

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
FULL BOARD SPECIAL MEETING  
July 27, 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: Jul 27, 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](mailto:hearingsunit@oaklandca.gov)

## HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD MEETING

1. CALL TO ORDER
2. ROLL CALL
3. WELCOME NEW BOARD MEMBERS
4. 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.
5. CONSENT ITEMS
  - a. Approval of Board Minutes, 7/13/2023 (pp. 4-13)
  - b. Resolution to Recommend Amendment of the Rent Adjustment Program Regulations to (1) extend amortization period for mandatory seismic retrofits to 25 years; (2) reduce argument time to six (6) minutes per party; (3) remove appearance requirement for appellant at appeal hearings; (4) allow non-voting alternates to participate in Board meetings in non-voting capacity; (5) add good cause hearings for failure to appeal at hearings; (6) change meeting time to 6 PM; (7) codify existing procedural practices in regulations; and (8) make other clarifying and reorganization changes (pp. 14-54)
6. APPEALS\*
  - a. T21-0203, Smith v. MacIntyre (pp. 133-331)
7. INFORMATION AND ANNOUNCEMENTS
  - a. Board Training Session—The Brown Act (pp. 55-132)
8. SCHEDULING AND REPORTS
9. OPEN FORUM
10. ADJOURNMENT

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*\*Staff appeal summaries will be available on the Rent Adjustment Program's website and the City Clerk's office at least 48 hours prior to the meeting pursuant to O.M.C. 2.20.070.B 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](mailto: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, Cantonés, Mandarín o de lenguaje de señas (ASL) por favor

envíe un correo electrónico a [RAP@oaklandca.gov](mailto: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](mailto:RAP@oaklandca.gov) 或致電 (510) 238-3721 或711 California relay service.

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**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
FULL BOARD SPECIAL MEETING**

**July 13, 2023**

**5:30 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 5:44 p.m.

**2. ROLL CALL**

<b>MEMBER</b>	<b>STATUS</b>	<b>PRESENT</b>	<b>ABSENT</b>	<b>EXCUSED</b>
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		
M. ESCOBAR	Undesignated	X		
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
D. TAYLOR	Landlord	X		
Vacant	Landlord			
Vacant	Landlord Alt.			
Vacant	Landlord Alt.			

**Staff Present**

Kent Qian

Marguerita Fa-Kaji

Briana Lawrence-McGowan

Deputy City Attorney

Senior Hearing Officer (RAP)

Administrative Analyst II (RAP)

### 3. PUBLIC COMMENT

- a. Kim Roehn spoke and stated that she was the owner representative in case T22-0202 on 5/11/2023 and suggested that a motion be made to amend the 5/11/2023 Board minutes to reflect three things:
  - A Board member stated on the record with regard to Hearing Officer Lambert, "...and just on the record, I've seen a lot of cases from this particular hearing examiner that concerns me in the past and I want to make sure I put that on the record. I'm not saying this Hearing Officer is biased or anything, I'm just saying that some of those decisions that have come from her have been concerning".
  - Language reflecting that the RAP staff present, Hearing Officer Moroz, stated that she would relay the owner's request for reassignment to the Senior Hearing Officer, and
  - Language reflecting that Hearing Officer Moroz represented to the Board that at the inception of case T22-0202, the Senior Hearing Officer reached out to the parties and asked if there were any claims of bias as to this Hearing Officer—and that no one responded to her e-mail.

Kim Roehn stated that without mention of these discussions, the minutes are incomplete and that it is important to Ms. Roehn and her client that the record in this case be complete and accurate because the request to reassign the case was denied and on remand, they were again issued the same notice of incomplete owner response.

- b. James Vann spoke and mentioned that the start time of the meeting was 5:30 pm; however, the Rent Ordinance states that the Board meets the 2<sup>nd</sup> and 4<sup>th</sup> Thursdays at 7:00 pm—and stated that this needs to be addressed in the recommended regulation changes. James Vann also mentioned that the moratorium is ending and that members of the Oakland Tenants Union have received several disturbing calls indicating what might be happening. James Vann stated that regarding the proposed changes to the regulations that are coming from the Board chair, most of them are very good—but there are some that need additional clarification. James Vann also mentioned that there should be copies of the agenda and packet available for members of the public who may not have had time to review or those who may not have computer access.

### 4. CONSENT ITEMS

- a. Approval of Board Minutes, 5/11/2023: Member Williams moved to approve the Board Minutes from 5/11/2023. Vice Chair Oshinuga

seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, M. Escobar, D. Taylor, J. deBoer,  
D. Williams  
**Nay:** None  
**Abstain:** None

The minutes were approved.

## 5. APPEALS\*

### a. T23-0011, Rattanamongkhoun v. Fong

Appearances: Phonethip Hill Tenant Representative

This case involved a tenant appeal of a tenant petition that was dismissed by the Hearing Officer on the basis that the tenant did not serve the proof of service via first class mail. The tenant in the petition attached a certified mail receipt and the Hearing Officer ruled that the ordinance requires proof of service by first class mail. Since the tenant did not attach a proof of service by first class mail, the proof of service was invalid. The tenant appealed this ruling, arguing that the proof of service was emailed to RAP in response to the notice of incomplete petition. The following issue was presented to the Board:

- 1) Is the Hearing Officer's decision to dismiss the petition on the basis that the petition was served by certified mail correct?

The tenant representative contended that on the proof of service form, it states that United States mail could be used—but it does not state that certified mail could not be used. The tenant representative argued that they decided to use first class mail to deliver the package and paid for the additional service of certified mail with a return receipt of service. The tenant representative argued that this was done because they only had a PO box address for the landlord and did not have a physical mailing address for him. The tenant representative contended that they're asking the Board to reject the dismissal and to approve the tenant petition.

After parties' arguments, questions to the parties, and Board discussion, Chair Ingram moved to find that the tenant satisfied the proof of service requirement and to remand the case back to the Hearing Officer for a full hearing. Member Escobar seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, M. Escobar, D. Taylor, J. deBoer,  
D. Williams  
**Nay:** None  
**Abstain:** None

The motion was approved.

b. L23-0001, Ruelas v. Tenants

Appearances:	Kim Roehn	Owner Representative
	Joel Bernhardt	Tenant

This case involved an owner petition for capital improvement rent increases and it affected a number of units on the property. The Hearing Officer held a number of hearings over three days and in the Hearing Decision, the Hearing Officer dismissed the petition on the basis that two of the RAP notices were defective because the owner did not file evidence that they were served in all three languages as required by the ordinance—which includes English, Spanish, and Chinese. The owner filed an appeal of the decision and makes three primary arguments:

- 1.) The Hearing Officer should not have dismissed the petition as to all units if only two units received defective RAP notices.
- 2.) Regarding the tenant in unit 2908, the tenant moved in before September 21, 2016—and the ordinance requiring RAP notices in three languages does not apply to pre-existing tenancies, even if the first RAP notice was served after that date.
- 3.) Regarding the tenant in unit 2900, the owner substantially complied with the ordinance by providing the RAP notice in English and because it did not prejudice that tenant.

The following issues were presented to the Board:

- 1) Is the Hearing Decision supported by substantial evidence that units 2900 and 2908 did not receive the RAP notice in all three languages?
- 2) Was the Hearing Officer's decision correct that the owner's failure to prove receipt of the RAP notices in all three languages to units 2900 and 2908 renders the entire petition fatally defective and subject to dismissal?

The owner representative contended that the landlord acquired the property in 2020 and scraped together funds and took out loans to get the capital improvement projects done. The owner representative argued that all the affected tenants resided at the property prior to the owner taking over the property. The owner representative contended that after three days of hearings, which the tenants fully participated in, the Hearing Officer dismissed the entire petition based on OMC section 8.22.060—which states that the RAP notice must be provided at the inception of tenancy in three languages. The owner representative argued that all affected tenants are English speaking, there's no dispute that the owner has regularly served the RAP notice in English to all tenants since 2020, and that the prior owner also provided the RAP notice in English on several occasions.

The owner representative argued that the issue in this case is the three-language requirement that was enacted in 2016, and that the code section itself says under subsection C that the penalty for failure to give this notice is a 6-month forfeiture of the requested increase—not a full dismissal, as long as the RAP notice had been provided before the petition was filed. The owner representative contended that there are four affected units in this case and that in the Hearing Decision, units 2902 and 2910 were not identified as defective regarding the RAP notice—and the Hearing Officer cannot dismiss a petition in full because there may be procedural defects as to some parties, which violates basic California procedural law.

The owner representative contended that the RAP notice requirement went into effect in 2016 and only applies to tenancies after that date—however, the Hearing Officer applied this law in error and the dismissal needs to be reversed. The owner representative argued that the intent of the three language requirement is to ensure that most tenants receive the RAP notice in a language they can understand, that not every Oakland resident speaks English, Spanish, or Chinese—and that in this case, it is undisputed that the tenant received the RAP notice in a language he understood, and there was no detriment to his not receiving the notice in Spanish and Chinese.

The owner representative argued that the applicability of the substantial compliance doctrine favors substance over form and that this kind of issue with broad stroke penalties doesn't achieve the purpose of any laws that are enacted in the code. The owner representative contended that capital improvement petitions are there to encourage owners to make improvements that benefit those who live at the property and that form over substance should be honored in this case. The owner representative argued that if the three-language requirement was not met at the inception of tenancy, the penalty is a 6-month forfeiture or postponement of the sought increase.



The tenant contended that he resides at 2902 Birdsall Avenue, that he doesn't believe that the petition was correct, and that it should be rejected because it doesn't meet the capital improvement requirements of Oakland. The tenant argued that capital improvements are improvements to covered units or common areas that materially add to the value of the property and appreciably prolong its useful life, adapt it to new building codes, and must primarily benefit the tenant—rather than the owner. The tenant contended that the owner petitioner failed on all the requirements and that the work done in his unit was because of deferred maintenance. The tenant argued that none of the improvements done did anything to improve or prolong the life of the building—and in some cases, the improvements made things worse. The tenant contended that none of the improvements did anything to benefit the tenants.

After parties' arguments, questions to the parties, and Board discussion, Vice Chair Oshinuga moved to reverse the Hearing Officer's decision to dismiss the petition on the grounds that OMC section 8.22.060B applies only to the filing requirement of the RAP notice; and whereas OMC section 8.22.060C applies to the sufficiency of the RAP notice. Here, there is substantial evidence that the owner filed evidence consistent with OMC section 8.22.060B of providing a RAP notice to each tenant. Any penalties as a result of a deficient notice are to be considered under OMC section 8.22.060C. Additionally, the case is to be remanded to the Hearing Officer to render a new decision applicable to all units. The Hearing Officer may consider the deficiencies of any RAP notices and apply any penalties under OMC section 8.22.060C. Member Williams seconded the motion.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, M. Escobar, D. Taylor, J. deBoer,  
D. Williams  
**Nay:** None  
**Abstain:** None

The motion was approved.

c. T22-0124, Benafield v. Equity Avg. LLC

Appearances: Andrew Catterall Owner Representative  
Kevin Benafield Tenant

This case involved a tenant petition for decrease housing services and this case has been heard by the Board before. Previously, the Hearing Officer decided that the waste management was a split utility—therefore, the

increase was an illegal rent increase because the owner passed on the utility costs to the tenants. The Board previously remanded the case for the Hearing Officer to precisely state the reasons why, from the record, the determination was made that the waste management bill was a split utility. In the remand decision, the Hearing Officer provided reasoning as to why such a finding was made in the first decision. The owner appealed the remand decision, arguing that there still isn't any substantial evidence in the record to prove that the waste management was in fact a split utility bill—and attached new evidence of the waste management bills. The owner also argued on appeal that he wasn't really put on notice of the split bill issue because the tenant petition only identified back billing, and the split bill issue never came up at the hearing.

The owner representative contended that the tenant filed the petition in this case alleging an unlawful rent increase and challenged the owner's right to charge for waste management fees on the grounds that at some point the landlord had stopped charging them those fees—therefore barring the owner from charging them in the future. The owner representative argued that in the first Hearing Decision, the Hearing Officer did not state that the landlord was barred from collecting these fees because he delayed in collecting them at some point—but stated that the back billing violated a RAP rule that prohibits splitting utilities.

The owner representative argued that this was not a part of the tenant's petition and was not addressed in the original hearing. The owner representative contended that in the landlord's first appeal, the landlord appealed the utility splitting aspect of the decision on the grounds that the waste management bills were in fact charged separately for each unit. The owner representative contended that during the first appeal, the owner attached the waste management bills that showed that each of the units were separately billed for the waste management fees—and therefore, it wasn't subject to RAP regulations. The owner representative argued that the second basis for the first appeal is that there was insufficient evidence showing anything to the contrary of the fact that these were independent bills to the separate units. The owner representative argued that the third ground for the initial appeal was that the landlord had no notice that the split bill issue was even an issue—therefore, he didn't have the opportunity to provide the supporting documentation.

The owner representative contended that during the first appeal hearing, the Board, on remand, requested for the Hearing Officer to identify what evidence in the record was relied on to support the finding that the waste management was a split utility—and in the Remand Decision, the Hearing Officer didn't provide any direct evidence showing what he relied on or anything that was part of a record showing that there were actually a shared

utility bill. The owner representative argued that the Hearing Officer instead provided a numbered list of things, that amounted to speculation on his part—and included things such as the fact that no documentation of the bills was provided at the hearing, and the fact that there was some testimony that the bills were all in the landlord's name. The owner representative contended that the Hearing Officer didn't provide any evidence that this issue was ever brought up in the hearing—and requested for the case to be remanded back to the Hearing Officer so that the owner is given the opportunity to provide the records of the separate billing.

The tenant contended that the Hearing Officer has reviewed this case and has ruled in favor of the tenants twice. The tenant argued that the owner said he didn't have the records, but the previous owner and the property manager provided him with all the records that he needed. The tenant contended that the owner still has not reimbursed them whatsoever, and that in May, the owner contacted waste management to start accounts in the tenants' names so that they would have to pay the bill.

The tenant argued that the owner wasn't prepared to be an owner or to pay for repairs and upkeep when he purchased the property. The tenant contended that the owner has had two years to get all his evidence together and to present it to the Hearing Officer and that he hasn't. The tenant argued that just because they had been paying the garbage bill since the inception doesn't make it right and that they didn't know the law about utility splitting until they filed the petition.

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

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, M. Escobar, D. Taylor, J. deBoer,  
D. Williams  
**Nay:** None  
**Abstain:** None

The motion was approved.

## 6. RESOLUTION TO RECOMMEND AMENDMENTS TO THE RENT ADJUSTMENT REGULATIONS

- a. Chair Ingram presented and discussed with the Board a proposed resolution to recommend amendments to the Rent Adjustment Regulations. Revisions

are being made and the proposed resolution will be brought back to the Board at the next meeting.

**7. AUTHORIZATION FOR CHAIR INGRAM & MEMBER DEBOER TO PRESENT TENANT FILING REQUIREMENT RESOLUTION TO CITY COUNCIL**

- a. Chair Ingram requested authorization from the Board for Chair Ingram and Member deBoer to present the Tenant Filing Requirement Resolution to City Council on behalf of the Board.

The Board voted as follows:

**Aye:** D. Ingram, C. Oshinuga, M. Escobar, D. Taylor, J. deBoer, D. Williams  
**Nay:** None  
**Abstain:** None

The motion was approved.

**8. INFORMATION AND ANNOUNCEMENTS**

- a. Board Training Session—*Robert’s Rules of Order*: The Board training session was postponed to a future meeting.
- b. Chair Ingram announced that he will be sending quarterly check-in emails to fellow Board members regarding attendance.
- c. Chair Ingram announced that there’s an appreciation mixer that the City Administrator’s office is putting on for Board and Commission members on July 31, 2023, and reminded Board members to RSVP if they’re going to attend.
- d. Chair Ingram provided a brief update on RAP’s Rent Registry implementation.
- e. Deputy City Attorney Kent Qian informed the Board that there are two landlord representative appointments for the Board being forwarded to City Council for approval on Tuesday, July 18, 2023.
- f. Chair Ingram informed the Board that they will not be taking a recess in August to avoid having a backlog of appeal cases.

**9. SCHEDULING AND REPORTS**

- a. None

## **10. OPEN FORUM**

- a. James Vann spoke and stated that a lot of things have been happening regarding the phase-out of the eviction moratorium and informed the Board about calls with disturbing reports from tenants and stated that he will follow-up with RAP's manager regarding this. James Vann mentioned that in the past, whenever the Board was proposing major changes to the RAP ordinance or regulations, there would be a public comment period, but that he does not know if this has happened already because he missed some meetings. James Vann stated that the Board overworked the first-class mail issue, stating that first class mail is typical for government operations, and that people often use certified mail because they want receipts for themselves, and that this should be an additional option. James Vann mentioned that initial base rent is only the initial period of renting up and that it changes—particularly every 12 months when the CPI is added; and that capital improvements come off after their amortization periods. James Vann also stated that the Board wastes time by having good cause hearings, that these hearings should be delegated to RAP staff, and that there should be an administrative determination when people don't show up for hearings.

## **11. ADJOURNMENT**

- a. The meeting was adjourned at 9:40 p.m.



CITY ATTORNEY'S OFFICE

**CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD (HRRRB)**

**RESOLUTION NO. \_\_\_\_\_**

**INTRODUCED BY BOARD CHAIR DENARD INGRAM**

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**RESOLUTION TO RECOMMEND AMENDMENT OF THE RENT ADJUSTMENT PROGRAM REGULATIONS TO (1) EXTEND AMORTIZATION PERIOD FOR MANDATORY SEISMIC RETROFITS TO 25 YEARS; (2) REDUCE ARGUMENT TIME TO SIX (6) MINUTES PER PARTY; (3) REMOVE APPEARANCE REQUIREMENT FOR APPELLANT AT APPEAL HEARINGS; (4) ALLOW NON-VOTING ALTERNATES TO PARTICIPATE IN BOARD MEETINGS IN NON-VOTING CAPACITY; (5) ADD GOOD CAUSE HEARINGS FOR FAILURE TO APPEAR AT HEARINGS; (6) CHANGE MEETING TIME TO 6 PM; (7) CODIFY EXISTING PROCEDURAL PRACTICES IN REGULATIONS; AND (8) MAKE OTHER CLARIFYING AND REORGANIZATION CHANGES**

**WHEREAS**, the Housing, Residential Rent and Relocation Board may make recommendations to the City Council or appropriate City Council committee pertaining to Chapter 8.22 of the Oakland Municipal Code (O.M.C.) or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so, pursuant to O.M.C. 8.22.040 D.4; and

**WHEREAS**, on January 22, 2019, the City Council adopted Ordinance No. 13516, to require mandatory seismic evaluation and retrofit of certain multifamily residential buildings; and

**WHEREAS**, in Ordinance No. 13516, the City Council directed the Rent Board to revise the capital improvements amortization schedule in the Rent Program Regulations to provide an

amortization period for Mandatory Seismic Capital Improvements that conforms with the Rent Board's final motion passed during Item 5 of their July 9, 2015 meeting; and

**WHEREAS**, on June 21, 2022, the City Council adopted Ordinance No. 13695, which established a rent registry and requires evidence of registration before submitting an owner petition or an owner response to a tenant petition; and now, therefore, be it

**WHEREAS**, Rent Adjustment Program Regulation Section 8.22.120.I. provides that if an appellant fails to appear at an appeal hearing, the Board will consider the appeal dropped and will issue a decision dismissing the appeal, subject to the appellant showing good cause for the failure to appear; and

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.120.D.2. provides that unless the Board or Appeal Panel votes otherwise, each party will have fifteen (15) minutes to present argument on or in opposition to the appeal; and

**WHEREAS**, on October 20, 2020, the City Council adopted Ordinance No. 13618 (Efficiency Ordinance), to among other things, streamline Rent Board meetings by allowing the Housing, Residential Rent and Relocation Board (Rent Board) to limit argument time for each party to six (6) minutes; and

**WHEREAS**, to make the appeal process more efficient and to minimize time commitment for parties to appeals, the Rent Board wishes to make appearances at appeals voluntary and reduce argument time to six (6) minutes per side; and

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.100.B provides that if a petitioner fails to appear at a properly noticed mediation, the Hearing Officer may dismiss the case; and

**WHEREAS**, because mediations are voluntary, the Rent Board wishes to amend the regulations to allow parties who miss a mediation the opportunity to receive a hearing on the petition; and

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.110.B provides that if a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may dismiss the case;

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.110 does not currently outline any good-cause relief for a party that fails to appear at a properly noticed hearing except through the appeal process; and

**WHEREAS**, either party can potentially wait an extended period of time for a scheduled appeal hearing just to address their good cause evidence, depending on the number of pending petitions; and

**WHEREAS**, significant wait times for either party to be able to present their good-cause evidence can, in some occasions, significantly impact the relief that can be granted by the Appeal

Body or by the Hearing Officer; and

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.040 does not currently address Alternate Board Members and their participation in scheduled Board meetings unless they are filling in for regular members; and

**WHEREAS**, allow non-voting alternates to participate in board meetings would allow alternates to learn about the Rent Board in a non-voting capacity; and

**WHEREAS**, Rent Adjustment Program Regulation section 8.22.090.B.1 provides that A Tenant petition or response to an Owner petition is not considered filed unless the tenant submits evidence that the tenant is current on rent or lawfully withholding rent; and

**WHEREAS**, consistent with the Rent Board's recommendation to City Council to remove the current on rent requirement from the Rent Adjustment Ordinance, the Rent Board wishes to remove the requirement for the tenant be current on rent before filing a petition from the Rent Adjustment Regulations; and

**WHEREAS**, the Rent Board wishes to revise the Rent Adjustment Regulations to clarify rent board procedures from case precedents and codify them in regulations;

**WHEREAS**, the Housing, Residential Rent and Relocation Board seeks to ensure that all covered Oakland tenants and property owners have equitable access to the protections and relief provided by the Rent Adjustment Ordinance; now, therefore, be it

**RESOLVED**, That the Housing, Residential Rent and Relocation Board recommends the City Council amend the Rent Adjustment Program Regulations by adopting the attached amendments to the Rent Adjustment Regulations;

**RESOLVED:** That the Rent Board wishes to amend the Rent Adjustment Regulations consistent with these ordinance changes; and be it

**FURTHER RESOLVED:** That the Rent Board approves the attached Rent Adjustment Regulation amendments and forwards the attached regulation amendments to City Council for approval; and be it



**Proposed Amendments to the Rent Adjustment Regulations Sections 8.22.020-040, 8.22.060, 8.22.070, 8.22.090-120, and Appendix A.** (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

**8.22.020 DEFINITIONS.**

“Base occupancy level” means the number of tenants occupying the covered unit as principal residence as of June 16, 2020, with the owner’s knowledge, or allowed by the lease or rental agreement effective as of June 16, 2020, whichever is greater, except that, for units that had an initial rent established on or after June 17, 2020, “base occupancy level” means the number of tenants allowed by the lease or rental agreement entered into at the beginning of the current tenancy. When there is a new lease or rental agreement solely as a result of adding one or more additional occupants to the lease or rental agreement, the “beginning of the current tenancy” refers to the tenancy existing prior to the new lease or rental agreement regarding the additional occupant(s).

“Initial Base Rent” means the monthly rental rate during the initial term of tenancy. If the rental agreement provides for a period of “free” or discounted rent within its initial term, the initial base rent shall account for the “free” or discounted period. Notwithstanding any agreement to the contrary, the “rental rate” is the total lawful consideration (excluding the security deposit) charged by the owner in the initial term of the lease divided by the number of months in the lease term.

“Imputed interest” means ~~the average of the 10 year United States treasury bill rate and the 10 year LIBOR swap rate~~ for the quarter prior to the date the permits for the improvements were obtained plus an additional one and one-half percent, to be taken as simple interest. The Rent Program will post the quarterly interest rates allowable.

“Primary tenant” means a tenant who resides in a covered unit, is not an owner of record of the property, and charges rent to or receives rent from one or more subtenants in the covered unit.

“Principal Residence” means the one dwelling place where an individual primarily resides. Such occupancy does not require that the individual be physically present in the dwelling place at all times or continuously, but the dwelling place must be the individual’s usual or intended place of return. A Principal Residence is distinguishable from one kept primarily for secondary residential occupancy, such as a pied-a-terre or vacation home, or non-residential use, such as storage or commercial use. A determination of Principal Residence shall be based on the totality of circumstances, which may include, but are not limited to, the following factors: (1) whether the individual carries on basic living activities at the subject premises; (2) whether the individual maintains another dwelling and, if so, the amount of time that the individual spends at each dwelling place and indications, if any, that residence in one dwelling is temporary; (3) the subject premises are listed as the individual’s place of residence on any motor vehicle registration, driver’s license, voter registration, or with any other public agency, including Federal, State and local taxing authorities; (4) utilities are billed to and paid by the individual at the subject premises; (5) all or most of the individual’s personal possessions have been moved into the subject premises; (6) a homeowner’s tax exemption for the individual has not been filed for a different property; (7) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, incarceration, or other reasonable temporary periods of absence.

“Staff” means the staff appointed by City Administrator to administer the Rent Adjustment Program.

“Subtenant,” for purposes of Regulation 8.22.025, means a tenant who resides with and pays rent to one or more primary tenants, rather than directly to the owner to whom the primary tenant(s) pay rent, for the housing services provided to the subtenant.

