAW AND PAST BOARD DECISIONS

I. Administrative Decisions

An administrative decision may be issued when petition or response forms have not been properly completed, were untimely, or filing prerequisites have not been met; where the petition and response forms raise no genuine dispute as to any material facts and the petition may be decided as a matter of law; or where the property was previously issued a certificate of exemption and is not challenged by the tenant. OMC 8.22.110F.

II. Owner Filing Requirements

In order to file a response to a tenant petition or file a petition seeking a rent increase, an owner must submit the following: evidence of possession of a current business license, evidence of payment of the RAP fee, evidence of service of the RAP notice on covered units, a completed response form, documentation supporting the

owner's claim of exemption or justification for the rent increase, and proof of service of the response on the tenant. OMC 8.22.090B.

III. Service of RAP Notice

Owners are required to serve tenants with a copy of the RAP Notice at the beginning of the tenancy and together with any rent increase. Failure to do so renders a rent increase invalid. O.M.C. 8.22.060, 8.22.070H, 8.22.090A(1)(c)-(d).

IV. Rent Increase Moratorium

Oakland's rent increase moratorium, which was in effect as of December 2022, limits rent increases to CPI and requires certain language to be included in rent increase notices.

RECOMMENDED OUTCOME

The office of the City Attorney recommends that the Hearing Officer's decision finding the rent increases invalid be affirmed, but with modification. The owner's response was incomplete and remained incomplete after the owner was provided with notice and 30 days to submit the required documentation. Both the Tenant Petition and the owner response indicate that the tenants were not provided with a RAP Notice. Therefore, failure to provide a RAP Notice is undisputed. Additionally, the increase from December 2022 from $1,300 to $1,500 exceeds the allowable CPI and does not comply with Oakland's rent increase moratorium.

The owner's claims of capital improvements and increased housing service costs are misguided. Owners are required to file petitions seeking approval from RAP in order to impose increases based on capital improvements and/or increased service costs. The other claims raised on appeal are irrelevant to the issue of whether the challenged rent increases were valid, and the appeal does not provide any explanation or justification (i.e. good cause) as to why the owner's response was incomplete.

Although not raised on appeal, the Board may wish to order that the Administrative Decision be amended, or that a limited hearing take place, to address the issue of restitution for the years that the tenants paid the unlawful rent increases. Currently, the Administrative Decision orders the parties to work out the calculations for rent overpayments. However, this is normally a function of the Hearing Officer, to determine how much the tenants are owed and/or how much rent should be reduced going forward. A (limited) hearing may be necessary if there is a question of fact regarding how much the tenants have paid over the years. However, if there is no question as to how much rent the tenants have paid each month during their tenancy, the calculations may be done without a hearing.