## **8.22.030 EXEMPTIONS.**

### **A. Dwelling Units That Are Not Covered Units**

1. In order to be a Covered Unit, the Owner must be receiving Rent in return for the occupancy of the dwelling unit.
  - a. Rent need not be cash, but can be in the form of “in-kind” services or materials that would ordinarily be the Owner’s responsibility.
    - i. For example, a person who lives in a dwelling unit and paints the premises, repairs damage, or upgrades the unit is considered to be paying Rent unless the person caused the damage.
  - b. Payment of some of expenses of the dwelling unit even though not all costs are paid is Rent.
    - i. Payment of all or a portion of the property taxes or insurance.
    - ii. Payment of utility costs that are not directly associated with the use of the unit occupied.
2. If California law determines that an “employee of the Owner”, including a manager who resides in the Owner’s property, is not a Tenant, then the dwelling unit occupied by such person is not subject to OMC Chapter 8.22 so long as the person is an employee and continues to reside in the unit.

### **B. Types of Dwelling Units Exempt**

1. Subsidized units. Dwelling units whose rents are subsidized by a governmental unit, including the federal Section 8 voucher program.
2. Newly constructed dwelling units (receiving a certificate of occupancy after January 1, 1983).
  - a. Newly constructed units include legal conversions of uninhabited spaces not used by Tenants, such as:
    - i. Garages;
    - ii. Attics;
    - iii. Basements;
    - iv. Spaces that were formerly entirely commercial.
  - b. Any dwelling unit that is exempt as newly constructed under applicable interpretations of the new construction exemption pursuant to Costa-Hawkins (California Civil Code Section 1954.52).
  - c. Dwelling units not eligible for the new construction exemption include:
    - i. Live/work space where the work portion of the space was converted into a separate dwelling unit;
    - ii. Common area converted to a separate dwelling unit.
3. ~~Substantially rehabilitated buildings.~~
  - a. ~~In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years.~~
  - b. ~~For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units~~Reserved.
4. Dwelling Units Exempt Under Costa-Hawkins. Costa-Hawkins addresses dwelling units that are exempt under state law. The Costa Hawkins exemptions are contained at California Civil Code Section 1954.52. ~~The text of Costa-Hawkins is attached as an appendix to OMC Chapter 8.22.~~

### **C. Certificates of Exemption**

1. Whenever an Owner seeks a Certificate of Exemption the following procedures apply:
  - a. The petition cannot be decided on a summary basis and may only be decided after a hearing on the merits;

b. Staff may intervene in the matter for the purpose of better ensuring that all facts relating to the exemption are presented to the Hearing Officer;

c. In addition to a party's right to appeal, Staff or the Hearing Officer may appeal the decision to the Rent Board; and,

d. A Certificate of Exemption shall be issued in the format specified by Government Code Section 27361.6 for purposes of recording with the County Recorder.

2. In the event that a previously issued Certificate of Exemption is found to have been issued based on fraud, or mistake, or is no longer valid due to an intervening material change in law or circumstances, and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

## **8.22.040 THE BOARD.**

### **A. Meetings**

1. Notice. Meetings shall be noticed and the agenda posted in accordance with the Ralph M. Brown Act (California Government Code Sections 54950, et. seq. (“Brown Act”) and Sunshine Ordinance (OMC Chapter 2.20).)
2. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month, unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.
3. Special Meetings. Meetings called by the Mayor or City Administrator, or meetings scheduled by the Board for a time and place other than regular meetings are to be designated Special Meetings. The agenda of Special Meetings shall be restricted to those matters for which the meeting was originally called and no additional matters may be added to the agenda.
4. Adjourned or Rescheduled Meetings. A meeting may be adjourned to a time and place to complete the agenda if voted by the Board members present. A rescheduled meeting may be held when a quorum cannot be convened for a regular meeting or when a quorum votes to substitute another time and/or place for a scheduled meeting. Notice of change of meeting time and/or place shall be sent to the City Clerk and absent Board members and provided in accordance with the Brown Act and Sunshine Ordinance.
5. Time of Meetings. Board meetings shall start at ~~7~~<sup>7</sup>:00 p.m. and end by 10:00 p.m. unless some other time is set in advance or the meeting is extended by a vote of the Board.
6. Location of Meetings. The Board meetings shall be held at City Hall, One Frank H. Ogawa Plaza, Oakland, CA 94612, unless otherwise designated.
7. Agenda. The agenda for each meeting shall be posted at such time and places as required by the Brown Act and Sunshine Ordinance.
8. Board meetings shall be conducted in accordance with “Robert’s Rules of Order (Newly Revised),” unless modified by these Regulations, requirements of the Brown Act or Sunshine Ordinance, or the Board.
9. Open to Public. The meetings shall be open to the public in accordance with the Brown Act and the Sunshine Ordinance, except for circumstances where the Brown Act or Sunshine Ordinance permits the Board to address a matter in closed session, such as litigation or personnel matters.
10. Board Vacations. The Board may schedule dates during the year when no regular Board meetings may be held so that the entire Board may take vacations. The Board must schedule vacation times at least two (2) months prior to the date of the vacation time.
11. Alternate Board Members. Alternate board members may participate in discussion and deliberations, but will only be allowed to vote when filling in for a regular member who is not

present or who has been excused from consideration of or voting on a matter by the Board.

## **B. Quorum and Voting**

1. Four Board members constitutes a quorum of the Board.
2. Decisions of the Board. For the Board to make a decision on the first time a matter comes before the Board, the quorum must include at least one of each of the three categories of Board members (Tenant, residential rental property Owner, and one who is neither of the foregoing). If a matter cannot be decided because at least one of each of the three categories of Board members is not present, the matter will be considered a second time at a future meeting where the matter can be decided even if at least one member from each category is not present. A majority of the Board members present are required to make decisions, provided a quorum is present and sufficient members of each category are present.
3. A Board member who does not participate in a matter because of a conflict of interest or incompatible employment neither counts towards a quorum nor in calculating the number of Board members required to make a majority.
4. Special voting requirements for Just Cause for Eviction regulations enacted as part of partial settlement of *Kim v. City of Oakland*, Alameda County Superior Court Case No. RG03081362 (the "Settlement Regulations").

a. The special voting requirements set out in this subsection apply only to the Just Cause for Eviction regulations set out in Exhibit A.

b. The Settlement Regulations may be amended only by affirmative vote of at least five (5) members of the Rent Board, provided that at least one member from each class of Rent Board members (homeowner, landlord, and tenant) affirmatively votes to modify the Settlement Regulations.

c. Before the Board adopts any amendments to the Settlement Regulations, the Board must introduce the proposed amendments at a meeting, hold a public hearing at which members of the public and interested organizations, including the Rental Housing Association of Northern Alameda County, Inc. and Just Cause Oakland, are noticed, and the amendments can only be considered for adoption at a subsequent meeting.

d. After the introduction of proposed amendments to the Settlement Regulations, if the Board decides to further consider the adoption of the regulations and sets a public hearing to do so, the Board must also transmit the proposed amendments to the appropriate committee of the City Council so the City Council may have the option of commenting on or holding its own hearing before the Rent Board votes to adopt or reject the proposed amendments. If the Council elects not to comment on the proposed amendments or does not comment on them within 90 days after transmittal of the proposed amendments by the Rent Board, the Rent Board may proceed to vote on the proposed amendments.

**C. Officers**

1. The Board shall select a Chair from among the Board members who are neither tenants nor residential rental property owners. Each Appeal Panel shall be chaired by the member of that panel who is neither a tenant nor a residential rental property owner.
2. The Board may also select a Vice-Chair (who is neither a Tenant nor an Owner) to act as Chair in the Chair's absence.
3. The Officers shall serve one-year terms.
4. The Board shall elect Officers each year at the second meeting in February.
5. The Chair votes on matters as any other Board member.

**D. Standing Committees**

The Board may establish standing committees subject to prior approval of the City Council. A request to create a standing committee must include:

1. The staffing costs for the committee; and
2. The costs of complying with meeting noticing requirements.

**8.22.060 NOTICE OF THE EXISTENCE OF CHAPTER 8.22 REQUIRED AT COMMENCEMENT OF TENANCY.**

A. Providing Notice in Multiple Languages

1. The requirement to provide the Notice of the Existence of Chapter 8.22 Required at Commencement of Tenancy in multiple languages took effect on September 21, 2016 and only applies to new tenancies that commenced on or after that date.

2. No Owner will be penalized for failing to comply with this requirement until the later of sixty (60) days after the Rent Program makes a general announcement of the requirement or all the translations are available on the Rent Program website.

3. Until September 21, 2017, no Owner will be denied a Rent increase for failing to provide the notice in the required languages, unless:

a. the Tenant is proficient in one of the non-English languages specified in OMC 8.22.060 (Spanish or Chinese), and is not proficient in English;

or

b. the Owner negotiated the terms of the rental agreement in either Spanish or Chinese and failed to give the notice in that language.

## **8.22.070 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.**

### **A. Purpose**

This section sets forth the Regulations for a Rent adjustment exceeding the CPI Rent Adjustment and that is not authorized as an allowable increase following certain vacancies.

### **B. CPI and Banking Rent Adjustments**

#### **5. Rent History/"Banking"**

(a) If a landlord chooses to increase rents less than the annual CPI Adjustment [formerly Annual Permissible Increase] permitted by the Ordinance, any remaining CPI Rent Adjustment may be carried over to succeeding twelve (12) month periods ("Banked"). However, the total of CPI Adjustments imposed in any one Rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the Rent Increase notice.

(b) Banked CPI Rent Adjustments may be used together with other Rent justifications, except Increased Housing Service Costs and Fair Return, because these justifications replace the current year's CPI increase.

(c) In no event may any banked CPI Rent Adjustment be implemented more than ten years after it accrues.

### **C. Justifications for a Rent Increase in Excess of the CPI Rent Adjustment or Banking**

1. ~~Regulations regarding~~ The justifications for a Rent increase in excess of the CPI Rent Adjustment or Banking are attached as Appendix A to these Regulations. The justifications are: banking; capital improvement costs; uninsured repair costs; increased housing service costs; additional occupant as defined by OMC 8.22.020; Tenant does not reside in the unit as their principal residence; and the rent increase is necessary to meet constitutional or fair return requirements.

**a. Capital Improvement Costs:** Capital Improvement Costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements primarily must benefit the tenant rather than the landlord.

(1) Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date the petition for a rent increase based on the improvements is filed.

(2) Eligible capital improvements include, but are not limited to, the following items:

1. Those improvements which primarily benefit the tenant rather than the landlord. (For example, the remodeling of a lobby would be eligible as a capital improvement, while the construction of a sign advertising the rental complex would not be eligible). However, the complete painting of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs.

2. In order for equipment to be eligible as a capital improvement cost, such equipment must be permanently fixed in place or relatively immobile (for example, draperies, blinds,



carpet, sinks, bathtubs, stoves, refrigerators, and kitchen cabinets are eligible capital improvements. Hot plates, toasters, throw rugs, and hibachis would not be eligible as capital improvements).

3. Except as set forth in subsection 4, repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements.

4. The following may not be considered as capital improvements:

a. Repairs for code violations may not be considered capital improvements if the Tenant proves the following:

i. That a repair was performed to correct a Priority 1 or 2 Condition that was not created by the Tenant, which may be demonstrated by any of the following:

(a) the condition was cited by a City Building Services Inspector as a Priority 1 or 2 Condition;

(b) the Tenant produces factual evidence to show that had the property or unit been inspected by a City Building Services Inspector, the Inspector would have determined the condition to be a Priority 1 or 2 Condition, but the Hearing Officer may determine that in order to decide if a condition is a Priority 1 or 2 Condition expert testimony is required, in which case the Hearing Officer may require such testimony.

ii. That the tenant

(a) informed the Owner of the condition in writing;

(b) otherwise proves that the landlord knew of the conditions, or

(c) proves that there were exceptional circumstances that prohibited the tenant from submitting needed repairs in writing; and

iii. That the Owner failed to repair the condition within a reasonable time after the Tenant informed Owner of the condition or the Owner otherwise knew of the condition.

iv. A reasonable time is determined as follows:

(a) If the condition was cited by a City Building Services Inspector and the Inspector required the repairs to be performed within a particular time frame, or any extension thereof, the time frame set out by the Inspector is deemed a reasonable time; or

(b) Ninety (90) days after the Owner received notice of the condition or otherwise learned of the condition is presumed a reasonable time unless either of the following apply:

(1) the violation remained unabated for ninety (90) days after the date of notice to the Owner and the Owner demonstrates timely, good faith efforts to correct the violation within the ninety the (90) days but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause; or

(2) the Tenant demonstrated that the violation was an immediate threat to the health and safety of occupants of the property, [in which case] fifteen (15) business days is presumed a reasonable time unless:

(i) the Tenant proves a shorter time is reasonable based on the hazardous nature of the condition, and the ease of correction, or

(ii) the Owner demonstrates timely, good faith efforts to correct the violation within the fifteen (15) business days after notice but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause.

(c) If an Owner is required to get a building or other City permit to perform the work, or is required to get approval from a government agency before commencing work on the premises, the Owner's attempt to get the required permit or approval within the timelines set out in (i) and (ii) above shall be deemed evidence of good faith and the Owner shall not be penalized for delays attributable to the action of the approving government agency.

b. Deferred Maintenance. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

i. Among the factors that may be considered in determining if the landlord knew or should reasonably have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?

(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?

(c) Did the landlord conduct routine inspections of the property?

(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case, replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.

(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition, and tenant complaints.

iii. Burden of Proof

(a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.

(b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord

to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.

c. “Gold-plating” or “Over-improvements”

i. Examples:

(a) A landlord replaces a Kenmore stove with a Wolf range. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

(b) A landlord replaces a standard bathtub with a jacuzzi bathtub. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

ii. Burden of Proof

(a) The tenant has the initial burden to prove that the improvement is greater in character or quality than existing improvements.

(b) Once a tenant meets the burden to prove that the improvement is greater in character or quality than existing improvements, the burden shifts to the landlord to prove that the tenant approved the improvement in writing, the improvement brought the unit up to current building or housing codes, or the improvement did not cost more than a substantially equivalent replacement.

d. Use of a landlord's personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.

e. Normal routine maintenance and repair of the rental until and the building is not a capital improvement cost, but a housing service cost. (For example: while the replacement of old screens with new screens would be a capital improvement).

f. Costs for which an Owner is reimbursed (e.g., insurance, court awarded damages, subsidies, tax credits, and grants) are not capital improvement costs.

(3) Rent Increases for Capital Improvement costs are calculated according to the following rules:

1. For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to landlord-occupied dwellings (i.e., exclusion of landlord's unit).

2. Items determined to be capital improvements pursuant to Section 10.2.2. shall be amortized over the useful life of the improvement as set out in the Amortization Schedule attached as Exhibit 1 to these regulations and the total costs shall be amortized over that time period, unless the Rent increase using this amortization would exceed the Rent increase limits provided by O.M.C. 8.22.070 A2 or 3. Whenever a Capital Improvement Rent increase alone or with any other Rent increases noticed at the same time for a particular Unit exceeds the limits set by O.M.C. 8.22.070 A2 or 3, if the Owner elects to recover the portion of the Capital Improvement that causes the Rent Increase to exceed the limits set by O.M.C. 8.22.070 A2 or 3, the excess can only be recovered by extending the Capital Improvement's amortization period in yearly increments sufficient to cover the excess, and complying with any requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement increase. The dollar amount of the rent increase justified by Capital Improvements shall be removed from the allowable rent at the end of the amortization period.

3. A monthly Rent increase for a Capital Improvement is determined as follows:

a. A maximum of seventy percent (70%) of the total cost for the Capital Improvement (plus imputed interest calculated pursuant to the formula set forth

- in Regulation 8.22.020) may be passed through to the Tenant;
- b. The amount of the Capital Improvement calculated in a. above is then divided equally among the Units that benefit from the Capital Improvement;
- c. The monthly Rent increase is the amount of the Capital Improvement that may be passed through as determined above, divided by the number of months the Capital Improvement is amortized over for the particular Unit.

4. If a unit is occupied by an agent of the landlord, this unit must be included when determining the average cost per unit. (For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any capital improvement would have to be divided by ten (10), not nine (9), in determining the average rent increase). This policy applies to all calculations in the financial statement which involve average per unit figures.

5. Undocumented labor costs provided by the landlord cannot exceed 25% of the cost of materials.

6. Equipment otherwise eligible as a Capital Improvement will not be considered if a "use fee" is charged (i.e., coin-operated washers and dryers).

7. Where a landlord is reimbursed for Capital Improvements (i.e., insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such Capital Improvements before costs are amortized and allocated among the units. For each improvement listed on a petition, the landlord must state whether a reimbursement or tax credit is or will be received for that improvement.

(4) In some cases, it is difficult to separate costs between rental units; common vs. rental areas; commercial vs. residential areas; or housing service costs vs. Capital Improvements. In these cases, the Hearing Officer will make a determination on a case-by-case basis.

(5) Interest on Failure to Reduce Capital Improvement Increase After End of Amortization Period.

1. If an Owner fails to reduce a Capital Improvement Rent increase in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Rent increase after the end of the amortization period, the Tenant may recover interest on the amount overpaid.

2. The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgments pursuant to California Constitution, Article XV and any legislation adopted thereto and shall be calculated at simple interest.

(6) Documentation of improvement costs with proof of payment (i.e., invoices, receipts, and/or canceled checks) must be presented for all costs which are being used for justification of the proposed rent increase.

(7) Amortization of Capital Improvements. The following schedule shall be used to determine the amortization period of the capital improvement:

<u>IMPROVEMENT</u>	<u>YEARS</u>
<u>Air Conditioners</u>	10
<u>Appliances</u>	

Refrigerator	5
Stove	5
Garbage Disposal	5
Water Heater	5
Dishwasher	5
Microwave Oven	5
Washer/Dryer	5
Fans	5
<b><u>Cabinets</u></b>	10
<b><u>Carpentry</u></b>	10
<b><u>Counters</u></b>	10
<b><u>Doors</u></b>	10
Knobs	5
Screen Doors	5
<b><u>Earthquake Expenses</u></b>	
Architectural and Engineering Fees	5
Emergency Services	
Clean Up	5
Fencing and Security	5
Management	5
Tenant Assistance	5
<b><u>Structural Repair and Retrofitting</u></b>	
Foundation Repair	10

Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Installation	10
<u>Seismic Retrofit</u>	<u>25</u>
<b><u>Electrical Wiring</u></b>	10
<b><u>Elevator</u></b>	20
<b><u>Fencing and Security</u></b>	
Chain	10
Block	10
Wood	10
<b><u>Fire Alarm System</u></b>	10
<b><u>Fire Sprinkler System</u></b>	20
<b><u>Fire Escape</u></b>	10
<b><u>Flooring/Floor Covering</u></b>	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
<b><u>Fumigation</u></b>	
Tenting	5
<b><u>Furniture</u></b>	5

<b><u>Automatic Garage Door Openers</u></b>	10
<b><u>Gates</u></b>	
Chain Link	10
Wrought Iron	10
Wood	10
<b><u>Glass</u></b>	
Windows	5
Doors	5
Mirrors	5
<b><u>Heating</u></b>	
Central	10
Gas	10
Electric	10
Solar	10
<b><u>Insulation</u></b>	10
<b><u>Landscaping</u></b>	
Planting	10
Sprinklers	10
Tree Replacement	10
<b><u>Lighting</u></b>	
Interior	10
Exterior	10

<b><u>Locks</u></b>	5
<b><u>Mailboxes</u></b>	10
<b><u>Meters</u></b>	10
<b><u>Plumbing</u></b>	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
<b><u>Painting</u></b>	
Interior	5
Exterior	5
<b><u>Paving</u></b>	
Asphalt	10
Cement	10
Decking	10
<b><u>Plastering</u></b>	10
<b><u>Pumps</u></b>	
Sump	10
<b><u>Railing</u></b>	10
<b><u>Roofing</u></b>	
Shingle/Asphalt	10
Built-Up, Tar, and Gravel	10
Tile and Linoleum	10
Gutters/Downspouts	10



<b><u>Security</u></b>	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
<b><u>Sidewalks/Walkways</u></b>	10
<b><u>Stairs</u></b>	10
<b><u>Stucco</u></b>	10
<b><u>Tilework</u></b>	10
<b><u>Wallpaper</u></b>	5
<b><u>Window Coverings</u></b>	
Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

(8) The following describe five major hazard conditions classified as Priorities 1 & 2:

I. **MECHANICAL**

**Priority 1**

- A. Unvented heaters
- B. No combustion chamber, fire or vent hazard
- C. Water heaters in sleeping rooms, bathrooms
- D. Open gas lines, open flame heaters

**Priority 2**

- A. Damaged gas appliance
- B. Flame impingement, soot
- C. Crimped gas line, rubber gas connections
- D. Dampers in gas heater vent pipes, no separation or clearance, through or near combustibile surfaces
- E. Water heater on garage floor

II. PLUMBING

Priority 1

- A. Sewage overflow on surface

Priority 2

- A. Open sewers or waste lines
- B. Unsanitary, inoperative fixtures; leaking toilets
- C. T & P systems, newly or improperly installed

III. ELECTRICAL

Priority 1

- A. Bare wiring, open splices, unprotected knife switches, exposed energized electrical parts
- B. Evidence of overheated conductors including extension cords
- C. Extension cords under rugs

Priority 2

- A. Stapled cord wiring; extension cords
- B. Open junction boxes, switches, outlets
- C. Over-fused circuits
- D. Improperly added wiring

IV. STRUCTURAL

Priority 1

- A. Absence of handrail, loose, weakly-supported handrail
- B. Broken glass, posing potential immediate injury
- C. Hazardous stairs
- D. Collapsing structural members

Priority 2

- A. Garage wall separation
- B. Uneven walks, floors, tripping hazards
- C. Loose or insufficient supporting structural members
- D. Cracked glass, leaky roofs, missing doors (exterior) and windows
- E. Exit, egress requirements; fire safety

Note: Floor separation and stairway enclosures in multi-story handled on a case basis.

V. OTHER

Priority 1

- A. Wet garbage
- B. Open wells or unattended swimming pools
- C. Abandoned refrigerators
- D. Items considered by field person to be immediate hazards

- C. Significant quantity of debris
- D. Abandoned vehicles

Priority 2

- A. Broken-down fences or retaining walls
- B. High, dry weeds, next to combustible surfaces

Questions concerning permits, repairs and compliance schedules should be referred to code enforcement office of the City of Oakland -- (510) 238-3381.

**b. Uninsured Repair Costs:** Uninsured Repair Costs are costs for work done by a landlord or tenant to a rental unit or to the common area of the property or structure containing a rental unit which is performed to secure compliance with any state or local law as to repair damage resulting from, fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds

(1) Uninsured Repair Costs are those costs incurred as a result of natural causes and casualty claims; it does not include improvement work or code correction work. Improvements work or code correction work will be considered either capital improvements or housing services, depending on the nature of the improvement.

(2) Increases justified by Uninsured Repair Costs will be calculated as Capital Improvement costs.

**c. Increased Housing Service Costs:** Increased Housing Service Costs are services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to, insurance, repairs, replacement maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service and employee services. Any repair cost that is the result of deferred maintenance, as defined in Appendix A, Section 10.2.28.22.070.C.1.a(2)(4)(b), cannot be considered a repair for calculation of Increased Housing Service Costs. Property tax is not considered a housing service cost.

(1) In determining whether there has been an increase in housing service costs, consider the annual operating expenses for the previous two years. (For example: if the rent increase is proposed in 1993, the difference in housing service costs between 1991 and 1992 will be considered.) The average housing service cost percentage (%) increase per month per unit shall be derived by dividing this difference by twelve (12) months, then by the number of units in the building and finally by the average gross operating income per month per unit (which is determined by dividing the gross monthly operating income by the number of units). Once the percentage increase is determined the percentage amount must exceed the allowable rental increase deemed by City Council. The total determined percentage amount is the actual percentage amount allowed for a rental increase.

(2) Any major or unusual housing service costs (i.e., a major repair which does not occur every year) shall be considered a capital improvement. However, any repair cost that is not eligible as a capital improvement because it is deferred maintenance pursuant to Appendix A, Section 10.2.28.22.070.C.1.a(2)(4)(b), may not be considered a repair for purposes of calculating Increased Housing Service Costs.

(3) Any item which has a useful life of one year or less, or which is not considered to be a capital improvement, will be considered a housing service cost (i.e., maintenance and repair).

(4) Individual housing service cost items will not be considered for special consideration. For example, PG&E increased costs will not be considered separately from other housing service costs.

(5) Documentation (i.e., bills, receipts, and/or canceled checks) must be presented for all costs

which are being used for justification of the proposed rent increase.

(6) Landlords are allowed up to 8% of the gross operating income of unspecified expenses (i.e., maintenance, repairs, legal and management fees, etc.) under housing service costs unless verified documentation in the form of receipts and/or canceled checks justify a greater percentage.

(7) If a landlord chooses to use 8% of his/her income for unspecified expenses, it must be applied to both years being considered under housing service cost (for example, 8% cannot be applied to 1980 and not 1981).

(8) An Increased Housing Service Costs increase may not be taken in the same year as a CPI increase because it replaces the current year's CPI increase.

~~1.8 A decrease in housing service costs (i.e., any items originally included as housing service costs such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.~~

~~1.9 The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs.~~

~~1.10 When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.~~

**d. "Fair Return"**

(1) Owners are entitled to the opportunity to receive a fair return. Ordinarily, a fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year, subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

(2) Maintenance of Net Operating Income (MNOI) Calculations

1. The base year shall be the calendar year 2014.
  - a. New owners are expected to obtain relevant records from prior owners.
  - b. Hearing officers are authorized to use a different base date, however, if an owner can demonstrate that relevant records were unavailable (e.g., in a foreclosure sale) or that use of base year 2014 will otherwise result in injustice.
2. The NOI for a property shall be the gross income less the following: property taxes, housing service costs, and the amortized cost of capital improvements. Gross income shall be the total of gross rents lawfully collectible from a property at 100%

occupancy, plus any other consideration received or receivable for, or in connection with, the use or occupancy of rental units and housing services. Gross rents collectible shall include the imputed rental value of owner-occupied units.

3. When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with the expense level for that item for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

(3) Owners may present methodologies alternative to MNOI for assessing their fair return if they believe that an MNOI analysis will not adequately address the fair return considerations in their case. To pursue an alternative methodology, owners must first show that they cannot get a fair return under an MNOI analysis. They must specifically state in the petition the factual and legal bases for the claim, including any calculations.

**e. Additional Occupants**

As provided by O.M.C. 8.22.020, "Additional occupant," the addition of occupants above the base occupancy level, as defined by the Rent Adjustment Ordinance, allows an owner to petition to increase the rent by an amount up to 5% for each occupant above the base occupancy level. Such petitions must be filed within ninety (90) days of approval, or deemed approval as provided by O.M.C. 8.22.360.A.2.b, of the tenant's written request to add the occupant. No rent increase shall be granted for an additional occupant who is the spouse, registered domestic partner, parent, grandparent, child, adopted child, foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant's child or grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability.

Such rent increases must be reversed by the Owner if the additional occupancy level decreases, beginning with the most recently granted increase. Once a tenant provides written notice to the Owner of a decrease in the additional occupancy level and lists all current occupants, the Owner must provide written notice within fifteen (15) days to the tenant of the applicable reduced rent, effective as of the next regular rent due date occurring no sooner than thirty (30) days after the tenant's written notice.

If there are changes in occupancy following a tenant's request to add an occupant and, prior to the Owner's 15-day rent reduction notice deadline and the Owner issuing the notice, the additional occupancy level remains the same (e.g., a departing occupant is replaced), the Owner need not issue the rent reduction notice and the rent increase granted due to the prior additional occupant shall remain in effect, until and unless the additional occupancy level decreases. When the additional occupancy level remains the same following a change in occupancy, the Owner may not be granted a new additional occupant rent increase for any additional occupant that is added. The number of rent increases for additional occupants that currently apply to the rent may not exceed the additional occupancy level.

**f. Tenant Not Residing in Unit as Principal Residence** [Added May 5, 2021, but does not take effect until 3 months after the Local Emergency regarding the COVID-19 pandemic declared on March 9, 2020, is terminated by the City Council]

An Owner who seeks to impose a rent increase without limitation because the Tenant is not residing in the unit as their principal residence must petition for approval of the unrestricted rent increase based on a determination made pursuant to a hearing that the Tenant does not reside in the unit as their principal residence as of the date the petition is filed. The Hearing Officer shall not consider evidence in support of a petition that is obtained in violation of California Civil Code Section 1954 or the Oakland Tenant Protection Ordinance.

F. Decreased Housing Services

1. A decrease in housing services costs (i.e., any items originally included as housing services costs such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.

2. The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs.

3. When more than one rental unit shares any type of utility bill with another rental unit, it is illegal to divide up the bill between units. Splitting the costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&E. The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill himself/herself and build the cost into the rent.

**8.22.090 PETITION AND RESPONSE FILING PROCEDURES.**

**A. Filing Deadlines**

1. In order for a document to meet the filing deadlines prescribed by OMC Chapter 8.22.090, documents must be received by the Rent Adjustment Program offices no later than 5 PM on the date the document is due. A postmark is not sufficient to meet the requirements of OMC Chapter 8.22.090. ~~Additional Regulations regarding electronic and facsimile filing will be developed when these filing methods become available at the Rent Adjustment Program.~~

2. Electronically filed documents must be received by the Rent Adjustment Program no later than 11:59 PM on the date the document is due.

**B. Tenant Petition and Response Requirements**

1. A Tenant petition or response to an Owner petition is not considered filed until the following has been submitted:

a. ~~Evidence that the Tenant is current on his or her Rent or is lawfully withholding Rent. For purposes of filing a petition or response, a statement under oath that a Tenant is current in his or her Rent or is lawfully withholding Rent is sufficient, but is subject to challenge at the hearing~~Reserved;

b. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath; and

c. For Decreased Housing Services claims, organized documentation clearly showing the Housing Service decreases claimed and the claimed value of the services, and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

d. Proof of service by first-class mail or in person of the tenant petition or response and any supporting documents on the owner.

2. Subtenant petitions described by Regulation 8.22.025 and Primary Tenant responses to them are subject to the tenant petition and response requirements in this section.

**C. Owner Petition and Response Requirements**

1. An Owner's petition or response to a petition is not considered filed until the following has been submitted:

a. Evidence that the Owner has paid his or her City of Oakland Business License Tax;

b. Evidence that the Owner has paid his or her Rent Program Service Fee or evidence that the unit is exempt from the fee;

c.

i. Evidence that the Owner has provided written notice, to all Tenants in each covered unit affected by the petition or response, of the existence and scope of the Rent Adjustment Program as required by OMC 8.22.060. For purposes of filing a petition or response, a statement that the Owner has provided the required notices is sufficient, but is subject to challenge at the hearing;

ii. After July 1, 2023, evidence of registration with the Rent Adjustment Program as required by O.M.C. 8.22.510 for each affected covered unit in the building prior to the petition or response being filed;

d. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath;

e. Organized documentation clearly showing the Rent increase justification and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file; and

f. Proof of service by first-class mail or in person of the owner petition or response and any supporting documents on the tenants of all units affected by the petition. Supporting documents that exceed twenty-five (25) pages are exempt from the service requirement, provided that: (1) the owner petition form must be served by first-class mail or in person; (2) the petition or attachment to the petition must indicate that additional documents are or will be available at the Rent Adjustment Program; and (3) the owner must provide a paper copy of supporting documents to the tenant or the tenant's representative within ten (10) days if a tenant requests a paper copy in the tenant's response.

2. Primary tenant responses to subtenant petitions described by Regulation 8.22.025 are not subject to the Owner response requirements in this section.

#### **D. Time of Hearing and Decision**

1. The time frames for hearings and decisions set out below are repeated from OMC 8.22.110 D.

2. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.

3. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later.

#### **E. Designation of Representative**

Parties have the right to be represented by the person of their choice. A Representative does not have to be a licensed attorney. Representatives must be designated in writing by the party. Notices and correspondence from the Rent Adjustment Program will be sent to representatives as well as parties so long as a written Designation of Representative has been received by the



Rent Adjustment Program at least ten (10) days prior to the mailing of the notice or correspondence. Parties are encouraged to designate their representatives at the time of filing their petition or response whenever possible.

## **8.22.100      MEDIATION OF RENT DISPUTES.**

### **A.      Availability of Mediation**

Voluntary mediation of Rent disputes will be available to all parties participating in Rent adjustment proceedings after the filing of a petition and response. Mediation will only be conducted in those cases in which all parties agree in advance to an effort to mediate the dispute.

### **B.      Procedures**

1. Parties who desire mediation shall have the choice between the use of Rent Adjustment Program Staff Hearing Officers acting as mediators or the selection of an outside mediator. Staff Hearing Officers shall be made available to conduct mediations free of charge. The Rent Adjustment Program will develop a list of available outside mediators for those who do not wish to have Staff Hearing Officers mediate rent disputes. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

2. The following rules apply to mediations conducted by Staff Hearing Officers and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and a hearing on the petition will be scheduled;

c. Written notice of the mediation session shall be served on the parties by the Rent Adjustment Program in accordance with OMC 8.22.110.

d. It is the goal to have the mediation scheduled within the first 30 days after the response to the petition is filed.

e. Absence Of Parties. If either party fails to appear for a properly noticed mediation, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.

~~i. If a petitioner fails to appear at a properly noticed mediation, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case.~~

~~ii. If a respondent fails to appear, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.~~

3. The following rules apply to mediations conducted by outside mediators and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. The Rent Adjustment Program will not schedule the mediation; the parties will be responsible for scheduling the mediation between themselves and the mediator and for notifying the Rent Adjustment Program of the time and date for the mediation;

c. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and an administrative hearing will be scheduled.

d. In the event that ~~the responding~~either party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative review and or hearing on the petition, whichever is appropriate.

~~d. In the event that the petitioning party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative dismissal of the petition.~~

4. The Regulations regarding representation by an agent and translation apply to mediations.

5. If the parties fail to settle the rent dispute through the mediation process after a good faith effort, a hearing on the petition will be scheduled on a priority basis with a Staff Hearing Officer. If the mediation was conducted by a Staff Hearing Officer, the hearing on the petition will be conducted by a different Hearing Officer.

6. If the parties reach an agreement during the mediation, a written mediation agreement will be prepared immediately by the mediator and signed by the parties at the conclusion of the mediation. To the extent possible, mediation agreements shall be self-enforcing. The Hearing Officer will issue an order corresponding to the mediated agreement and signed by the parties that either dismisses the petition or grants the petition according to terms set out in the mediation agreement.

7. A settlement agreement reached by the parties will become a part of the record of the proceedings on the petition unless the parties otherwise agree.

8. The parties cannot agree to grant an Owner a permanent exemption of for dwelling unit. Permanent exemption claims must be decided by a Hearing Officer after a hearing on the evidence.

### **C. Postponements of Mediations Before Hearing Officers**

1. A Hearing Officer or designated Staff member may grant a postponement of the mediation only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" includes but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or

material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled mediation date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of a mediation must be made in writing at the earliest date possible after receipt of the notice of mediation with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the mediation.

## **8.22.110 HEARING PROCEDURE.**

### **A. Postponements**

1. A Hearing Officer or designated Staff member may grant a postponement of the hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.
2. "Good cause" includes but is not limited to: a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party; b. Verified travel plans scheduled before the receipt of notice of hearing; c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".
3. A request for a postponement of a hearing must be made in writing at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.
4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the hearing.

### **B. Absence Of Parties**

1. If a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case, subject to the petitioner showing good cause for the failure to appear.
  - a. Any excuse for failing to appear, along with supporting documentation, must be submitted to the Hearing Officer within ten (10) days of service of the hearing decision.
  - b. The Hearing Officer will determine if the excuse represents a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.
  - c. If the Hearing Officer determines that the application represents a prima facie case of good cause, the Hearing Officer may schedule a new hearing on good cause and on the petition.
  - d. If the petitioner submits a timely application under subsection (a), the time to appeal the Hearing Decision is extended until fifteen (15) days after service of the Hearing Officer's decision denying good cause for failure to appear.

2. If a respondent fails to appear, the Hearing Officer may rule against the respondent, or proceed to a hearing on the evidence.

### **C. Record Of Proceedings**

1. All proceedings before a Hearing Officer or the Rent Board, except mediation sessions, shall

be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

#### **D. Translation**

Translation services for documents, procedures, hearings and mediations in languages other than English pursuant to the Equal Access to Services ordinance (O.M.C. Chapter 2.3) shall be made available to persons requesting such services subject to the City's ability to provide such services. In the event that the City is unable to provide such services, petitioners and respondents who do not speak or are not comfortable with English must provide their own translators. The translators will be required to take an oath that they are fluent in both English and the relevant foreign language and that they will fully and to the best of their ability translate the proceedings.

#### **E. Conduct Of Hearings Before Hearing Officers**

1. Each party, attorney, other representative of a party or witness appearing at the hearing shall complete a written Notice of Appearance and oath, as appropriate, that will be submitted to the Hearing Officer at the commencement of the hearing. All Notices of Appearance shall become part of the record.

2. All oral testimony must be given under oath or affirmation to be admissible.

3. Each party shall have these rights:

a. To call and examine witnesses;

b. To introduce exhibits, provided that the party provides the exhibits to the Rent Adjustment Program and serves copies to the other party not less than seven (7) days before the hearing unless the party has good cause for late filing;

c. To cross-examine opposing witnesses on any matter relevant to the issues even if that issue was not raised on direct examination;

d. To impeach any witness regardless of which party called first called him or her to testify;

e. To rebut the evidence against him or her;

f. To cross-examine an opposing party or their agent even if that party did not testify on his or her own behalf or on behalf of their principal

g. A party who fails to file a response to a petition is prohibited from calling or examining witnesses or introducing oral or written evidence and is limited to cross-examination, unless the

party has good cause for failing to file a response.

4. Unless otherwise specified in these Regulations or OMC Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

#### **F. Decisions Of The Hearing Officer**

1. The Hearing Officer shall make written findings of fact and issue a written decision on petitions filed.

2. If an increase in Rent is granted, the Hearing Officer shall state the amount of increase that is justified, ~~and the effective date of the increase.~~

3. If a decrease in Rent is granted, the Hearing Officer shall state when the decrease commenced, the nature of the service decrease, the value of the decrease in services, and the amount to which the rent may be increased when the service is restored. When the service is restored, any Rent increase based on the restoration of service may only be taken following a valid change of terms of tenancy notice pursuant to California Civil Code Section 827. A Rent increase for restoration of decreased Housing Services is not considered a Rent increase for purposes of the limitation on one Rent increase in twelve (12) months pursuant to OMC 8.22.070 A. (One Rent Increase Each Twelve Months).

4. The Hearing Officer may order Rent adjustment for overpayments or underpayments over a period of months, however, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstances. The following is a schedule of adjustments for underpayment and overpayments that Hearing Officers must follow unless the parties otherwise agree or good cause is shown:

a. If the underpayment or overpayment is 25% of the Rent or less, the Rent will be adjusted over 3 months;

b. If the underpayment or overpayment is 50% of the Rent or less, the Rent will be adjusted over 6 months;

c. If the underpayment or overpayment is 75% of the Rent or less, the Rent will be adjusted over 9 months;

d. If the underpayment or overpayment is 100% of the Rent or more, the Rent will be adjusted over 12 months.

5. For Rent overpayments based on an Owner's failure to reduce Rent after the expiration of the amortization period for a Capital Improvement, the decision shall also include a calculation of any interest that may be due pursuant to Reg. 8.22.070.C.1.a(5) ~~10.2.5 (see Appendix A)~~.

6. If the Landlord has petitioned for multiple capital improvements covering the same unit or building, the Hearing Officer may consolidate the capital improvements into a single amortization period and, in the Hearing Officer's discretion, determine the length for that

amortization period in the Decision.

**G. Administrative Decisions**

For rent increase petitions based on one or more additional occupants, if there is no genuine dispute regarding any material fact, the petition may be decided as a matter of law, and the tenant waives their right to a hearing in writing on a form provided by the Rent Adjustment Program, the Hearing Officer shall issue a decision without a hearing.





## **8.22.120 APPEALS.**

### **A. Statement of Grounds for Appeal and Supporting Documentation**

1. A party who appeals a decision of a Hearing Officer or administrative decision must clearly state the grounds for the appeal on the appeal form or an attachment. The grounds for appeal must be stated sufficiently clearly for the responding party, and the Board to reasonably determine the basis for the appeal so that the responding party can adequately respond and the Board can adequately adjudicate the appeal.
2. A party who files an appeal must file any supporting argument and documentation and serve it on the opposing party within fifteen (15) days of filing the appeal along with a proof of service on the opposition party.
3. A party responding to an appeal must file any response to the appeal and any supporting documentation and serve it on the opposing party within thirty (30)~~fifteen (15)~~ days of the service of the ~~supporting documentation~~appeal along with a proof of service on the opposing party.
4. Any argument and supporting documentation may not be any more than twenty-five (25) pages. Arguments must be legible and double-spaced if typed. Any submissions not conforming to these requirements may be rejected by Staff. Staff may limit the pages for argument and supporting documentation submitted in consolidated cases.
5. Staff, in its discretion, may modify or waive the above requirements for good cause. The good cause must be provided in writing by the party seeking a waiver or modification.

### **B. Grounds for Appeal**

The grounds on which a party may appeal a decision of a Hearing Officer include, but are not limited to, the following:

1. The decision is inconsistent with OMC Chapter 8.22, the Regulations, or prior decisions of the Board;
2. The decision is inconsistent with decisions issued by other Hearing Officers;
3. The decision raises a new policy issue that has not previously been decided by the Board;
4. The decision violates federal, state, or local law;
5. The decision is not supported by substantial evidence. Where a party claims the decision is not supported by substantial evidence, the party making this claim has the burden to ensure that sufficient record is before the Board to enable the Board to evaluate the party's claim;
6. The Hearing Officer made a procedural error that denied the party sufficient opportunity to adequately present his or her claim or to respond to the opposing party; or
7. The decision denies the Owner a fair return.

a. This appeal ground may only be used by an Owner when his or her underlying petition for approval of a rent increase was based on a fair return claim.

b. Where an Owner claims the decision denies a fair return, the Owner must specifically state on the appeal form the basis for the claim, including any calculations, and the legal basis for the claim.

### **C. Postponements**

1. The Board or Staff may grant a postponement of the appeal hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. "Good cause" shall include but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of an appeal hearing must be made in writing at the earliest date possible after receipt of the notice of appeal hearing with supporting documentation attached.

~~4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date for the appeal hearing.~~

### **D. Procedures at Appeal Hearings**

1. It is the Board's or Appeal Panel's goal to hear three (3) appeals per meeting.

2. Unless the Board or Appeal Panel votes otherwise, or the Appeal Body Chair establishes an alternate time limit prior to the first appeal being heard by the Appeal Body, each party will have ~~fifteen (15)~~ six (6) minutes to present argument on or in opposition to the appeal. This time includes opening argument and any response.

3. Whenever the Board or Appeal Panel considers an appeal at more than one meeting, any Board member not present at a prior hearing must listen to a tape of the prior hearing in order to participate at a subsequent hearing.

4. Only those grounds presented in the written appeal may be argued before the Board or the Appeal Panel.

### **E. Record Of Proceedings**

1. All proceedings before the Rent Board shall be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any appeal hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.
2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

#### **F. Evidentiary Hearings**

1. As a general rule, the Board and Appeal Panels should not conduct evidentiary hearings. When the Board or Appeal Panel determines that additional evidence or reconsideration of evidence is necessary, the Board or Appeal Panel should remand the matter back to a Hearing Officer for consideration of evidence.
2. The Board or Appeal Panel should only consider evidence when the evidence is limited in scope and resolution of the matter is more efficient than having it remanded to a Hearing Officer for consideration of the evidence.
3. In order for new evidence to be considered, the party offering the new evidence must show that the new evidence could not have been available at the Hearing Officer proceedings.
4. If the Board or Appeal Panel deems an evidentiary hearing necessary, the appeal will be continued and the Board will issue a written order setting forth the issues on which the parties may present evidence.
5. The parties must file any new documentary evidence with the Board or Appeal Panel and also serve it the opposing party not more than ten (10) days after notice is given that a date has been set for the evidentiary appeal hearing.
  - a. Parties must also file with the Rent Program proofs of service of the evidence on the opposing party.
  - b. Failure to file the evidence and the proofs of service may result in the evidence not being considered by the Board or Appeal Panel.
6. When the Board or Appeal Panel conducts an evidentiary hearing, the same rules will apply as to hearings before Hearing Officers.

#### **G. Appeal Decisions**

1. **Vote Required.** Provided a quorum of the Board is present, or all three Appeal Panel members if a matter is being heard by an Appeal Panel, a majority vote of the Board members present is required to overturn or modify a Hearing Officer's decision. A tie vote upholds the Hearing Officer's decision. If no Board member makes a motion to uphold, reverse, or modify the Hearing Officer's decision on appeal or no motion receives a second, the appeal is deemed denied without comment.

2. Vote at Close of Appeal Hearing. Unless the Board or Appeal Panel votes otherwise, it shall vote on each appeal at the close of the appeal. The motion should include the reasons for the decisions so that the reasons can be set forth in a written decision.

a. Form of Decision. An appeal decision must be in writing and include findings and conclusions.

b. Time for Written Decision. The Board has the goal of issuing a written decision within thirty (30) days of the close of the appeal hearing.

c. Final decision.

i. Written appeal decisions are drafted by Staff, reviewed by the City Attorney, signed by staff as the Board's designee, and served on the parties.

ii. In any individual matter, however, the Board or Appeal Panel may vote to require that a decision first come to the full Board or full Appeal Panel or to the Board or Appeal Panel Chair for final approval and signature of that Chair. A decision is not final until signed by Staff or the Board or Appeal Panel Chair and served on the parties.

d. In its decision, the Board is authorized to designate a schedule for refunds or repayments consistent with Reg. 8.22.110 F.4 in cases where its decision results in under- or over-payments by a party; alternatively, the Board may remand to the Hearing Officer for purposes of devising a refund or repayment plan.

e. Staff shall serve decisions on the parties.

## **H. Dismissal of Appeal**

1. Untimely appeal filing.

a. Staff may dismiss an appeal that is not timely filed.

b. Within ten (10) days following Staff's notice of the dismissal, the party filing the late appeal may submit a written statement explaining any good cause for the late filing.

c. If the good cause appears within the guidelines for acceptable good cause set out in Rent Board decisions, Staff may reinstate the appeal or set a hearing before the Board on whether there is good cause for the late appeal.

d. If the good cause does not appear within the acceptable good cause parameters, Staff may reject the good cause and affirm the appeal dismissal.

2. Failing to adequately state grounds for appeal.

a. If Staff determines that an appeal fails to adequately state the grounds for appeal, Staff will send a deficiency notice to the appellant notifying the appellant of the deficiency and giving the appellant ten (10) days to correct the deficiency.

b. If the appellant fails to respond to the deficiency notice or fails to correct the deficiency in the response, Staff may dismiss the appeal, or ask the Rent Board to determine the adequacy of the appeal.

### **I. Failure to Appear**

1. Appellant. If an appellant fails to appear at an appeal hearing, the Board or Appeal Panel may will decide the appeal on the record as submitted~~consider the appeal dropped and will issue a decision dismissing the appeal, subject to the appellant showing good cause for the failure to appear.~~

a. ~~Any excuse for failing to appear, along with supporting documentation, must be submitted to Staff with ten (10) days of the date of the service of the appeal decision.~~

b. ~~Staff will, in the first instance determine if the excuse represents a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.~~

e. ~~If a prima facie case of good cause is shown, Staff will schedule an appeal hearing on whether the Board or Appeal Panel accepts the good cause.~~

2. Responding party. If an appellant appears and the responding party fails to appear, the Board or Appeal Panel must still hear and decide the appeal.

**Appendix A**

Deleted [Contents moved to Section 8.22.070.]

**FURTHER RESOLVED:** That the Rent Board authorizes the Chair or the Chair’s designee to speak in support of the resolution on behalf of the Board at City Council or Committee meetings.

APPROVED BY THE FOLLOWING VOTE

AYES: BRODFUEHRER, ESCOBAR, NICKENS, OSHINUGA, TAYLOR, WILLIAMS AND  
CHAIRPERSON INGRAM

NOES:

ABSENT:

ABSTENTION:

\_\_\_\_\_  
Date:

ATTEST

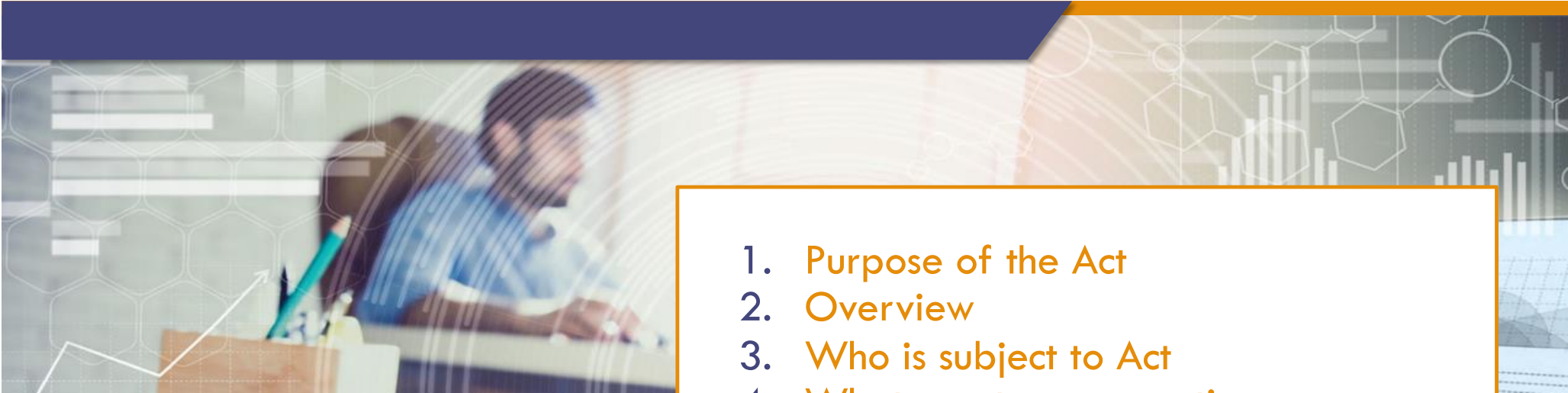
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BRIANA LAWRENCE-MCGOWAN  
Rent Adjustment Program, Housing  
& Community Development  
Department

3253243v7

# BROWN ACT OVERVIEW



HRRRB Training  
July 27, 2023



## WHAT WE WILL COVER:

1. Purpose of the Act
2. Overview
3. Who is subject to Act
4. What counts as a meeting
5. Meeting requirements
6. Types of prohibited communication
7. Agenda/notice requirements
8. Public testimony
9. Violations



---

# PURPOSE OF THE RALPH M. BROWN ACT

Govt. Code 54950

- “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.”



## OVERVIEW OF THE BROWN ACT

*To promote transparency and public participation in local government by ensuring public access and notice.*

“All **meetings** of the legislative body of a local agency shall be **OPEN + PUBLIC**, and all persons shall be permitted to attend...except as otherwise provided in this Chapter.”

## WHAT GOVERNMENT BODIES ARE SUBJECT TO THE ACT?

- The governing body of a local agency or any other local body created by state or federal statute. “Local agency” includes county, city, school district, municipal corporation, district, political subdivision, or “any board, commission, agency thereof.” (Govt. Code 54951)
- “Legislative bodies” of local agencies, including commissions, committees, boards, and other bodies, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.
- Standing committees of legislative bodies that have continuing jurisdiction over a subject matter or whose meeting schedule is fixed by formal action of the body. (Govt. Code 54952)



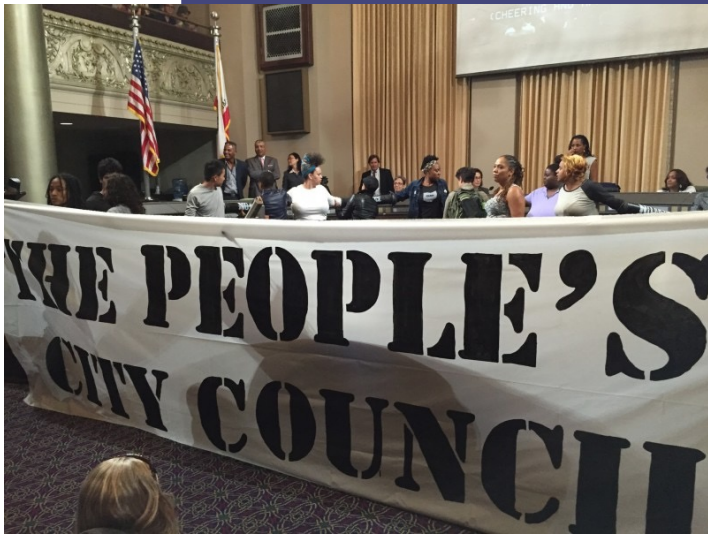
NOT COVERED: temporary ad hoc committee with < quorum

# WHAT COUNTS AS A MEETING?

A “meeting” is any congregation of a majority of the members of a legislative body at the same time and location to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the body. Gov. Code 54952.



# MEETING REQUIREMENTS: OPEN AND PUBLIC



- Sufficient notice of meeting
- All persons permitted to attend and speak at public forum and on items
- Voting by secret ballot or proxy prohibited
- Body must report all actions taken and the vote or abstention of each member present for the action
- Must be recorded
- Public record subject to disclosure

## Communication Among Majority

prohibited  
permissible



- ⊗ **Emails** or teleconferences discussing Board business
- ⊗ **Conversation** over meals, at events, conferences, etc. about Board business
- ⊗ Use of **intermediaries** to discuss, deliberate, take action, or develop consensus



- ✓ Attending public conferences of general interest, other body's public meetings, purely social or ceremonial gatherings, open/public community meetings by non-city organizations
- ✓ Discussion of Board items w/ 3 or less members
- ✓ Individual communication with staff
- ✓ **No discussion of Board business!**

# AGENDA REQUIREMENTS

- **Posted** 72 hours prior to regular meeting, 48 hours prior to special meeting (not incl. weekend) in place freely accessible to public
- Date, time, location of meeting
- Brief **description** of each item to be transacted or discussed, with sufficient details to “alert a person of average intelligence and education whose interests are affected by the item” that they may have reason to attend meeting or seek more info
- At meeting, action/discussion limited to items in posted agenda



## EXCEPTIONS TO AGENDA REQUIREMENT

- Brief announcements (e.g., community event)
- Scheduling future meetings or items
- Brief response/answer to public testimony
- Ask staff a question for clarification
- “Emergency situation” or need for immediate action that just came to attention after agenda posted





# PUBLIC TESTIMONY

- Regular and special meetings must have open forum at beginning or end
- 2 minutes allowed for public speakers (OMC 2.20.150)
- Public can speak on all items appearing on agenda
- Opportunity to speak prior to vote on items



## PUBLIC TESTIMONY (CONT.)

- Body may adopt reasonable regulations including time limits, so long as enforced fairly and without regard to speakers' viewpoints. Body has discretion to modify regulations if necessary (e.g., shorten time if lengthy agenda) if stated reason for shortening
- Public may speak on anything w/in subject matter jurisdiction of body
- Cannot prohibit public criticism
- Cannot require speakers to provide name or address as condition of speaking

# VIOLATIONS & REMEDIES



**Invalidation**



**Injunction**



**Criminal Penalties**



Overt act

Bad intent

**QUESTIONS?**



# Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016



AGENDA ITEM

1. PUBLIC COMMENT: The City Council values your comments; however, pursuant to the Brown Act, Council cannot take action on items not listed on the posted agenda. The public comment period is limited to 20 minutes, with 2 minutes allotted for each speaker. This public comment period is to address the City Council on Consent Calendar items, other agenda items (if the member of the public cannot be present at the time the item is considered) or items of genera...

CURRENT SPEAKER: Larry Block

**ACKNOWLEDGEMENTS**

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

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# Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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# Chapter 1

## IT IS THE PEOPLE’S BUSINESS

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# 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."*<sup>1</sup>

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."*<sup>2</sup>

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."*<sup>3</sup>

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

**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.

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.<sup>4</sup>

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.<sup>5</sup>

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.

### **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.

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**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.

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### 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.<sup>6</sup> 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.

### 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.

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**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.

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**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](http://www.cacities.org/opengovernment). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).





# Chapter 2

## LEGISLATIVE BODIES

What is a “legislative body” of a local agency? ..... 12

What is not a “legislative body” for purposes of the Brown Act? ..... 14

# 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.<sup>1</sup>*



### What is a “legislative body” of a local agency?

A “legislative body” includes:

- **The “governing body”** of a local agency<sup>2</sup> and certain of its subsidiary bodies; “or any other local body created by state or federal statute.”<sup>2</sup> 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.<sup>3</sup> A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.<sup>4</sup> The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.<sup>5</sup> Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.<sup>6</sup>

- **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.<sup>7</sup> 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

**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.

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.<sup>8</sup>

- **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.<sup>9</sup> 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.<sup>10</sup> “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.<sup>11</sup>
- 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.<sup>12</sup> These include some nonprofit corporations created by local agencies.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

**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.<sup>16</sup>

### 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.<sup>17</sup> 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.<sup>18</sup>
- 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.<sup>19</sup>

**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.<sup>20</sup>
- 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.<sup>21</sup>
- County central committees of political parties are also not Brown Act bodies.<sup>22</sup>

#### 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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# Chapter 3

## MEETINGS



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."<sup>1</sup> 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.<sup>2</sup>

### 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.<sup>3</sup>
- **"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.<sup>4</sup>
- **"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.<sup>5</sup>
- **"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.<sup>6</sup>

### Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:<sup>7</sup>

#### *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.<sup>8</sup> 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).<sup>9</sup>

- 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.<sup>10</sup> 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.<sup>11</sup>



**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."<sup>12</sup> 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 discussion, deliberation, or a decision on a proposed action.<sup>13</sup> 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.”<sup>14</sup>

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.<sup>15</sup>

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

**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."<sup>18</sup> 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.*

- 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.

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

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.<sup>19</sup> 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.<sup>20</sup> 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.”<sup>21</sup> 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:<sup>22</sup>

- 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.<sup>23</sup>

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:<sup>24</sup>

- 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup>





## 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

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# 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.”<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

**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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.”<sup>9</sup> 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.<sup>10</sup>

**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.<sup>11</sup>



### 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.<sup>12</sup>

### 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

### Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> However, they are generally consistent with the Brown Act. An item is probably void if not posted.<sup>19</sup> 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.<sup>20</sup>

### **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.<sup>21</sup> 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 XIII C or XIII D, 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.<sup>22</sup> 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:<sup>23</sup>

- 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.

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?

**PRACTICE TIP:** Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted 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.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.<sup>27</sup>

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.<sup>28</sup>

Action by secret ballot, whether preliminary or final, is flatly prohibited.<sup>29</sup>

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.<sup>30</sup>

**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.<sup>31</sup> Ejection is justified only when audience members actually disrupt the proceedings.<sup>32</sup> 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.<sup>33</sup>

### 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.<sup>34</sup> A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.<sup>35</sup>

**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.<sup>36</sup> 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.<sup>37</sup>

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.<sup>38</sup> The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

### 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.<sup>42</sup>

**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.<sup>43</sup>



**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.<sup>44</sup>

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.<sup>45</sup>

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.<sup>46</sup>

**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 Pacific 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](http://www.cacities.org/opengovernment). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).





# Chapter 5

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# Chapter 5

## 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.<sup>1</sup>



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.<sup>2</sup> 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.<sup>3</sup>

**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),<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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.

## 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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**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.

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The California Attorney General has opined that if the agency’s attorney is not a participant, a litigation closed session cannot be held.<sup>17</sup> 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.<sup>18</sup>

**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.<sup>19</sup>

**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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>



**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<sup>24</sup> and the names of the parties with whom its negotiator may negotiate.<sup>25</sup>

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.<sup>26</sup>

**“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.*

**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.

## 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.”<sup>27</sup> 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.<sup>28</sup> The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.<sup>29</sup> That authority may be delegated to a subsidiary appointed body.<sup>30</sup>

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,<sup>31</sup> 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.<sup>32</sup> The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.<sup>33</sup> If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.<sup>34</sup>

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.<sup>35</sup>

- 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.<sup>36</sup> 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.<sup>37</sup> 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.

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.<sup>38</sup> However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.<sup>39</sup>

**"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,<sup>40</sup> 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.<sup>41</sup>

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.

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

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**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.<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup>

Public participation under the Rodda Act also takes another form.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup> Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.<sup>49</sup>

### 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.<sup>50</sup>

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

## 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.<sup>51</sup>

## 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.<sup>52</sup> 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.<sup>53</sup>

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.<sup>54</sup>

## 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.<sup>55</sup>

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.<sup>56</sup>



**PRACTICE TIP:** Meetings are either open or closed. There is nothing “in between.”<sup>62</sup>

### 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,<sup>57</sup> consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,<sup>58</sup> 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,<sup>59</sup> 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,<sup>60</sup> 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.<sup>61</sup>

### 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.<sup>63</sup>

**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.<sup>64</sup> 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.<sup>65</sup> 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.<sup>66</sup>



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,<sup>67</sup> though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.<sup>68</sup> 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.<sup>69</sup>

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.<sup>70</sup>

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.<sup>71</sup> 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.*

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

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## 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](http://www.cacities.org/opengovernment). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).



# Chapter 6

## REMEDIES

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# Chapter 6

## 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.<sup>1</sup> 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;<sup>2</sup>
- 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 agendaized items are acted on by the governing body during a meeting.<sup>3</sup> 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,<sup>4</sup> the challenger must show prejudice as a result of the alleged violation.<sup>5</sup> An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.<sup>6</sup>

### 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.<sup>7</sup> 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.<sup>8</sup> The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> The unconditional commitment must be substantially in the form set forth in the Brown Act.<sup>12</sup> No legal action may thereafter be commenced regarding the past action.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup>

### 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.

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**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.

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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.<sup>16</sup> Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup>

### 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.<sup>20</sup>

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.<sup>21</sup>

"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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

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



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.<sup>25</sup> 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.<sup>26</sup>

## 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 54956.5 (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](http://www.cacities.org/opengovernment). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).





1400 K Street, Suite 400, Sacramento, CA 95814  
Phone: (916) 658-8200 | Fax: (916) 658-8240  
[www.cacities.org](http://www.cacities.org) | [www.cacities.org/events](http://www.cacities.org/events) | [www.westerncity.com](http://www.westerncity.com)



## CHRONOLOGICAL CASE REPORT

Case No.: T21-0203

Case Name: Smith v. MacIntyre

Property Address: 474 Jean Street, Oakland, CA 94610

Parties: Gregory Smith (Tenant)  
Andrew Wolff (Tenant Representative)  
Stuart MacIntyre (Owner)  
David Sternfeld (Owner Representative)

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed (T20-0202)	September 14, 2020
Tenant Petition filed (T20-0250)	December 11, 2020
Tenant Petition filed (T21-0021)	February 22, 2021
Tenant Petition filed (T21-0030)	March 13, 2021
Tenant Petition filed (T21-0197)	November 3, 2021
Tenant Petition filed (T21-0203)	November 9, 2021
Owner Response filed	November 19, 2021

Tenant Documents submitted	December 14, 2021
Tenant Documents submitted	December 16, 2021
Notice of Remote Settlement Conference and Hearing mailed	December 17, 2021
Tenant Documents submitted	December 28, 2021
Tenant email and attachments submitted	January 15, 2022
Order Re Consolidation mailed	January 20, 2022
Tenant email correspondence	January 24, 2022
Tenant Request to Dismiss Petitions	January 31, 2022
Order Re Mediation mailed	January 31, 2022
Tenant email and attachments submitted	February 1, 2022
Email Re Excluded Claims Re RAP Petition From Tenant	November 2, 2022
Order to Produce Settlement Agreement & Release mailed	November 4, 2022
Hearing Date	February 22, 2023
Hearing Decision mailed	April 26, 2023
Tenant Appeal filed	May 8, 2023

Notice of Incomplete Appeal Form mailed	May 11, 2023
Tenant POS submitted	May 23, 2023
Administrative Appeal Decision mailed	June 15, 2023
Written Statement from Tenant- Reason for Delay of Appeal	June 22, 2023
Notice of Appeal Hearing and Statement from Appellant Re Late Appeal filing	June 27, 2023

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SM/KL T20.0202 3/2

City of Oakland  
Rent Adjustment Program  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

SEP 14 2020  
RENT ADJUSTMENT PROGRAM  
OAKLAND

Tenant Petition  
Property Address: 474 JEAN ST  
Case: Petition: 11524  
Date Filed: 9/14/2020

Party	Name	Address	Mailing Address	
Owner	stuart macintyre	478 jean st oakland, CA 94610	478 jean st oakland, 94610	(510) 967-6031
Tenant	gregory smith	474 Jean Street Oakland, CA 94610	474 Jean Street Oakland, 94610	(510) 435-1687 galaxigigi@gmail

Number of units on the property **4**

Type of unit you rent **Apartment, Room or Live-work**

Are you current on your rent? **Yes**

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



**City of Oakland  
Rent Adjustment Program**

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

**Tenant Petition**

Property Address: 474 JEAN ST  
Case: Petition: 11524  
Date Filed: 9/14/2020

**Grounds for Petition**

For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. I (We) contest one or more rent increases on one or more of the following grounds:

h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance.

i) My property owner is providing me with fewer housing services than I previously received or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.)

**City of Oakland**  
**Rent Adjustment Program**  
 250 Frank H. Ogawa Plaza, Suite 5313  
 Oakland, CA 94612  
 (510) 238-3721

**Tenant Petition**  
 Property Address: 474 JEAN ST  
 Case: Petition: 11524  
 Date Filed: 9/14/2020

**Rental History**

Date you moved into the Unit **12/7/2004**

Initial Rent **1200**

When did the property owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)?

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

**List all rent increases that you want to challenge.**

Date you received the notice	Date increase goes into effect	Monthly rent increase From	Monthly rent increase To	Are you Contesting this Increase in this Petition? *	Did You Receive a Rent Program Notice With the Notice Of Increase?
				No	No

*\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)*

Have you ever filed a petition for your rental unit? **No**

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

**City of Oakland**  
**Rent Adjustment Program**  
 250 Frank H. Ogawa Plaza, Suite 5313  
 Oakland, CA 94612  
 (510) 238-3721

**Tenant Petition**  
 Property Address: 474 JEAN ST  
 Case: Petition: 11524  
 Date Filed: 9/14/2020

**Description of Decreased or Inadequate Housing Services**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner? **Yes**

Have you lost services originally provided by the owner or have the conditions changed? **Yes**

Are you claiming any serious problem(s) with the condition of your rental unit? **Yes**

**Loss of Service**

Date Loss Began **6/30/2020**  
 Date Owner Was Notified of Loss  
 Estimated Loss **70**  
 Reduced Service Description  
 1- Dryer, 2- Health issue, 3- Electrical

**City of Oakland**  
**Rent Adjustment Program**  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

**Tenant Petition**  
Property Address: 474 JEAN ST  
Case: Petition: 11524  
Date Filed: 9/14/2020

**Mediation**

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

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

Mediation will be scheduled only if both parties agree. The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

Would you like to request Mediation? **Yes**

City of Oakland

Gregory Smith  
474 Jean Street  
Oakland, CA 94610  
(510) 435-1687

*Via: Personal delivery*

To: Stuart MacIntyre  
478 Jean St, Oakland, CA 94610

Ph# 1-510-967-6031

June 24, 2020

**Delivered July 29, 2020**

**RE: Request for Repairs, Compensation & to Cease Harassment**

Dear Stuart MacIntyre,

This letter is regarding my legal rights related to my tenancy at 474 Jean Street in Oakland, California. I am writing for four reasons: (1) to request repairs and action regarding several habitability violations; (2) to request compensation for the costs I incurred paying for the maintenance of items that were your responsibility as landlord to properly maintain; (3) to request that you stop intimidating my mother whether intentional or not and me as legally required by the covenant of quiet enjoyment; and (4) that you reduce my monthly rent at a rate comparable to the additional monthly cost of operating the new payment-operated dryer you installed

**I. Request for Repairs Due to Habitability Violations**

First, I am contacting you once again to request you to take action on the following items:

1. Repair electrical problems: I have been requesting you to address Two (2) electrical outlets in the front room that have sparked & appear to have a "short(s)" for at least a several years, if not more, however each time I ask you, you have said you would look into the matter, but as of yet there has been no action on your part. Also there is a light fixture in the dining room that may cause electrocution. This specific issue, when it was brought to your attention; many years ago; your response was, and I quote, "Do Not Use It". What would be the ramifications for you in the event someone in this household forgot or a visitor to my unit wasn't aware of any electrical problems (ie. outlets, light fixtures etc.) and in the act of using such, was electrocuted, burned or worse; even died? As you will recall, I asked you many years ago; [my best recollection is initially in 2014 or 2015 and several times since regarding the light fixture and 2014 and 2016 and most recently 2018 regarding the outlets].

**Note: I am Not requesting you to fix the entrance hall light as a courtesy and in deference to you for informing me that it would incur a major expense.**

2. I have continually asked you for well over 2 years to repair the disintegrated grout in the shower area that leaks into the wall & floor; more than likely causing a buildup of mold & mildew; and the same for the face bowl, however your only response has been the same as the electrical issues, that you would look into the matter, but as of yet no action. Regarding the shower stall and face-bowl was initially approximately 2 years ago and several times since then and most recently in August 2019 when you came inside our place to fix the kitchen sink faucet {2X within a few months (it was constantly leaking)}; I have requested many times for you to make

**000141**

these repairs, but so far you have not done so. These conditions are affecting my mother's and my own health and the livability of our unit. By law I am allowed to withhold some or all of the rent if you do not fix these serious defects. *Green v. Superior Court (1974) 10 Cal.3d 616.*

I respectfully ask that you complete repairs by no later than [21] days after receiving this letter. I will, of course, cooperate with you in scheduling times for the repairs to be completed. I ask, in return, that you comply with your legal obligations to notify me in writing, 24 hours in advance any time you, or your agent, intend to enter the apartment. If making necessary repairs requires us to vacate the apartment, you are required to provide my family with temporary relocation to a vacant unit. Furthermore, if these health and safety issues continue unabated, I will be forced to relocate my mother and myself elsewhere, and I reserve my right to seek relocation assistance from you. I also reserve my right to return to my unit after necessary repairs are made.

## II. Request for Compensation for Costs Incurred

Second, I am writing to request compensation for the numerous costs I incurred of both money and labor repairing and cleaning items and spaces on the premises that were your responsibility as landlord to properly maintain. These costs include the following:

1. The most recent repair in March of 2020 in the amount of \$350.00 for the new motor. The motor; for all intents and purposes is the machine. \$45.00 for (\$90.00 total, at that time, shared by all tenants cost of repairs) a new dryer drum belt. I bought a New washer in February of 2020 (cost: \$719.53) because I was sick and tired of paying never-ending repair/replacement costs due to someone else's perpetual misuse, thus destruction of the shared machines.
2. I Re-caulked shower stall 3X spending approx 2-3 hrs each time but it didn't last (a few months), actually needed re-grout and re-caulked face-bowl 3X (approx 1 hr each time) but the mold returned after a couple of weeks each time because probably the inside wasn't sufficiently dried.

In the past you have required me to pay for certain repairs that are your responsibility. A landlord is not permitted to shift on to the tenant the landlord's obligation to make and pay for repairs. Please see California Civil Code sec. 1942.1. I request you reimburse me for the costs I have paid over the years for maintenance. There were at least 6-7 instances of repairs for both washers and dryers and several instances, the entire machines were replaced with new although used machines within the past 8 yrs. We paid an average of \$150-\$175 each time. Using the lesser # of instances (6) and the lower figure of \$150 = \$900 + the above \$45 + \$350 + \$719.53 (Total machine related = \$2,014.53)

## III. Covenant of Quiet Enjoyment

Further, you, your daughter (Maureen), have violated the implied covenant of quiet enjoyment, which is a part of all rental agreements. *See Civil Code § 1927.* This behavior includes:

1. Harassment by the landlord: I equate your machinations to be out of spite and to be both harassment and intimidation ie. Turning my dryer over in an attempt to damage it, saying you thought it was still broken, however you were specifically notified that it had been repaired; instructing only me to remove bags, boxes (paper products) from a store room under the back stairs, when in fact the majority of such

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products are someone else's items. Also you have shown bias against me in favor of other tenants when there have been tenant disputes.

2. Harassment by your daughters: Mainly your daughter (Maureen) has constantly harassed me about where I park my car. You (the landlord) have admitted to me and my mother that your daughter (Maureen) has no business interfering with us and you have said you would address this matter with her. Thank you for doing so.

If a landlord is engaging in behavior that creates a disturbance or is aware of neighbors creating a disturbance regularly, the landlord must try to ameliorate these problems or the landlord will be in breach of the implied covenant of quiet enjoyment. Please consider this letter my notice to you of these regular disturbances.

#### **IV. Request for Rent Reduction due to Installment of Pay Dryer**

Finally, I am writing to request a rent reduction due to the new, additional monthly cost of using the payment operated dryer unit you recently installed. Since a washing machine and dryer were included at the time I first moved into my unit in 2004, I am entitled to the continued use and enjoyment of a washing machine and dryer as part of my monthly rent cost. The additional cost of operating the new dryer is an additional fee on top of our rental agreement that I did not agree to either in writing or by my conduct. This new, additional fee constitutes an unauthorized rent increase which Oakland's Rent Adjustment Ordinance does not allow.

I request that we agree my rent be reduced by the amount I must spend about \$70.00 per month (No change machine) to use the dryer to compensate for this unlawfully added cost. If we do not come to such an agreement, it is within my rights to petition the Rent Board for a rent reduction.

**OR**

**Reconnect my dryer and I will waive the rent reduction request and all washer/dryer related expenses I'm entitled to...**

I bought my own washer because I got fed up with having to bear the cost of another tenant's misuse and continued destruction of both the washer and dryer. To reiterate, **I'm willing to forgo all past laundry related expenditures if you would kindly reconnect my dryer.** I Do Not wish to share these machines with other tenants. There are hookups for 2 washers and 2 dryers that have been here since I moved in.

Despite all of the aforementioned issues, I wish to remain in my home and continue my tenancy with you. Please know that failure to peaceably allow me to resume my tenancy may leave me no other recourse but to seek legal redress for your unlawful actions.

Thank you for your prompt attention to this matter.


Sincerely,

Gregory Smith

CC: East Bay Community Law Center

000143

Duplicate petition T20.0202 SM/EL

 <b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp:  <b>TENANT PETITION</b>
--	---

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

Please print legibly

Your Name <b>GREGORY SMITH</b>	Rental Address (with zip code) <b>474 JEAN ST OAKLAND, CA 94610</b>	Telephone: <b>510-435-1687</b>
Your Representative's Name <b>N/A</b>	Mailing Address (with zip code)	E-mail: <b>ggregory@gregsmith.com</b>
Property Owner(s) name(s) <b>SUVAEI MCINTYRE</b>	Mailing Address (with zip code) <b>478 JEAN ST OAKLAND, CA 94610</b>	Telephone: <b>510-967-6031</b>
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	E-mail: <b>UNKNOWN</b>
		Telephone:
		E-mail:

Number of units on the property: 4

Type of unit you rent (check one)	<input type="checkbox"/> House	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment, Room, or Live-Work
Are you current on your rent? (check one)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

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

**I. GROUNDS FOR PETITION:** Check all that apply. You must check at least one box. For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. **I (We)** contest one or more rent increases on one or more of the following grounds:

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

Rev. 7/3/17

For more information phone (510) 238-3721.

**RECEIVED**  
 SEP 22 2020  
 RENT ADJUSTMENT PROGRAM  
 OAKLAND



(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)

(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).

(f) The rent increase notice(s) was (were) not given to me in compliance with State law.

(g) The increase I am contesting is the second increase in my rent in a 12-month period.

(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)

(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F). A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)

(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.

(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014)

(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article D)

(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.

(n) The rent was raised illegally after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: Dec 2004 Initial Rent: \$ 1,200.00 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: NEVER If never provided, enter "Never"

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

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. If you never received the RAP Notice you can contest all past increases. You must check "Yes" next to each increase that you are challenging.

Date you received the notice (month/year)	Date increase goes into effect (month/year)	Monthly rent increase (Specify the amount and percentage increase. Attach schedule if applicable.)	Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Increase? Notice Of Increase?
NO NOTICE ON DRIVER CARPORTAGE	Yearly Rent Increase 2020	\$ 1,569.00	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
REPAIRED PARTIAL DRIVEWAY	REPAIRED PARTIAL DRIVEWAY	\$ 4.00	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
		\$	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		\$	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		\$	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		\$	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>

\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A.2) If you did not receive a *Rent Notice* with the rent increase, you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A.3)

Have you ever filed a petition for this rental unit?  
 Yes  
 No

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:  
None

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**  
Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

Are you being charged for services originally paid by the owner?  
Have you lost services originally provided by the owner or have the conditions changed?  
Are you claiming any serious problem(s) with the condition of your rental unit?

If you answered "Yes" to any of the above, or if you checked box (b) or (c) on page 2, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include the following:

- 1) a list of the lost housing service(s) or problem(s);
  - 2) the date the loss(es) or problem(s) began or the date you began paying for the service(s) 4/30/2020
  - 3) when you notified the owner of the problem(s); and he refused to rectify my dryer  
WARRANTY PERIOD DRYER EXISTE
  - 4) how you calculate the dollar value of lost service(s) or problem(s). WAS 40 TO BULK THE COINS
- Please attach documentary evidence if available. SEE ATTACHED LETTER GIVEN TO LANDLORD 7/29/2020

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381. WARRANTY FOR INSPECTOR STATE  
FEI 07/15/2020. RECEIVED OFCI APPOINTMENT CALL  
END WED 07/07/2020... INSPECTOR WILL COME BETWEEN  
FEI 07/14 09/16/2020

**IV. VERIFICATION:** The tenant must sign:  
I declare under penalty of perjury pursuant to the laws of the State of California that everything I said in this petition is true and that all of the documents attached to the petition are true copies of the originals.

Tenant's Signature: [Signature]  
Date: 09/14/2020

NOTE: DRYER IS BLOWING MY DRYER AGAINST MY EXPLICIT WISHES TO KEEP MY DRYER, I  
BOUGHT A NEW DRYER FOR IT IN MARCH/APRIL 2020. THE HWSA BULK REFUSE PU  
SCHEDULED FOR 09/15/2020 ... TOHARBOR

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

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

Mediation will be scheduled only if both parties agree (after both your petition and the owner's response have been filed with the Rent Adjustment Program). The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.

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

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

Henry Smith  
Tenant's Signature

09/14/2020  
Date

**VI. IMPORTANT INFORMATION:**

**Time to File**

This form must be received at the offices of the Rent Adjustment Program ("RAP") within the time limit for filing a petition set out in the Rent Adjustment Ordinance (Oakland Municipal Code, Chapter 8.22). RAP staff cannot grant an extension of time by phone to file your petition. Ways to Submit: Mail to: Oakland Rent Adjustment Program, 250 Frank H. Ogawa Plaza, Suite 5313, Oakland, CA 94612. In person: Date stamp and deposit in Rent Adjustment Drop-Box, Housing Assistance Center, Datzel Building, 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland. For more information, please call: (510) 238-3721.

**File Review**

Your property owner(s) will be required to file a response to this petition with the Rent Adjustment office within 35 days of notification by the Rent Adjustment Program. When it is received, the RAP office will send you a copy of the Property Owner's Response form. Any attachments or supporting documentation from the owner will be available for review in the RAP office by appointment. To schedule a file review, please call the Rent Adjustment Program office at (510) 238-3721. If you filed your petition at the RAP Online Petitioning System, the owner may use the online system to submit the owner response and attachments, which would be accessible there for your review.

**VII. HOW DID YOU LEARN ABOUT THE RENT ADJUSTMENT PROGRAM?**

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): \_\_\_\_\_

3/2

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DEC 11 2020

City of Oakland Rent Adjustment Program  
 250 Frank H. Ogawa Plaza, Suite 5313  
 Oakland, CA 94612  
 (510) 238-3721

RENT ADJUSTMENT PROGRAM  
**OAKLAND**

T20.0250 EL



**TENANT PETITION**

**Property Address:** 474 JEAN ST  
**Case:** Petition: 11622  
**Date Filed:** 12-11-2020

**Parties**

Party	Name	Address	Mailing Address
Owner	Stuart MacIntyre	478 Jean st Oakland, CA 94610	(510) 967-6031
Manager	Stuart MacIntyre	478 Jean st Oakland, CA 94610	(510) 967-6031
Tenant	Gregory Smith	474 Jean St Oakland, CA 94610	(510) 435-1687 galaxigigi@gmail.com

**Number of units on the property** 1

**Type of unit you rent** Apartment, Room or Live-work

**Are you current on your rent?** Yes

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



**City of Oakland Rent Adjustment Program**  
**250 Frank H. Ogawa Plaza, Suite 5313**  
**Oakland, CA 94612**  
**(510) 238-3721**

**TENANT PETITION**

**Grounds for Petition**

**For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. I (We) contest one or more rent increases on one or more of the following grounds:**

- a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
- b) The increase (or increases) exceeds the CPI Adjustment and is unjustified, or is greater than 10%.
- c) I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such an increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase.
- e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
- f) The rent increase notice(s) was (were) not given to me in compliance with State law.
- g) The increase I am contesting is the second increase in my rent in a 12-month period.
- h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance.
- i) My property owner is providing me with fewer housing services than I previously received or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.)
- k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with notice(s) of rent increases on or after August 1, 2014).



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

**TENANT PETITION**

**Rental History**

**Date you moved into the Unit** 1/10/2004

**Initial Rent**

**When did the property owner first provide you with a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program (RAP NOTICE)?** 12/10/2020

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

**List all rent increases that you want to challenge.**

<b>Date you received the notice</b>	<b>Date increase goes into effect</b>	<b>Monthly rent increase From</b>	<b>Monthly rent increase To</b>	<b>Are you Contesting this Increase in this Petition? *</b>	<b>Did You Receive a Rent Program Notice With the Notice Of Increase?</b>
12-10-2020	01-01-2022	1.5	1.84	Yes	Yes

*\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)*

**Have you ever filed a petition for your rental unit?** Yes

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



**City of Oakland Rent Adjustment Program**  
**250 Frank H. Ogawa Plaza, Suite 5313**  
**Oakland, CA 94612**  
**(510) 238-3721**

**TENANT PETITION**

**Description of Decreased or Inadequate Housing Services**

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

<b>Are you being charged for services originally paid by the owner?</b>	Yes
<b>Have you lost services originally provided by the owner or have the conditions changed?</b>	Yes
<b>Are you claiming any serious problem(s) with the condition of your rental unit?</b>	Yes

**Loss of Service**

<b>Date Loss Began</b>	01-01-2021 00:00:00
<b>Date Owner Was Notified of Loss</b>	12-10-2020 00:00:00
<b>Estimated Loss</b>	414
<b>Reduced Service Description</b>	landlord adding taxes, utilities & insurance that were previously paid by landlord. This appears to be in retaliation for filing a grievance with the Oakland City Code Inspector who found the landlord negligent regarding maintenance and other habitability issues that the landlord simply ignored and has been fined as a result. The above amount includes prior petition (T20-0202) \$70.00+344 current (2nd increase within 12 months)

City of Oakland



**City of Oakland Rent Adjustment Program**  
**250 Frank H. Ogawa Plaza, Suite 5313**  
**Oakland, CA 94612**  
**(510) 238-3721**

**TENANT PETITION**

**Mediation**

Mediation is an optional process offered by the Rent Adjustment Program to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. The purpose of mediation is to find a mutual agreement that satisfies both parties. A trained third party will discuss the issues with both sides, look at relative strengths and weaknesses of each position, and consider both parties' needs in the situation. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing process. 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 want to request mediation for your case.

**I/We agree to have my/our case mediated by a Rent Adjustment Program staff mediator.**

Yes





**City of Oakland Rent Adjustment Program**  
**250 Frank H. Ogawa Plaza, Suite 5313**  
**Oakland, CA 94612**  
**(510) 238-3721**

**TENANT PETITION**

**Consent to Electronic Service**

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will only send documents electronically and not by first class mail.

**I/We consent to receiving notices and documents in this matter electronically at the email address(es) provided in this petition.** Yes

**Interpretation Services**

If English is not your primary language, you have the right to an interpreter in your primary language 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:** No,

City of Oakland

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DEC 14 2020

RENT ADJUSTMENT PROGRAM  
OAKLAND

**Proof of Service Confirmation**

**TENANT PETITION**

PETITION # 11622

MY COPY  
MAILED 12/11/2020

I declare under penalty of perjury under the laws of the State of California that on 12-11-2020 I, **Gregory Smith**, served a copy of the below document(s), and all attached pages, to each opposing party, whose names and addresses are listed below, by United States mail..

**Names of Served**

**Document(s)**

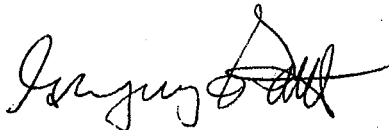
TENANT PETITION 1/2 PRIOR PETITION TZO-0202

**Addresses Information**

No items to show...

**Gregory Smith**

**12-11-2020**

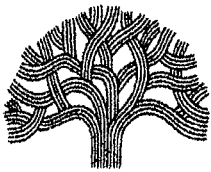


SIGNATURE OF PETITIONER OR  
DESIGNATED REPRESENTATIVE

DATE: 12-11-2020

**City of Oakland**

EL T21-0021



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](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**RECEIVED**

FEB 22 2021

RENT ADJUSTMENT PROGRAM  
OAKLAND

6/8

## 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](mailto:RAP@oaklandca.gov).**

### Rental Unit Information

474 JEAN ST \_\_\_\_\_ Oakland, CA 94610  
Street Number Street Name Unit Number Zip Code

Move-in Date: 12/2004 Initial Rent at Move-In: \$1,030.00 Current Rent: \$1,637 (#1,539)

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: 12/19/2020  I was never provided with the RAP Notice PRIOR TO ABOVE  I do not remember if I ever received the RAP Notice

Case number(s) of any relevant prior Rent Adjustment case(s): T20-0202; T20-0250

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

CARELORY SMITH  
First Name Last Name

Mailing Address (if different from above): \_\_\_\_\_

Primary Telephone: 510-435-1687 Other Telephone: \_\_\_\_\_ Email: galaxigigi@gmail.com

\_\_\_\_\_  
First Name Last Name

Mailing Address (if different from above): \_\_\_\_\_

Primary Telephone: \_\_\_\_\_ 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  
**STUART** **MACINTYRE**  
 First Name Last Name  
 Company/LLC/LP (if applicable): **MACINTYRE BS TR SURVIVORS TRUST & MACINTYRE ETAL**  
 Mailing Address: **478 JEAN ST., OAKLAND, CA 94610**  
 Phone Number: **510-967-6031** Email: **stuartmacintyre11@gmail.com**

Property Manager (if applicable)  
**SAME** **SAME**  
 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](http://www.oaklandca.gov/resources/read-the-oakland-rent-adjustment-program-ordinance).

A.	<b>Unlawful Rent Increase(s)</b> (Complete section A on page 3)	<input checked="" type="checkbox"/> (A1) I received a rent increase above the allowable amount.
		<input checked="" type="checkbox"/> (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").
		<input checked="" type="checkbox"/> (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.	<b>Decreased Housing Services</b> (Complete section B on page 3)	<input checked="" type="checkbox"/> (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.)
		<input checked="" type="checkbox"/> (B2) I am being unlawfully charged for utilities.
C.	<b>Other</b>	<input type="checkbox"/> (C1) My rent was not reduced after a prior rent increase period for capital improvements.
		<input type="checkbox"/> (C2) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.
		<input type="checkbox"/> (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)					
<p><b>List all rent increases you wish to contest.</b> 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.</p> <ul style="list-style-type: none"> <li>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, <b>you must attach a copy of the citation</b> to your petition. Failure to attach a copy of the citation may result in your petition being dismissed.</li> </ul>					
Date received rent increase notice: (Month/Day/Year)	Date rent increase went into effect: (Month/Day/Year)	Amount of increase: FROM (Month/Day/Year) TO (Month/Day/Year)		Received RAP Notice with notice of rent increase? YES NO	
12/11/2020	01/01/2021	\$ 1,569	\$ 1,637 (AMENDED)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
12/08/2019	01/01/2020	\$ 1,516	\$ 1,569	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/29/2017	01/01/2018	\$ 1,424	\$ 1,457	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/07/2016	01/01/2017	\$ 1,396	\$ 1,424	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/07/2015	01/01/2016	\$ 1,373	\$ 1,396	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B. Decreased Housing Services	
(Complete this section if any of the grounds for petition fall under category B, above)	
<p><b>List all the conditions that you believe entitle you to a rent decrease.</b> 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.</p> <ul style="list-style-type: none"> <li><b>You are strongly encouraged to submit documentary evidence</b> (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.</li> <li><b>You may wish to have a City inspector come inspect your unit</b> 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 <a href="https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement">https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement</a>. 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.</li> </ul>	

	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.	DISCONNECTED MY DRYER COIN OPERATED DRYER	MID APRIL 2020 INSTALLED 6/17/2020	APRIL 2020	NEVER	\$ 7000/MO
2.	UPSTAIRS PATIO LEAK CEILING PEELING (2 RAS)	APRIL 2017 APRIL 2017	APRIL 2017 APRIL 2017	? NEVER	\$ RUINED BLINDS (CUSTOM) @ \$250.00
3.	ENTRANCE HALL LITE NOT WORKING	2016	2016	NEVER	\$ ? MAJOR INCONVENIENCE
4.	SHOWER STALL GROUT DISINTEGRATED @ 2017 3 OF 19 WINDOWS OPEN	2017	2018 EARLY 2017	NEVER NEVER	MOLD \$ HUNDREDS INSUFFICIENT FRESH AIR

A.	Unlawful Rent Increase(s)				
	(Complete this section if any of the grounds for petition fall under category A, above)				
<p><b>List all rent increases you wish to contest.</b> 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.</p> <ul style="list-style-type: none"> <li>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, <b>you must attach a copy of the citation</b> to your petition. Failure to attach a copy of the citation may result in your petition being dismissed.</li> </ul>					
Date received rent increase notice:	Date rent increase went into effect:	Amount of increase:		Received RAP Notice with notice of rent increase?	
(Month/Day/Year)	(Month/Day/Year)	FROM	TO	YES	NO
11/29/2014	01/01/2015	\$ 1,347	\$ 1,373	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/29/2013	01/01/2014	\$ 1,319	\$ 1,347	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/12/2011(2012)	01/01/2013	\$ 1,281	\$ 1,319	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/12/2011	01/01/2012	\$ 1,256	\$ 1,281	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<del>11-14-2010</del>	<del>01-01-2011</del>	\$ 1,223	\$ 1,256	<input type="checkbox"/>	<input checked="" type="checkbox"/>

B.	Decreased Housing Services				
	(Complete this section if any of the grounds for petition fall under category B, above)				
<p><b>List all the conditions that you believe entitle you to a rent decrease.</b> 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.</p> <ul style="list-style-type: none"> <li><b>You are strongly encouraged to submit documentary evidence</b> (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.</li> <li><b>You may wish to have a City Inspector come inspect your unit</b> 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 <a href="https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement">https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement</a>. 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.</li> </ul>					

	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.					\$

A.	<b>Unlawful Rent Increase(s)</b>				
<i>(Complete this section if any of the grounds for petition fall under category A, above)</i>					
<p><b>List all rent increases you wish to contest.</b> 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.</p> <ul style="list-style-type: none"> <li>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, <b>you must attach a copy of the citation</b> to your petition. Failure to attach a copy of the citation may result in your petition being dismissed.</li> </ul>					
Date received rent increase notice: (Month/Day/Year)	Date rent increase went into effect: (Month/Day/Year)	Amount of Increase:		Received RAP Notice with notice of rent increase?	
		FROM	TO	YES	NO
04/22/2009	06/01/2009	\$ 1,185	\$ 1,223	<input type="checkbox"/>	<input checked="" type="checkbox"/>
08/01/2008	02/01/2008	\$ 1,100	\$ 1,185	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<del>11/15/2006</del>	<del>07/15/2007</del>	<del>\$ 1,100</del>	<del>\$ 1,185</del>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12/30/2006	02/01/2007	\$ 1,065	\$ 1,100	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>

B.	<b>Decreased Housing Services</b>				
<i>(Complete this section if any of the grounds for petition fall under category B, above)</i>					
<p><b>List all the conditions that you believe entitle you to a rent decrease.</b> 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.</p> <ul style="list-style-type: none"> <li><b>You are strongly encouraged to submit documentary evidence</b> (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.</li> <li><b>You may wish to have a City inspector come inspect your unit</b> 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 <a href="https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement">https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement</a>. <i>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.</i></li> </ul>					
#	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.

*[Signature]*  
Tenant 1 Signature

02/20/2021  
Date

\_\_\_\_\_  
Tenant 2 Signature

\_\_\_\_\_  
Date

**CONSENT TO ELECTRONIC SERVICE**

*(Highly Recommended)*

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will send certain documents only electronically and not by first class mail.

I/We consent to receiving notices and documents in this matter 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.

*[Signature]*  
Tenant Signature

02/20/2021  
Date

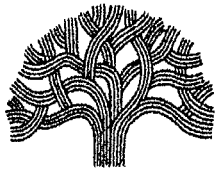
**INTERPRETATION SERVICES**

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-**





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](http://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) Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.
- 3) 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: 02 / 22 / 2021 I served a copy of (check all that apply):

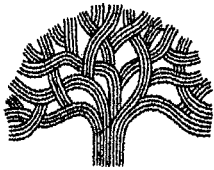
- TENANT PETITION** plus \_\_\_\_\_ attached pages (number of pages attached to Petition not counting the Petition form, NOTICE TO PROPERTY OWNER OF TENANT PETITION, or PROOF OF SERVICE)
- NOTICE TO PROPERTY OWNER OF TENANT PETITION**
- Other: NEW RAP petition 2021 & NEW RAP petition 2021 #2 (FOLDERS)

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.
- Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below. (GMAIL)
- 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	<u>STUART MACINTYRE</u>
Address	<u>478 JEAN ST. / email: stuartmacintyre11@gmail.com</u>
City, State, Zip	<u>OAKLAND, CA 94610</u>



CITY OF OAKLAND

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For Rent Adjustment Program date stamp.

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- 3) 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: 02 / 22 / 2021 I served a copy of (check all that apply):

- TENANT PETITION** plus 68 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: NEW RAP petition 2021 & NEW RAP petition 2021 #2 (FOLDERS)

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.
- Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below. (GMAIL)
- 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	<u>STUART MACINTYRE</u>
Address	<u>478 JEAN ST. / email: stuartmacintyre1@gmail.com</u>
City, State, Zip	<u>OAKLAND, CA 94610</u>

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.

CORREY SMITH

PRINTED NAME

Correy Smith

SIGNATURE

02/20/2021

DATE SIGNED

Gregory Smith  
474 Jean Street  
Oakland, CA 94610  
(510) 435-1687

*Via: Personal delivery*

To: Stuart MacIntyre  
478 Jean St, Oakland, CA 94610  
Ph# 1-510-967-6031

June 24, 2020

**Delivered July 29, 2020**

**RE: Request for Repairs, Compensation & to Cease Harassment**

Dear Stuart MacIntyre,

This letter is regarding my legal rights related to my tenancy at 474 Jean Street in Oakland, California. I am writing for four reasons: (1) to request repairs and action regarding several habitability violations; (2) to request compensation for the costs I incurred paying for the maintenance of items that were your responsibility as landlord to properly maintain; (3) to request that you stop intimidating my mother whether intentional or not and me as legally required by the covenant of quiet enjoyment; and (4) that you reduce my monthly rent at a rate comparable to the additional monthly cost of operating the new payment-operated dryer you installed

**I. Request for Repairs Due to Habitability Violations**

First, I am contacting you once again to request you to take action on the following items:

1. Repair electrical problems: I have been requesting you to address Two (2) electrical outlets in the front room that have sparked & appear to have a "short(s)" for at least a several years, if not more, however each time I ask you, you have said you would look into the matter, but as of yet there has been no action on your part. Also there is a light fixture in the dining room that may cause electrocution. This specific issue, when it was brought to your attention; many years ago; your response was, and I quote, "Do Not Use It". What would be the ramifications for you in the event someone in this household forgot or a visitor to my unit wasn't aware of any electrical problems (ie. outlets, light fixtures etc.) and in the act of using such, was electrocuted, burned or worse; even died? As you will recall, I asked you many years ago; [my best recollection is initially in 2014 or 2015 and several times since regarding the light fixture and 2014 and 2016 and most recently 2018 regarding the outlets].

**Note: I am Not requesting you to fix the entrance hall light as a courtesy and in deference to you for informing me that it would incur a major expense.**

2. I have continually asked you for well over 2 years to repair the disintegrated grout in the shower area that leaks into the wall & floor; more than likely causing a buildup of mold & mildew; and the same for the face bowl, however your only response has been the same as the electrical issues, that you would look into the matter, but as of yet no action. Regarding the shower stall and face-bowl was initially approximately 2 years ago and several times since then and most recently in August 2019 when you came inside our place to fix the kitchen sink faucet {2X within a few months (it was constantly leaking)}; I have requested many times for you to make

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these repairs, but so far you have not done so. These conditions are affecting my mother's and my own health and the livability of our unit. By law I am allowed to withhold some or all of the rent if you do not fix these serious defects. *Green v. Superior Court (1974) 10 Cal.3d 616.*

I respectfully ask that you complete repairs by no later than [21] days after receiving this letter. I will, of course, cooperate with you in scheduling times for the repairs to be completed. I ask, in return, that you comply with your legal obligations to notify me in writing, 24 hours in advance any time you, or your agent, intend to enter the apartment. If making necessary repairs requires us to vacate the apartment, you are required to provide my family with temporary relocation to a vacant unit. Furthermore, if these health and safety issues continue unabated, I will be forced to relocate my mother and myself elsewhere, and I reserve my right to seek relocation assistance from you. I also reserve my right to return to my unit after necessary repairs are made.

## II. Request for Compensation for Costs Incurred

Second, I am writing to request compensation for the numerous costs I incurred of both money and labor repairing and cleaning items and spaces on the premises that were your responsibility as landlord to properly maintain. These costs include the following:

1. The most recent repair in March of 2020 in the amount of \$350.00 for the new motor. The motor; for all intents and purposes is the machine. \$45.00 for (\$90.00 total, at that time, shared by all tenants cost of repairs) a new dryer drum belt. I bought a New washer in February of 2020 (cost: \$719.53) because I was sick and tired of paying never-ending repair/replacement costs due to someone else's perpetual misuse, thus destruction of the shared machines.
2. I Re-caulked shower stall 3X spending approx 2-3 hrs each time but it didn't last (a few months), actually needed re-grout and re-caulked face-bowl 3X (approx 1 hr each time) but the mold returned after a couple of weeks each time because probably the inside wasn't sufficiently dried.

In the past you have required me to pay for certain repairs that are your responsibility. A landlord is not permitted to shift on to the tenant the landlord's obligation to make and pay for repairs. Please see California Civil Code sec. 1942.1. I request you reimburse me for the costs I have paid over the years for maintenance. There were at least 6-7 instances of repairs for both washers and dryers and several instances, the entire machines were replaced with new although used machines within the past 8 yrs. We paid an average of \$150-\$175 each time. Using the lesser # of instances (6) and the lower figure of \$150 = \$900 + the above \$45 + \$350 + \$719.53 (Total machine related = \$2,014.53)

## III. Covenant of Quiet Enjoyment

Further, you, your daughter (Maureen), have violated the implied covenant of quiet enjoyment, which is a part of all rental agreements. *See Civil Code § 1927.* This behavior includes:

1. Harassment by the landlord: I equate your machinations to be out of spite and to be both harassment and intimidation ie. Turning my dryer over in an attempt to damage it, saying you thought it was still broken, however you were specifically notified that it had been repaired; instructing only me to remove bags, boxes (paper products) from a store room under the back stairs, when in fact the majority of such

products are someone else's items. Also you have shown bias against me in favor of other tenants when there have been tenant disputes.

2. Harassment by your daughters: Mainly your daughter (Maureen) has constantly harassed me about where I park my car. You (the landlord) have admitted to me and my mother that your daughter (Maureen) has no business interfering with us and you have said you would address this matter with her, Thank you for doing so.

If a landlord is engaging in behavior that creates a disturbance or is aware of neighbors creating a disturbance regularly, the landlord must try to ameliorate these problems or the landlord will be in breach of the implied covenant of quiet enjoyment. Please consider this letter my notice to you of these regular disturbances.

#### **IV. Request for Rent Reduction due to Installment of Pay Dryer**

Finally, I am writing to request a rent reduction due to the new, additional monthly cost of using the payment operated dryer unit you recently installed. Since a washing machine and dryer were included at the time I first moved into my unit in 2004, I am entitled to the continued use and enjoyment of a washing machine and dryer as part of my monthly rent cost. The additional cost of operating the new dryer is an additional fee on top of our rental agreement that I did not agree to either in writing or by my conduct. This new, additional fee constitutes an unauthorized rent increase which Oakland's Rent Adjustment Ordinance does not allow.

I request that we agree my rent be reduced by the amount I must spend about \$70.00 per month (No change machine) to use the dryer to compensate for this unlawfully added cost. If we do not come to such an agreement, it is within my rights to petition the Rent Board for a rent reduction.

**OR**

**Reconnect my dryer and I will waive the rent reduction request and all washer/dryer related expenses I'm entitled to...**

I bought my own washer because I got fed up with having to bear the cost of another tenant's misuse and continued destruction of both the washer and dryer. To reiterate, **I'm willing to forgo all past laundry related expenditures if you would kindly reconnect my dryer.** I Do Not wish to share these machines with other tenants. There are hookups for 2 washers and 2 dryers that have been here since I moved in.

Despite all of the aforementioned issues, I wish to remain in my home and continue my tenancy with you. Please know that failure to peaceably allow me to resume my tenancy may leave me no other recourse but to seek legal redress for your unlawful actions.

Thank you for your prompt attention to this matter.

Sincerely,

Gregory Smith

CC: East Bay Community Law Center

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City of Oakland, Planning and Building Department, Bureau of Building, Inspection Division  
250 Frank H. Ogawa Plaza, 2nd Floor, Suite 2340, Oakland, California 94612-2031  
www.oaklandnet.com, (510) 238-6402, FAX: (510) 238-2959, TDD: (510) 238-3254

Request for Service: Tenant Complaint

Property Address: 474 JEAL ST, OAKLAND, CA 94610-2639 Unit No. \_\_\_\_\_ Inspection Date: \_\_\_\_\_

Complaint No. 2003806 Inspector: BELGON WAN Phone No. 510-238-6195

Complainant's Name: GREGORY SMITH Phone No. 510-435-1687

Owner/Manager: STUART MACINTYRE Phone No. 510-967-6031

INSPECTION:

PROPERTY MAINTENANCE:

- Overgrown vegetation: \_\_\_\_\_
- Trash & debris: \_\_\_\_\_
- Lack of/Inadequate garbage service: \_\_\_\_\_
- Unapproved open storage \_\_\_\_\_
- Unapproved parking \_\_\_\_\_

BUILDING MAINTENANCE:

- Electrical: \_\_\_\_\_
- Plumbing: \_\_\_\_\_
- Plumbing leak: \_\_\_\_\_
- Clogged sink/toilet: \_\_\_\_\_
- Building sewer blockage: \_\_\_\_\_
- Lack of/defective heating system: \_\_\_\_\_
- Mechanical: \_\_\_\_\_
- Wall/ceiling/floor defects: \_\_\_\_\_
- Others: ELECTRICAL: LIGHT SOCKETS CAUSING LED BULB TO BE VERY HOT
- Others: OWNER CHANGED SPARKING OUTLETS (2) SAID THEY WERE FUNCTIONAL, BUT REPLACED (SAID HE WAS DOING ME A FAVOR?)
- Extensive surface mold present on SHOWER STALL FROM DISINTEGRATED GROUT  
See brochure for remediation guild lines. (Description required, e.g. bedroom wall under window, tub ceiling)

- Window defects: PART OPEN MOST
- Lack of window egress: \_\_\_\_\_
- Lack of light/ventilation: \_\_\_\_\_
- Mice/rodents/roaches: \_\_\_\_\_
- Roof leaking/damaged: 2ND FLOOR PATIO/APT.
- Damaged/non-functional Doors/locks: \_\_\_\_\_
- Stairs/decks/railing: \_\_\_\_\_
- Exterior walls/windows/trim: \_\_\_\_\_
- Blocked exits: \_\_\_\_\_
- No resident manager (required 16 units or more)
- Unpermitted work: \_\_\_\_\_
- Unpermitted work: \_\_\_\_\_
- Undocumented residential unit: \_\_\_\_\_
- Missing/Inoperative smoke/carbon monoxide detectors: \_\_\_\_\_

Note: Items identified on this form above are for investigation purposes only. If they are determined to be code violations, they will be specified in an official Notice to Abate by the inspector.

Complainant Only: I certify that I have notified the owner/manager of the above identified item(s) and I will allow the owner or agents with proper notice as governed by State law to enter my unit in order to make all necessary repairs.

Signature: Gregory Smith Date: 09/28/2020



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA • SUITE 2340 • OAKLAND, CALIFORNIA 94612-2031

Planning & Building Department  
Bureau of Building

(510) 238-6402

### Code Enforcement (CE) Routing Slip

Property Address 474 JEAN ST, OAKLAND, CA 94610 Date 09/28/2020  
 Complaint # 2003806 Applicant Name & Phone # GREGORY SMITH & 510-435-1687  
 Spec. Combo Insp. BENSON WAN Counter Staff \_\_\_\_\_  
 (print name) (print name)

Please direct all permit applicants with open Code Complaints to the Inspections Counter to meet with the assigned Code Enforcement Inspector (8:00 – 9:00 a.m. M-F, except Wednesday 9:30-10:00 am), or by:

a. Scheduling an appointment with the Inspector OR b. Meet with the Supervisor, if available

Note: Must have the Permit Application worksheet completed prior to consultation. Please provide all plans and documentation.

Inspection staff must complete and sign this form before related building permit applications may be processed.

Please Check boxes below:

YES NO

- See attached List of Violations
- Is this work related to the complaint on this address/parcel? If "NO" please sign form and return to technician.
- Does permit description accurately describes work required to abate violation?  
If not, change description to: \_\_\_\_\_
- Need Zoning information before plans are prepared? (e.g.: setbacks, height, parking, # of units etc.)
- Are plans required? If "NO", explain \_\_\_\_\_
- Has the work commenced?
- Do I apply double (2x) fee? If "NO", explain \_\_\_\_\_
- Has the trade(s) work commenced? If, "YES", circle which E, P, M.
- Valuation Correct? If NO, provide estimate here \$ \_\_\_\_\_
- Is a field check inspection required?
- Could this be an OTC permit?
- Is it ok to process application and route to Zoning, Plan Check, Etc.?
- Are PHOTOS required?
- Permits must be finalized by \_\_\_\_\_

Other permits required: Electrical Plumbing Mechanical Encroachment Obstruction CGS Other \_\_\_\_\_

Applicant signature Gregory Smith Date: 09/28/2020

Spec. Combination Inspector: \_\_\_\_\_ Date: \_\_\_\_\_  
(Sign)



## VIOLATIONS LIST

- ① ELECTRIC : SEEMS LIKE SOCKET WIRING IS NOT GROUNDED PROPERLY OR MIXED IE LED BULBS TOO HOT, BUT NOT EXPERT SO DON'T REALLY KNOW CAUSE ...
- ② GROUT IN SHOWER IS DISINTEGRATED  $\frac{1}{2}$  CRACKS IN CORNERS (LANDLORD SAID THAT IS BECAUSE THERE IS SHIELD BEHIND THE WALL TO ALLOW MOISTURE/WATER TO SEEP BACK INTO SHOWER DRAIN ??)
- ③ SHOWER TILES FELL OFF
- ④ HUGE SPACE BETWEEN COUNTER CABINETS,  $\frac{1}{2}$  FLOOR
- ⑤ CEILING DAMAGE FROM TOILET OVERFLOW UPSTAIRS APT.  $\frac{3}{4}$ , LEAK FROM UPSTAIRS APT. PATIO

OVERALL LACK OF BASIC MAINTENANCE !

GREGORY SMITH

# 200 3806

474 JEAN ST

OAKLAND, CA 94610

PH: 510-435-1687



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA - SUITE 2340 - OAKLAND, CALIFORNIA 94612-2031

Planning and Building Department

Bureau of Building

Building Permits, Inspections and Code Enforcement Services

[inspectioncounter@oaklandca.gov](mailto:inspectioncounter@oaklandca.gov)

(510) 238-3381

FAX:(510) 238-2959

TDD:(510) 238-3254

## NOTICE OF VIOLATION

October 14, 2020

*Certified and Regular mail*

To: MACINTYRE B S TR SURVIVORS TRUST  
& MACINTYRE ETAL  
478 JEAN ST,  
OAKLAND CA 94610-2622

Code Enforcement Case No.: 2003806

Property: 474 JEAN ST, OAKLAND 94610

Parcel Number: 010- -0822-010-00

Re-inspection Date/Correction Due Date: November 19, 2020

Code Enforcement Services inspected your property on September 17, 2020 and confirmed:

- that the violations of the Oakland Municipal Code (OMC) identified below (p. 2) are present and need to be addressed as specified under "Required Actions". Photographs of the violations are enclosed where applicable.
- that work was performed without permit or beyond the scope of the issued permit and you are receiving this Notice of Violation because you did not get the required permit within three (3) days of receiving the Stop Work Order. You must contact the inspector indicated below before the Re-inspection Date to stop further code enforcement action.

At this point, no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations and contact Inspector Benson Wan, who is assigned to your case, before the re-inspection date shown above to schedule an inspection. Your inspector is available by phone at 510-238-6195 and by email at [bwan@oaklandca.gov](mailto:bwan@oaklandca.gov).

*If the Property Owner Certification is included in this notice you may also complete the form and include photographs of the corrected violations.*

**Note: If a complaint is filed regarding the same or similar violation(s) and it is confirmed within 24 months from the date of this notice an immediate assessment of \$1,176.00 will be charged as a Repeat Violation. In addition, if violation(s) remain uncorrected after you receive a Re-inspection notice, further enforcement action(s) will include additional fees.**

### Additional Code Enforcement Actions:

- If the re-inspection verifies that all violations have not been corrected, you will be charged for inspection and administrative costs that can total \$2,665.00.
- Property Blight may be abated using City contractors and you will be charged for the contracting and administrative costs.
- The Notice of Violation may be recorded on your property title with associated fees for processing and recording.
- If it is necessary for tenants to vacate so that repairs can be made, you are required to comply with the Code Enforcement Relocation Program (OMC 15.60.010).
- Violations determined to be Investor-Owned (OMC 8.58) or Foreclosed and Defaulted (OMC 8.54) properties will be assessed fees to include re-inspection costs if violations are not corrected and Administrative/Civil penalties.

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## Violations

Property Address: 474 JEAN ST.

Complaint #: 2003806

### Property Maintenance (Blight) - (Checklist of Violations attached)

Description of Violation	Required Action	OMC Section

### Building Maintenance (Housing)

Description of Violation	Required Action	OMC Section
House has electrical problems, cause by the 2nd floor water leak through the ceiling, and lighting sockets need to be update for safty issues.	Repair/replace. Obtain permits, inspections and approvals. Fix the leak, patch and paint.	15.08.120 15.08.150 15.08.050 15.08.260 C
Bathroom shower and tiles grout is missing may cause the water leak through the wall.	Fix/Repair.	15.08.050 15.08.230 G
Few windows in the house can not open.	Repair.	15.08.050

### Zoning (Minor)

Description of Violation	Required Action	OMC Section

### Zoning (Major)

Description of Violation	Required Action	Required Action

**Zoning Violations:** Major Zoning violations require a Zoning Determination before an appeal to the Planning Commission. If you wish to appeal a Major Zoning violation, please see the process or filing for a Zoning Determination in the Appeal Section of this notice.

## Appeal Information

**You have a right to appeal** this Notice of Violation. The following describes the process for appealing each type of violation described in the Notice of Violation. In some cases, separate appeal processes may be required.

In order to appeal any violations described in this Notice of Violation, you must complete the enclosed Violation Appeal form and submit it as described below with supporting documentation along with the applicable appeal fee(s) by the Appeal deadline. If you wish to appeal a Major Zoning violation(s), you must submit the enclosed Appeal form requesting a Zoning Determination by the Zoning Manager. Your supporting documentation to the Zoning Manager should explain a) why the use of your property conforms to the zoning designation for the property or b) why the activity should be approved as set forth in Planning Code, Title 17.

**The Appeal Deadline is: 11/19/2020** Note: The appeal period may be reduced based on prior noticing i.e., Courtesy notice, and the Property Owner Certification on record.

**Applicable to all appeals:** The Bureau of Building must receive your written appeal by the Appeal Deadline or you will waive your right to administrative review of all violations described in this Notice of Violation. Incomplete appeals including, but not limited to an oral notification of your intention to appeal, a written appeal postmarked but not received by us within the prescribed deadline or a written appeal received by us without a filing fee are not acceptable and will be rejected.

If you choose to file an appeal for Property Maintenance (Blight), Building Maintenance (Housing) and/or Minor Zoning violations, no further action can be taken by Code Enforcement Services with respect to these violations until you have had the opportunity to be heard by an independent Administrative Hearing Examiner pursuant to the Oakland Municipal Code Section 150.08.100 and a Final Decision is determined. An appeal will be scheduled within **60 days** from the end of the appeal period.

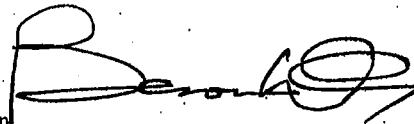
If you choose to file an appeal for Major Zoning violations, the Zoning Manager will issue written decision within **45 days** from the end of the appeal period. If you disagree with the decision you may appeal to the Planning Commission within **10 days** from the written decision. Unless special circumstances require otherwise, you will be expected to work with the Bureau of Building to resolve the Building Code violations (s) and any Minor Zoning Violation(s) during the Major Zoning appeal process.

### Appeal Fees

For Property Maintenance (Blight), Building Maintenance (Housing) and Minor Zoning Appeals: A filing fee in the amount of \$110.00 is due at the time of submittal. Payments may be made in person at the Bureau of Building, 250 Frank Ogawa Plaza, 2<sup>nd</sup> Floor, or by phone by calling 510-238-4774 (Please include the receipt number and date on your appeal). MasterCard and Visa are accepted.

For Zoning Determinations/Appeals of Major Zoning violations: A filing fee in the amount of \$413.00 is due at the time of submittal in the manner described above. Additionally a \$413.00 per hour fee will be assessed as needed to complete the review of the determination. The determination fee is not refundable once the letter has been issued, regardless of outcome.

Sincerely,



Benson Wan  
Specialty Combination Inspector  
Planning and Building Department

### Attached as applicable:

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Blight brochure                                   | <input type="checkbox"/> Residential Code Enforcement brochure         | <input type="checkbox"/> Vehicular Food Vending brochure            |
| <input checked="" type="checkbox"/> Property Owner Certification           | <input type="checkbox"/> Mold and Moisture brochure                    | <input type="checkbox"/> Pushcart Food Vending brochure             |
| <input type="checkbox"/> Lead Paint brochure                               | <input type="checkbox"/> Undocumented Dwelling Units brochure          | <input type="checkbox"/> Smoke Alarms brochure                      |
| <input checked="" type="checkbox"/> Photographs                            | <input type="checkbox"/> Stop Work brochure                            | <input type="checkbox"/> Condominium Conversion brochure            |
| <input type="checkbox"/> Housing - Relocation Assistance Program           | <input type="checkbox"/> Investor Owned Property brochure              | <input type="checkbox"/> Foreclosed and Defaulted Property brochure |
| <input type="checkbox"/> Description of Property Maintenance Code Sections | <input type="checkbox"/> Major and Minor Zoning Violation Descriptions |   |

cc:



**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](http://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](mailto:RAP@oaklandca.gov). Additional information is also available on the RAP website and on the PROPERTY OWNER RESPONSE form.

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Rent increase letter.  
Dec,8,2019

Frances:

*Effective January 1, 2020 your rent will increase by \$53.00 to \$1569.00 per mo.*

Thank you

Stuart MacIntyre

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Rent increase letter.

November 29 2017

Frances:

Effective January 1, 2018 your rent will increase by \$33.00 to ~~\$1457.00~~

*21457.00*

Thank you

Stuart MacIntyre

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Rent increase letter.

November 7 2016

Frances:

Effective January 1, 2017 your rent will increase by 2% or \$28.00 from \$1396.00 to \$1424.00

Thank you

Stuart MacIntyre

*Stu*

000174

Rent increase letter.

November 7 2015

Frances:

Effective January 1, 2016 your rent will increase by 1.7% or \$23.00 from \$1373.00 to 1396.0

Thank you

Stuart MacIntyre

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Rent increase letter.

November 29 2014

Frances:

Effective January 1, 2015 your rent will increase by 1.9% or \$26.00 to \$1373.00

Thank you

Stuart MacIntyre



000175

Rent increase letter.

November 29 2013

Frances:

Effective January 1, 2014, your rent will increase by 2.1% or \$28.00 to \$1347.00

Thank you

Stuart MacIntyre

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Rent increase letter.

November 12, 2011

Frances:

Effective January 1, 2013, your rent will increase by 3% to \$1319.00.

Thank you

Stuart MacIntyre



November 12, 2011

Frances:

Effective January 1, <sup>2012</sup> 2021, your rent will increase by 2% to \$1281.00.

Thank you

Stuart MacIntyre



December 14, 2010

Frances:

Effective January 1, 2011, your rent will increase by 2.7% to \$1256.00.

Thank you

Stuart MacIntyre



April 22, 2009

Francis Tabor:

Effective June 1, 2009 your rent will increase by 3.2% to \$1223 per month

Sincerely,

Stuart MacIntyre



1/1/08

Francis:

Utility costs are soaring as they try to get us to conserve. We are waging the rents as of February 1, 2008 the allowed 3.3%. Your current rent is \$1100 per month + \$25 each for additional people. Your new monthly rent will be \$1135 + \$50 for grandkids.

Thanks Joan and Stu

12/30/2006

Frances:

2 years since a rent raise so up it goes on 2/1/2007

Your rent will be  $\$1065 \times 3.3 = \$1100 + \$25$  per month for each occupant over two to cover water and electrical costs.

Thanks

Joan & Stu

000178

LANDLORD STATED

RECALCULATION 1/28/2021

2006 → 1,065 × 3.3% = \$35  
 +35

2007 → 1,100 × 3.3% = \$36 BUT LANDLORD \$35  
 +35

2008 → 1,135 + 50 FEE (2 PEOPLE)  
 1,185 × 3.2% = \$38  
 +38

FROM 2008 TILL PRESENT \$50. FEE INCLUDED IN ANNUAL CPI INCREASE \* INACCURATE PPP

2009 → 1,223 × 2.7% = \$33  
 +33

+2 PEOPLE TILL JUNE

2010 → 1,256 × 2.0% = 25  
 +25

+1 PERSON

2012 → 1,281 × 3.0% = 38  
 +38

2013 → 1,319 × 2.1% = 28  
 +28

2014 → 1,347 × 1.9% = 26  
 +26

+1 TILL JULY

2015 → 1,373 × 1.7% = 23  
 +23

2016 → 1,396 × 2.0% = 28  
 +28

+1 FROM OCT

2017 → 1,424 × 2.3% = 33  
 +33

+1 TILL FEB

2018 → 1,457 × 3.9% = 59 (2.2%)  
 +59

FROM FEB

2019 → 1,516 × 3.5% = 53 (2.6%)  
 +53

+1

2020 → 1,569 × 2.7% = \$42 = 1,611  
 +25  
 1,636

RAP ROLLING FROM OCT

-70

1,599 × 2.7% = \$40

+40

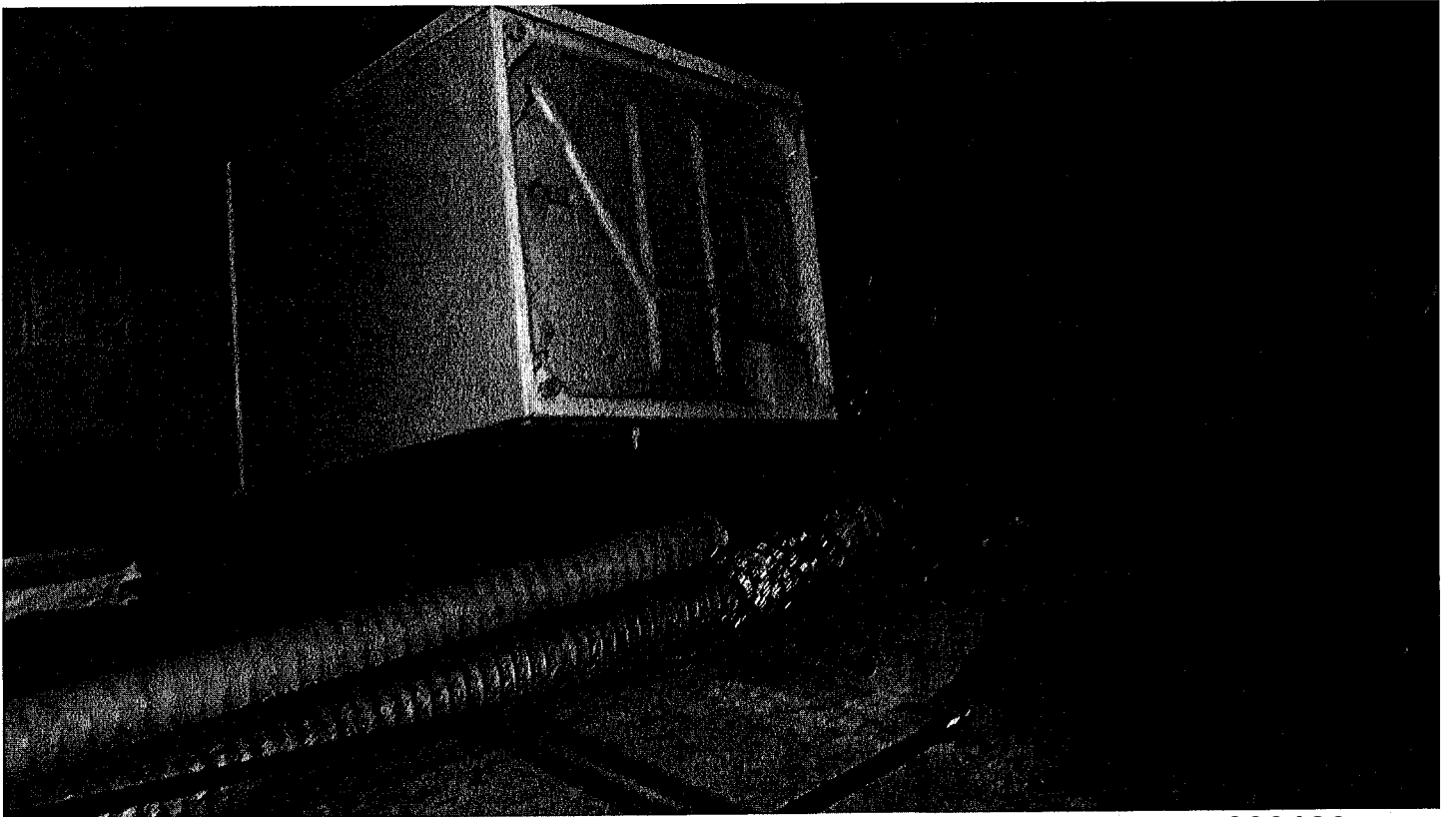
2021 → 1,539 → \$1,637 ACCORDING TO LANDLORD

PAID JAN 2021

YEAR	RENT	CPI INCREASE
2008	\$1,135	3.2% = \$36
	+36	
	\$1,185	
2009	\$1,171	2.7% = \$32
	+32	
2011	\$1,203	2% = \$24
	+24	
2012	\$1,227	3% = \$38
	+38	
2013	\$1,264	2.1% = \$27
	+27	
2014	\$1,291	1.9% = \$25
	+25	
2015	\$1,316	1.7% = \$22
	+22	
2016	\$1,338	2% = \$27
	+27	
2017	\$1,365	2.3% = \$31
	+31	
2018	\$1,396	2.2% = \$31
	+31	
2019	\$1,427	2.6% = \$37
	+37	
2020	\$1,464	
	-70	
	\$1,394	2.7% = \$38
	+38	
2021	\$1,432	

\$25/FEE (2) \$1,135 + 50 (FEE) = 1,185  
 (1) 1,171 + 25 = \$1,196  
 \$1,203 + 25 = \$1,228 (1)  
 \$1,227 + 25 = \$1,252 (1)  
 \$1,264 + 25 = \$1,289 (1)  
 TILL JULY \$1,291 + 25 = \$1,316 (1)  
 FROM OCT \$1,338 + 25 = \$1,363  
 TILL FEB \$1,365 + 25 = \$1,390  
 FROM FEB \$1,396 + 25 = \$1,421 (1)  
 \$1,427 + 25 = \$1,452 (1)  
 \$1,464 (1) 25 = 1,489  
 -70 = \$1,419 FROM OCT  
 \$1,432 (1) + 25 = 1,457

NOTE: THE RECALCULATION RECENTLY CAME TO MY ATTENTION; PLEASE CHECK FOR ACCURACY...



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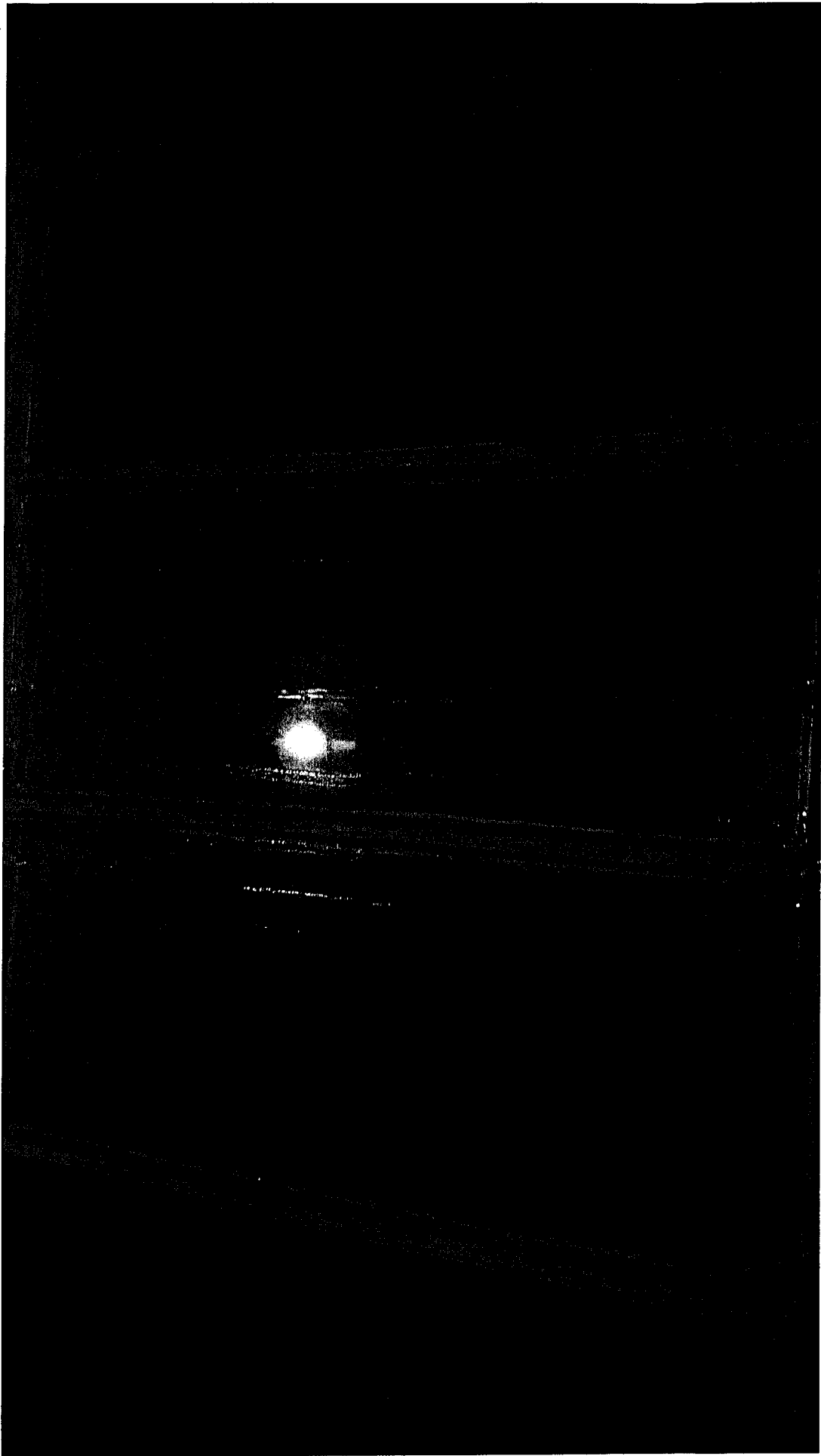




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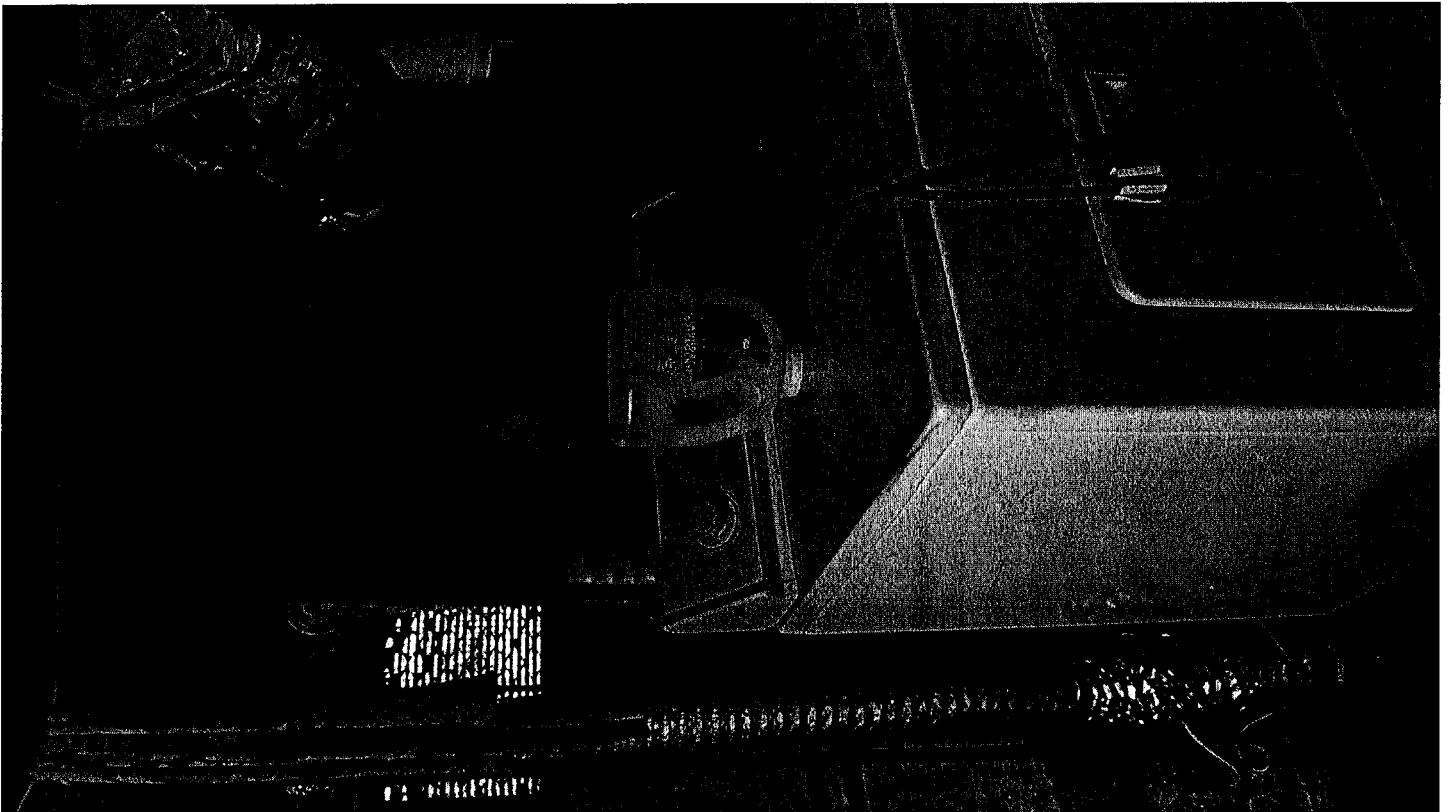


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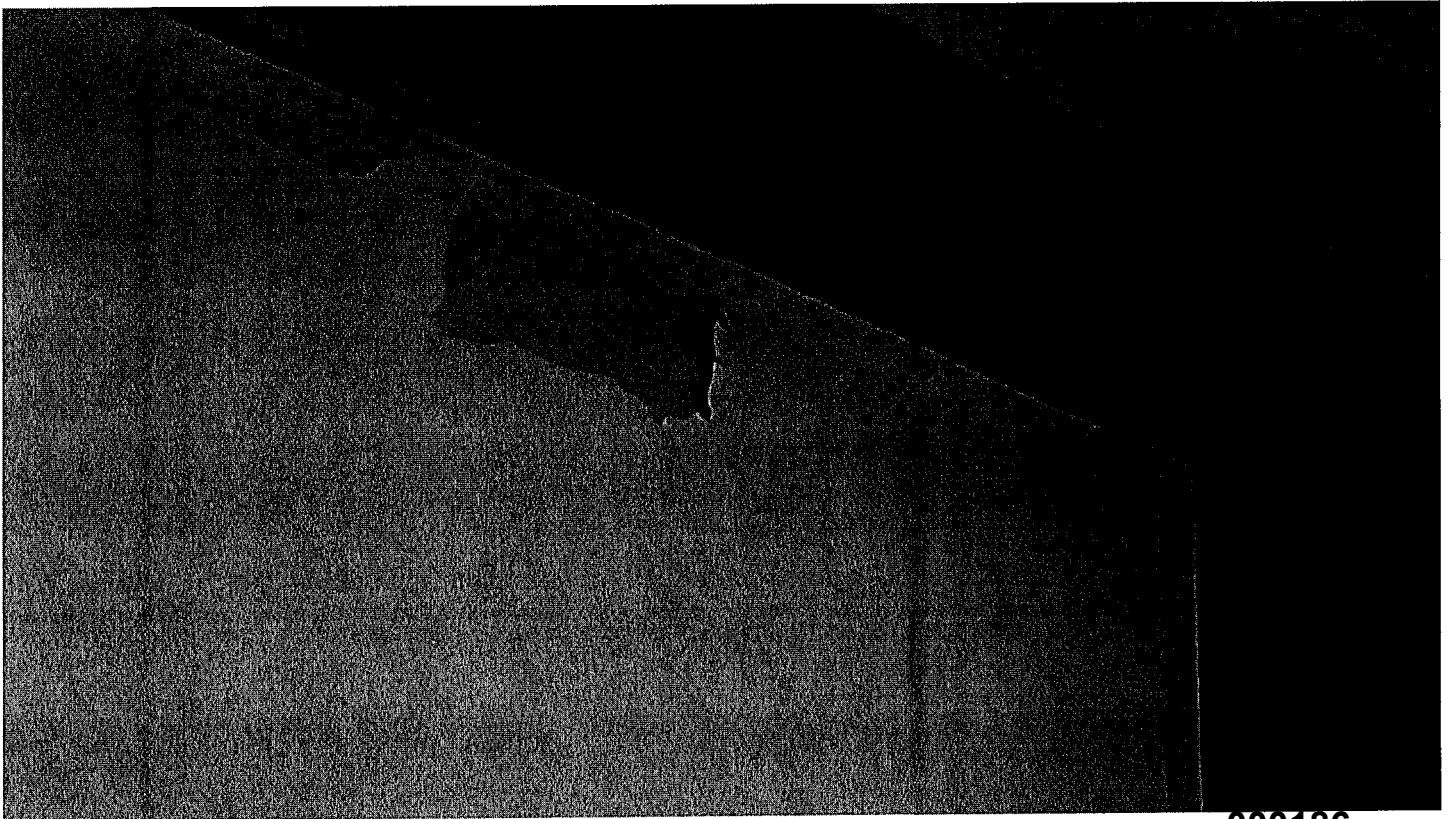


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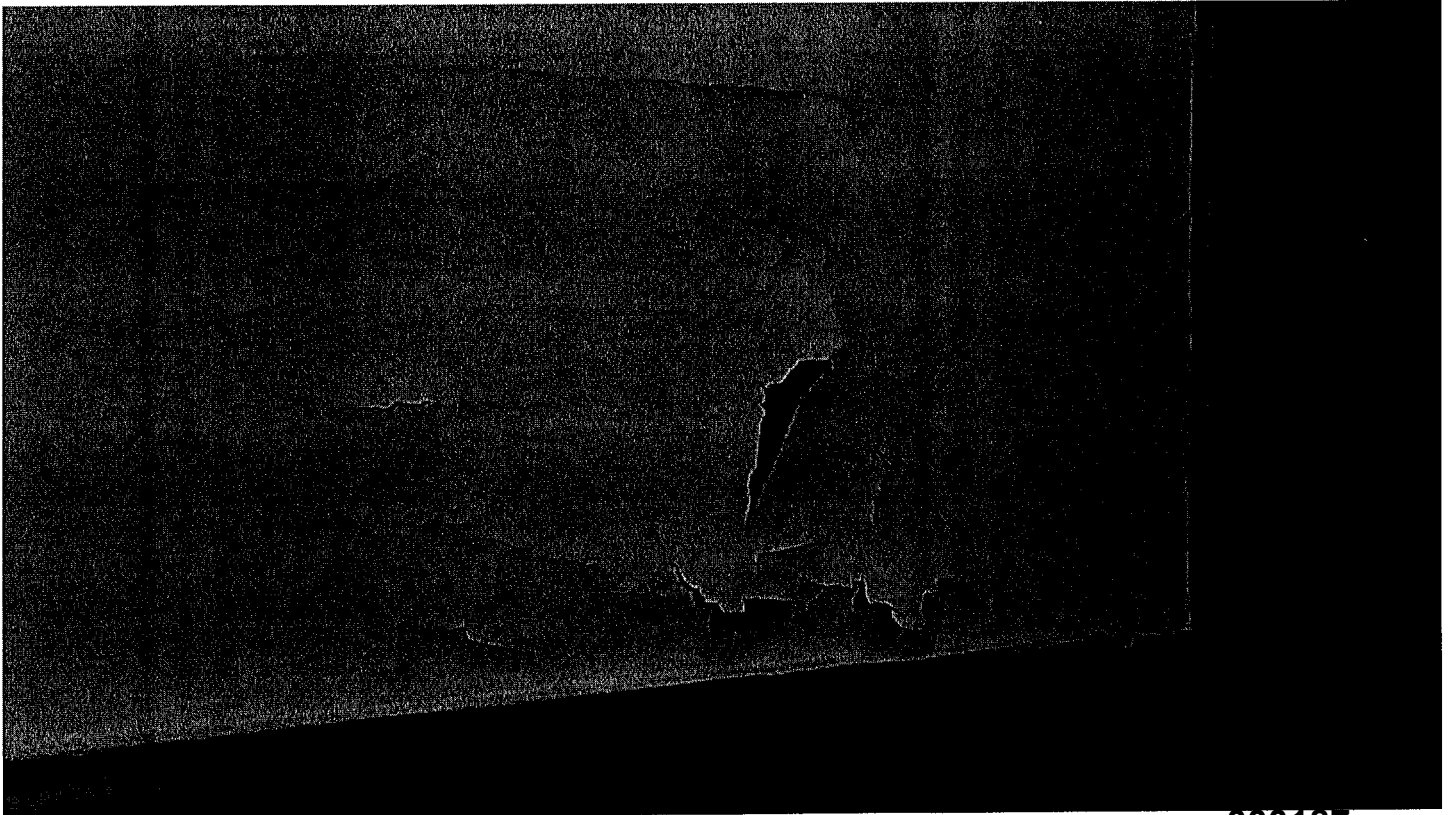




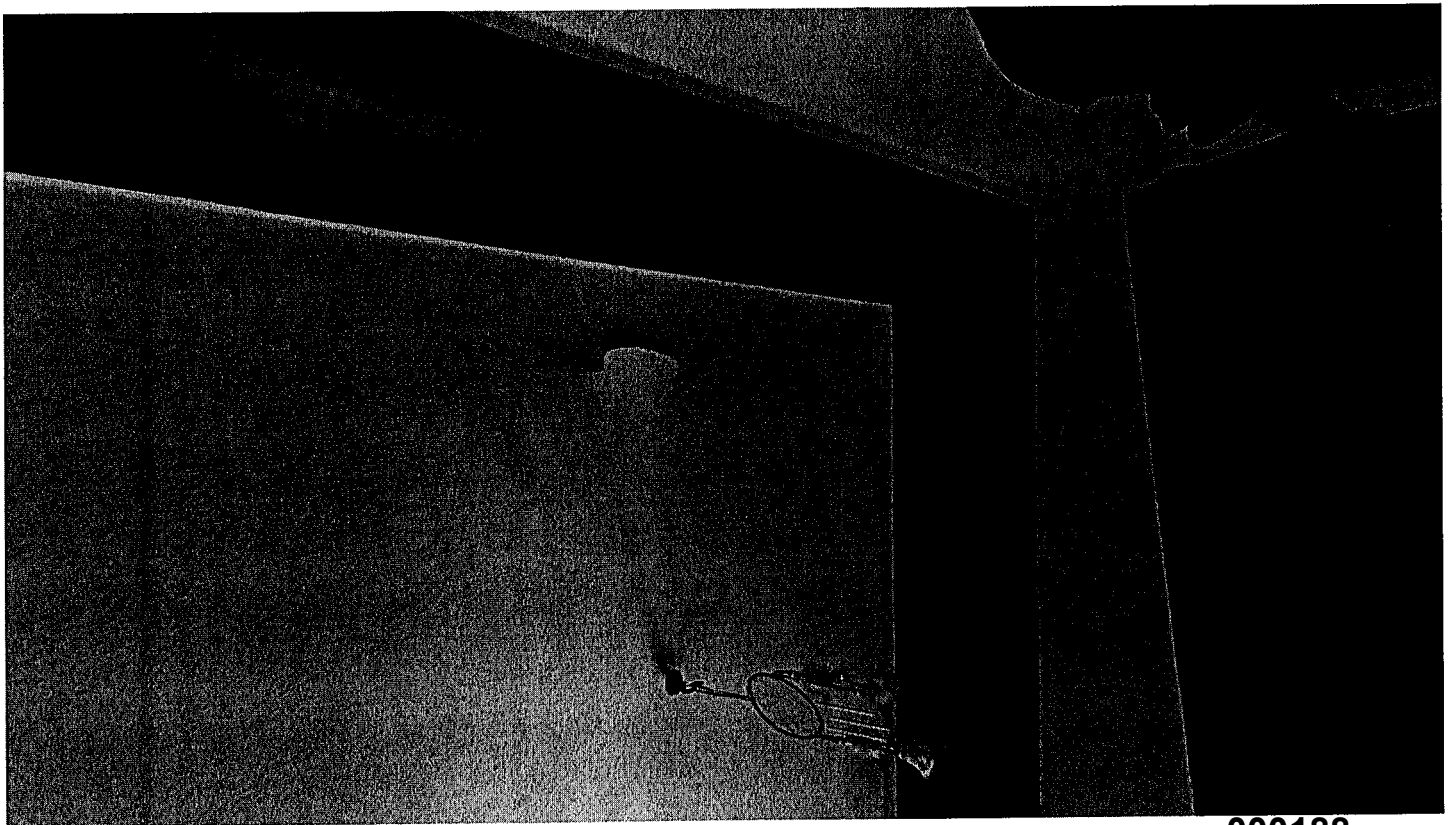
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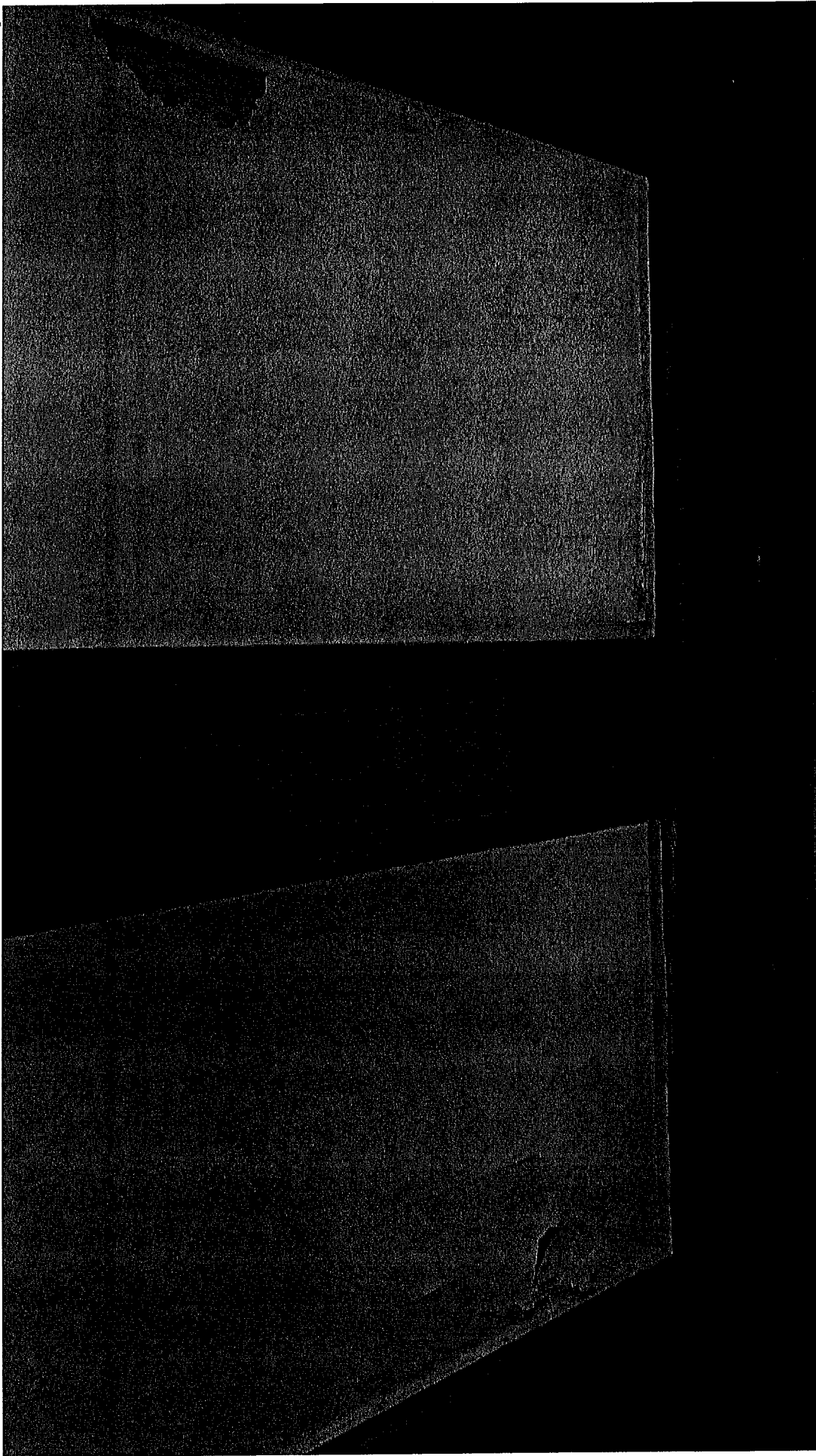
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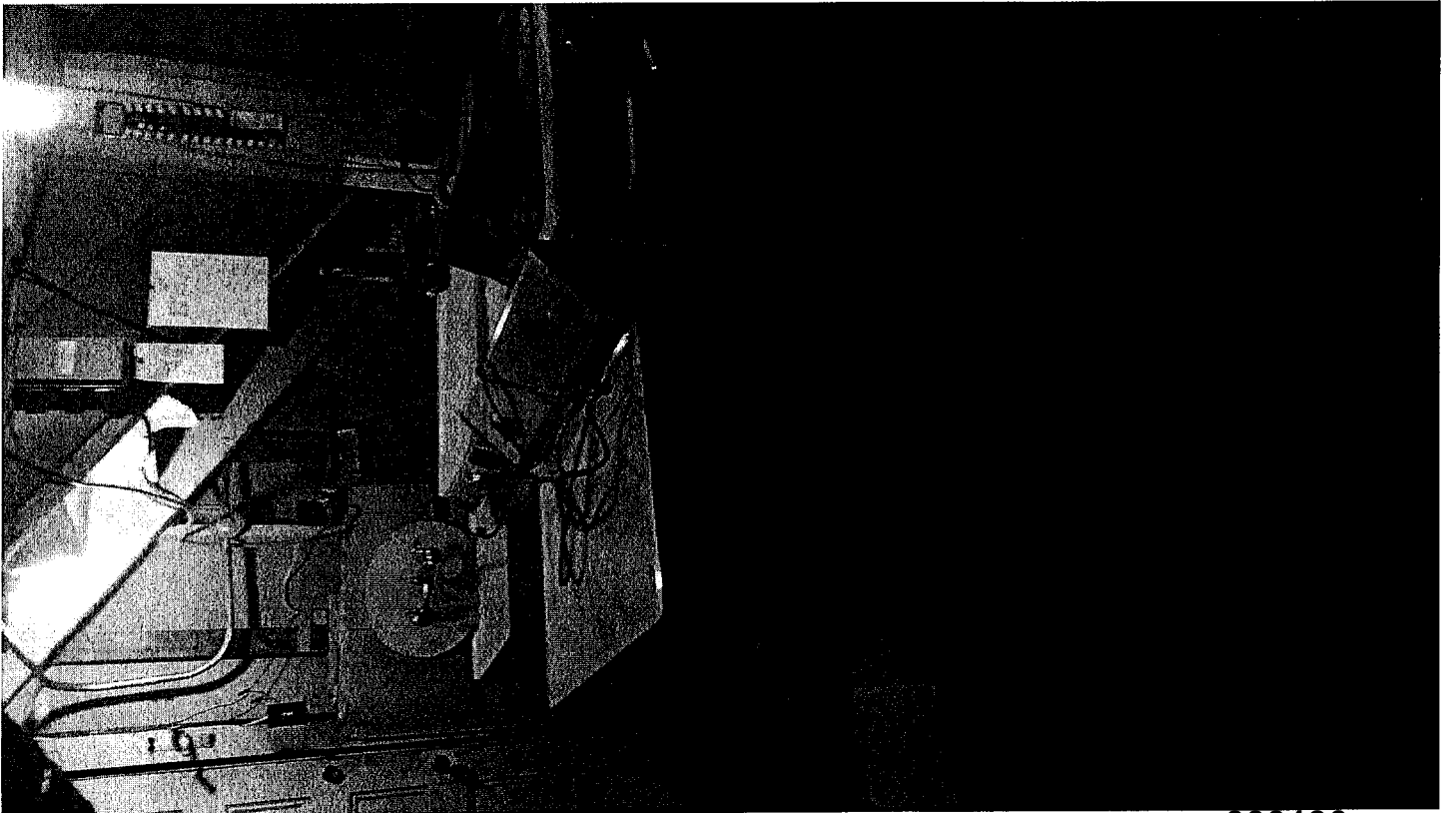
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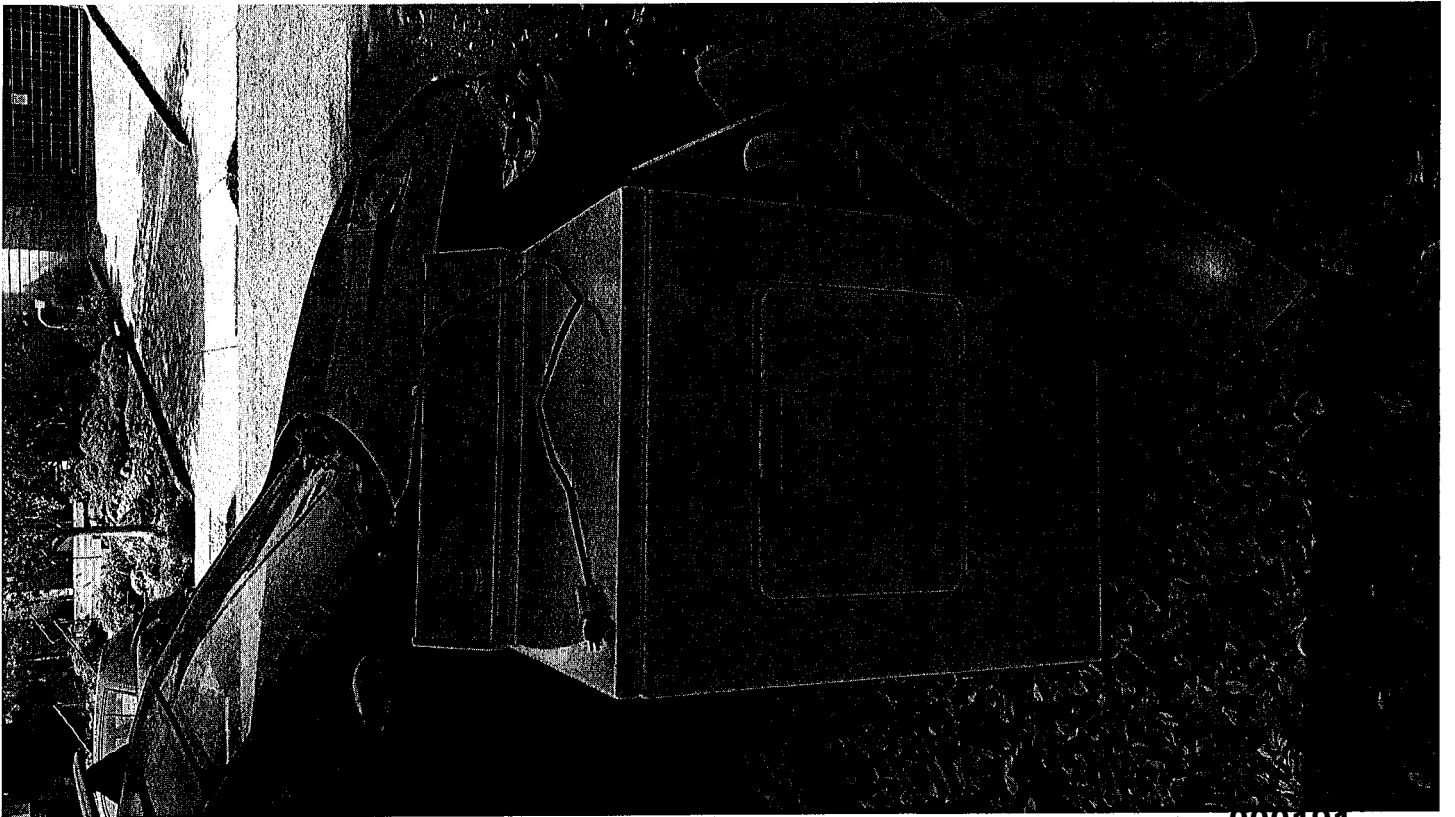
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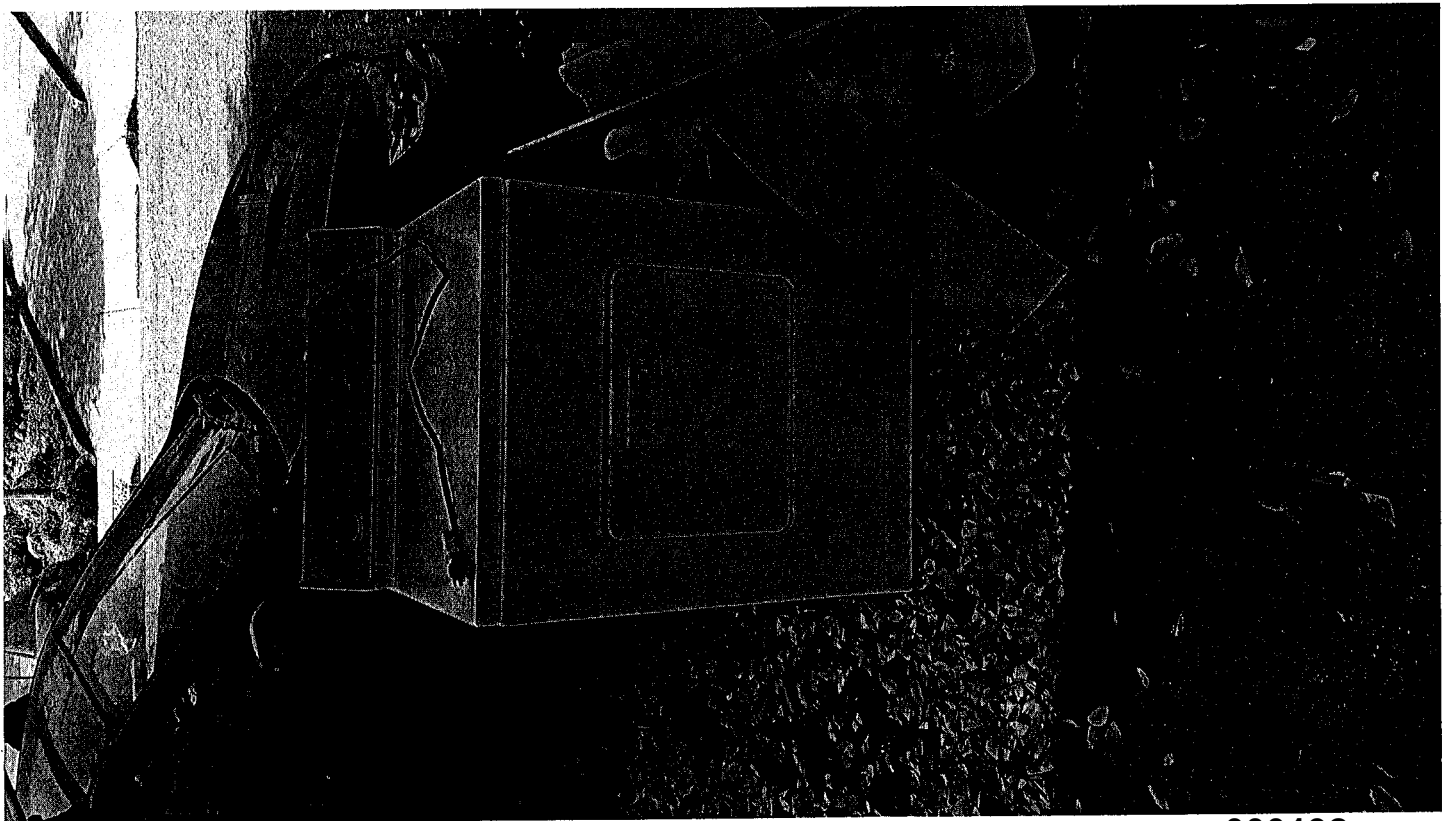
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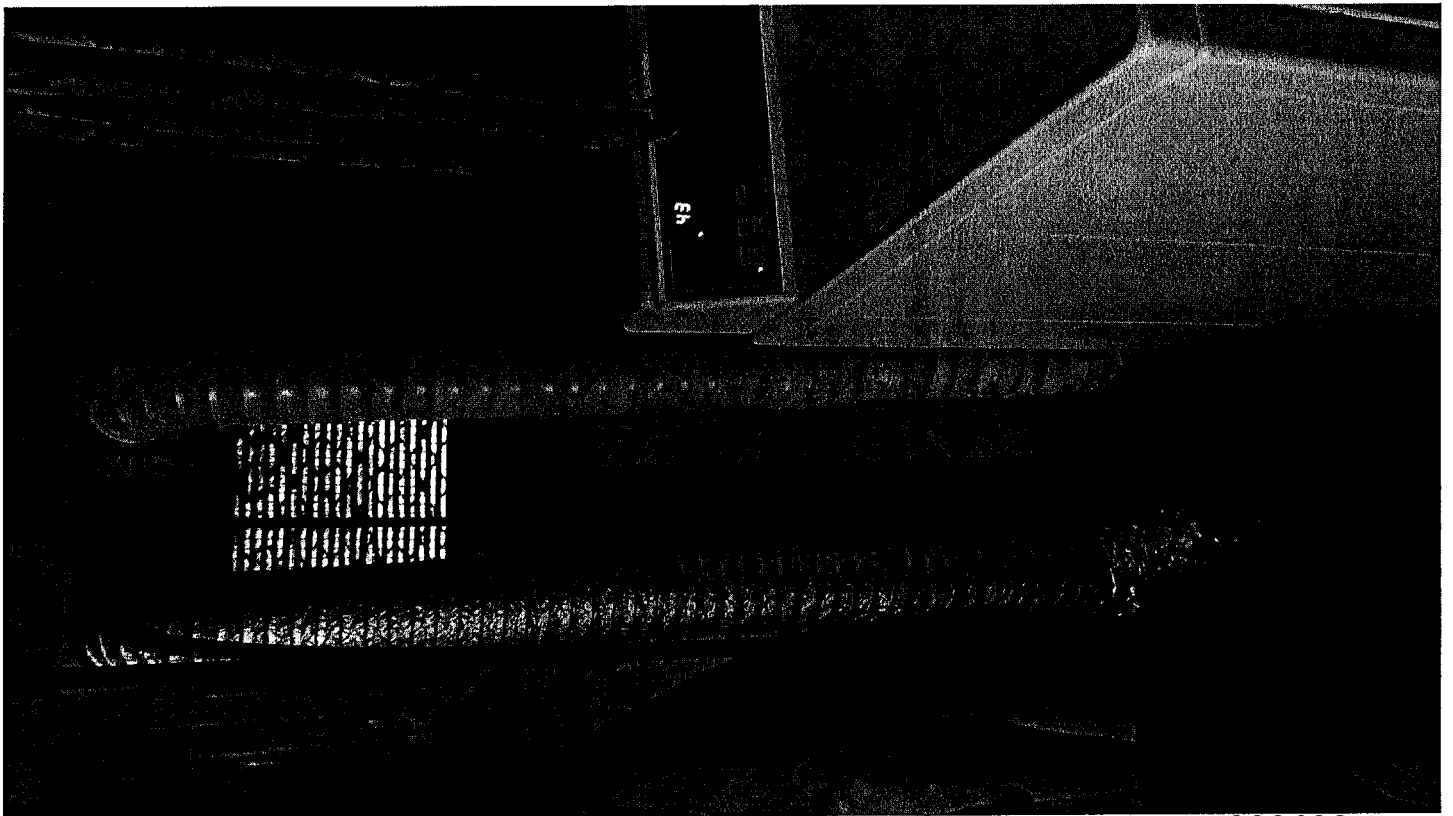


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000193



City of Oakland Rent Adjustment Program  
 250 Frank H. Ogawa Plaza, Suite 5313  
 Oakland, CA 94612  
 (510) 238-3721

FL T21-0030

**TENANT PETITION**

**RECEIVED** 6/8  
 MAR 13 2021  
 RENT ADJUSTMENT PROGRAM  
 OAKLAND

**Property Address:** 474 JEAN ST  
**Case:** Petition: 13712  
**Date Filed:** 03-13-2021

**Parties**

Party	Name	Address	Mailing Address	
Owner	Stuart MacIntyre	478 Jean St Oakland, CA 94610	478 Jean St Oakland, 94610	stuartmacintyre11@gmail.com
Tenant	Gregory Smith	474 Jean Street Oakland, CA 94610		(510) 435-1687 galaxigigi@gmail.com

**Number of units on the property** 4

**Type of unit you rent** Apartment, Room or Live-work

**Are you current on your rent?** Yes

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

**Grounds for Petition**

**For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. I (We) contest one or more rent increases on one or more of the following grounds:**

I received a rent increase above the allowable amount.

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").

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.)

**Rental History**

<b>Date you moved into the Unit</b>	12/1/2004
<b>Initial Rent</b>	\$ 1.03 /month
<b>Current Rent</b>	\$ 1.54 /month
<b>Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?</b>	No

**List the case numbers of any relevant prior Rent Adjustment case(s):**  
 T20-0202, T20-0250, T21-0021

**List all rent increases that you want to challenge.**

<b>Date you received the notice</b>	<b>Date increase goes into effect</b>	<b>Monthly rent increase From</b>	<b>Monthly rent increase To</b>	<b>Are you Contesting this Increase in this Petition? *</b>	<b>Did You Receive a Rent Program Notice With the Notice Of Increase?</b>
12-11-2020	01-01-2021	\$ 0.00	\$ 0.00	No	Yes
12-08-2019	01-01-2020	\$ 0.00	\$ 0.00	No	No
11-29-2017	01-01-2018	\$ 0.00	\$ 0.00	No	No
11-07-2016	01-01-2017	\$ 0.00	\$ 0.00	No	No
11-07-2015	01-01-2016	\$ 0.00	\$ 0.00	No	No
11-29-2014	01-01-2015	\$ 0.00	\$ 0.00	No	No
11-29-2013	01-01-2014	\$ 0.00	\$ 0.00	No	No
11-12-2012	01-01-2013	\$ 0.00	\$ 0.00	No	No
11-12-2011	01-01-2012	\$ 0.00	\$ 0.00	No	No
12-14-2010	01-01-2011	\$ 0.00	\$ 0.00	No	No
04-22-2009	06-01-2009	\$ 0.00	\$ 0.00	No	No
01-01-2008	02-01-2008	\$ 0.00	\$ 0.00	No	No
12-30-2006	01-01-1900	\$ 0.00	\$ 0.00	No	No

*\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)*

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:  
 T20-0202, T20-0250, T21-0021

### Description of Decreased or Inadequate Housing Services

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

#### Loss of Service

<b>Date Loss Began</b>	09-15-2016
<b>Date Owner Was Notified of Loss</b>	09-15-2016
<b>Estimated Loss</b>	1
<b>Reduced Service Description</b>	Entrance hall light not working

<b>Date Loss Began</b>	09-15-2016
<b>Date Owner Was Notified of Loss</b>	09-15-2016
<b>Estimated Loss</b>	2000
<b>Reduced Service Description</b>	Entrance hall light not working

<b>Date Loss Began</b>	04-07-2017
<b>Date Owner Was Notified of Loss</b>	04-07-2017
<b>Estimated Loss</b>	250
<b>Reduced Service Description</b>	Upstairs patio leak into 3 rooms and ruined custom blinds

<b>Date Loss Began</b>	04-07-2017
<b>Date Owner Was Notified of Loss</b>	04-07-2017
<b>Estimated Loss</b>	500
<b>Reduced Service Description</b>	Leak from upstairs ceiling peeling 2 rooms

<b>Date Loss Began</b>	11-15-2017
<b>Date Owner Was Notified of Loss</b>	11-15-2017
<b>Estimated Loss</b>	500
<b>Reduced Service Description</b>	Shower stall grout disintegrated

<b>Date Loss Began</b>	11-15-2017
<b>Date Owner Was Notified of Loss</b>	11-15-2017
<b>Estimated Loss</b>	2.5
<b>Reduced Service Description</b>	Windows don't open (16 of 19)

<b>Date Loss Began</b>	11-15-2017
<b>Date Owner Was Notified of Loss</b>	11-15-2017
<b>Estimated Loss</b>	2.5
<b>Reduced Service Description</b>	Windows don't open (16 of 19)

**Mediation**

Mediation is an optional process offered by the Rent Adjustment Program to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. The purpose of mediation is to find a mutual agreement that satisfies both parties. A trained third party will discuss the issues with both sides, look at relative strengths and weaknesses of each position, and consider both parties' needs in the situation. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing process. 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 want to request mediation for your case.

**I/We agree to have my/our case mediated by a Rent Adjustment Program staff mediator.** Yes

**Consent to Electronic Service**

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will only send documents electronically and not by first class mail.

**I/We consent to receiving notices and documents in this matter electronically at the email address(es) provided in this petition.** Yes

**Interpretation Services**

If English is not your primary language, you have the right to an interpreter in your primary language 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:** No



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](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**RECEIVED**

MAR 12 2021

RENT ADJUSTMENT PROGRAM  
OAKLAND

## 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](mailto:RAP@oaklandca.gov).**

<u>474</u>		<u>JEAN ST</u>		Oakland, CA <u>94610</u>	
Street Number	Street Name	Unit Number	Zip Code		
Move-in Date: <u>12/2004</u>		Initial Rent at Move-in: <u>\$1,030.00</u>		Current Rent: <u>\$1,637 (#1,539)</u>	
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)				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not sure	
Are you current on rent?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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")?		<input checked="" type="checkbox"/> I first received the RAP Notice on: <u>12/10/2020</u> <input checked="" type="checkbox"/> I was never provided with the RAP Notice <u>PRIOR TO ABOVE</u> <input type="checkbox"/> I do not remember if I ever received the RAP Notice			
Case number(s) of any relevant prior Rent Adjustment case(s): <u>T20-0202; T20-0250</u>					
<b>Landlord Information</b>					
<u>CARELORY</u>			<u>SURTH</u>		
First Name			Last Name		
Mailing Address (if different from above): _____					
Primary Telephone: <u>510-435-1687</u>		Other Telephone: _____		Email: <u>gabxigigi@gmail.com</u>	
_____ First Name Last Name					
Mailing Address (if different from above): _____					
Primary Telephone: _____		Other Telephone: _____		Email: _____	
<b>Tenant Representative Information</b>					
_____ First Name		_____ Last Name		_____ Firm/Organization (if any)	
Mailing Address: _____					
Phone Number: _____		Email: _____			

**Property Owner Information**

Property Owner  
 First Name: STUART Last Name: MACINTYRE

Company/LLC/LP (if applicable): MACINTYRE B S TR SURVIVORS TRUST & MACINTYRE ETAL

Mailing Address: 478 JEAN ST., OAKLAND, CA 94610

Phone Number: 510-967-6031 Email: stuartmacintyre11@gmail.com

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Property Manager (if applicable)

First Name: SAME Last Name: SAME Name of Management Company: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**GROUND(S) 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](http://www.oaklandca.gov/resources/read-the-oakland-rent-adjustment-program-ordinance).

A	Unlawful Rent Increase(s) <i>(Complete Section A on page 1)</i>	<input checked="" type="checkbox"/> (A1) I received a rent increase above the allowable amount.
		<input checked="" type="checkbox"/> (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").
		<input checked="" type="checkbox"/> (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. <i>(You must attach a copy of the citation to your petition.)</i>
B	Decreased Housing Services <i>(Complete Section B on page 1)</i>	<input checked="" type="checkbox"/> (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. <i>(Check this box for petitions based on bad conditions/failure to repair.)</i>
		<input checked="" type="checkbox"/> (B2) I am being unlawfully charged for utilities.
C	Other	<input type="checkbox"/> (C1) My rent was not reduced after a prior rent increase period for capital improvements.
		<input type="checkbox"/> (C2) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.
		<input type="checkbox"/> (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:		Received RAP Notice with notice of rent increase?	
		FROM	(#,000) TO	YES	NO
12/11/2020	01/01/2021	\$ 1,569	\$ 1,637 (AMENDED)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
12/08/2019	01/01/2020	\$ 1,516	\$ 1,569	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/29/2017	01/01/2018	\$ 1,424	\$ 1,457	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/07/2016	01/01/2017	\$ 1,396	\$ 1,424	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/07/2015	01/01/2016	\$ 1,373	\$ 1,396	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**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	DISCONNECTED MY DRYER COIN OPERATED DRYER	MID APRIL 2020 INSTALLED 6/17/2020	APRIL 2020	NEVER	\$ 700/MO
2	UPSTAIRS PATIO LEAK CEILING PEELING (2 RMS)	APRIL 2017 APRIL 2017	APRIL 2017 APRIL 2017	? NEVER	BLINDS \$ (CUSTOM) @ \$250.00
3	ENTRANCE HALL LITE NOT WORKING	2016	2016	NEVER	\$ ? MAJOR INCONVENIENCE
4	SHOWER STALL FRONT DISINTEGRATED 3 OF 19 WINDOWS OPEN	2017 2017	2018 EARLY 2017	NEVER NEVER	MOLD \$ HUNDREDS INSUFFICIENT FRESH AIR



**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:		Received RAP Notice with notice of rent increase?	
		FROM	TO	YES	NO
11/29/2014	01/01/2015	\$ 1,347	\$ 1,373	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/29/2013	01/01/2014	\$ 1,319	\$ 1,347	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/12/2011 (2012)	01/01/2013	\$ 1,281	\$ 1,319	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/12/2011	01/01/2012	\$ 1,256	\$ 1,281	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11/12/2010	01/01/2011	\$ 1,236	\$ 1,256	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**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					\$

**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:		Received RAP Notice with notice of rent increase?	
		FROM	TO	YES	NO
01/22/2009	06/01/2009	\$ 1,185	\$ 1,226	<input type="checkbox"/>	<input checked="" type="checkbox"/>
02/01/2008	02/01/2008	\$ 1,100	\$ 1,185	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<del>11/15/2006</del>	<del>01/15/2007</del>	<del>\$ 1,000</del>	<del>\$ 1,100</del>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12/30/2006	02/01/2007	\$ 1,065	\$ 1,100	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>

**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					\$

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.

Juan Carlos  
Tenant # Signature

02/20/2021  
Date

\_\_\_\_\_  
Tenant 2 Signature

\_\_\_\_\_  
Date

### CONSENT TO ELECTRONIC SERVICE

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will send certain documents only electronically and not by first class mail.

I/We consent to receiving notices and documents in this matter 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.

Juan Carlos  
Tenant Signature

02/20/2021  
Date

### INTERPRETING 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-**



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](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**RECEIVED**

MAR 12 2021

RENT ADJUSTMENT PROGRAM  
OAKLAND

## 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) Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.
- 3) 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: 02/22/2021 I served a copy of (check all that apply):

- TENANT PETITION plus <sup>70</sup> ~~70~~ 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: NEW RAP petition 2021 & NEW RAP petition 2021 #2 (FOLDERS) 45 FILES

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.
- Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below. (GMAIL)
- 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	STUART MACINTYRE
Address	478 JAW ST / email: stuartmacintyre11@gmail.com
City, State, Zip	OAKLAND, CA 94610

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.

GREGORY SMITH  
PRINTED NAME

[Signature]  
SIGNATURE

02/20/2021  
DATE SIGNED



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](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp

**RECEIVED**

MAR 12 2021

RENT ADJUSTMENT PROGRAM  
OAKLAND

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- 3) 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: 02/22/2021 I served a copy of (check all that apply):

- TENANT PETITION plus <sup>70</sup> ~~11~~ 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: New RAP petition 2021 & New RAP petition 2021 #2 (FOLDERS) 45 FILES

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.
- Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below. (GMAIL)
- 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	<u>STUART MACINTYRE</u>
Address	<u>478 JAW ST / email: stuartmacintyre11@gmail.com</u>
City, State, Zip	<u>OAKLAND, CA 94610</u>

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.

CATHERINE SMITH  
 PRINTED NAME

[Signature]  
 SIGNATURE

02/22/2021  
 DATE SIGNED



GRAND LAKE  
 490 LAKE PARK AVE  
 OAKLAND, CA 94610-9991  
 (800)275-8777

02/22/2021 02:17 PM

Product	Qty	Unit Price	Price
---------	-----	------------	-------

Priority Mail® 1-Day 1 Flat Rate Env			\$7.95
--------------------------------------	--	--	--------

Oakland, CA 94610  
 Flat Rate  
 Expected Delivery Date  
 Tue 02/23/2021

Tracking #:  
 9505 5110 2641 1053 6987 24

Insurance Up to \$50.00 included			\$0.00
-------------------------------------	--	--	--------

Total			\$7.95
-------	--	--	--------

Grand Total:			\$7.95
--------------	--	--	--------

Credit Card Remitted			\$7.95
----------------------	--	--	--------

Card Name: MasterCard  
 Account #: XXXXXXXXXXXX2766  
 Approval #: 592096  
 Transaction #: 546  
 AID: A0000000042203 Chip  
 AL: Debit  
 PIN: Not Required

\*\*\*\*\*  
 USPS is experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19. We appreciate your patience.

LANDLORD STATED

RECALCULATION 1/28/2021

2006 → 1,065 × 3.3% = \$35  
 +35  
 2007 → 1,100 × 3.3% = \$36 BUT LANDLORD \$35  
 +35  
 2008 → 1,135 + 50 FEE (2 PEOPLE)  
 FROM 2008 TILL PRESENT \$50. FEE INCLUDED IN ANNUAL CPI INCREASE \* INACCURATE PPP  
 1,185 × 3.2% = \$38  
 +38  
 2009 → 1,223 × 2.7% = \$33  
 +33  
 +2 PEOPLE TILL JULY  
 2010 → 1,256 × 2.0% = 25  
 +25  
 +1 PERSON  
 2012 → 1,281 × 3.0% = 38  
 +38  
 2013 → 1,319 × 2.1% = 28  
 +28  
 2014 → 1,347 × 1.9% = 26  
 +26  
 +1 TILL JULY  
 1,373 × 1.7% = 23  
 +23  
 2015 → 1,396 × 2.0% = 28  
 +28  
 +1 FROM OCT  
 1,424 × 2.3% = 33  
 +33  
 2017 → 1,457 × 3.9% = 59 (2.2%)  
 +59  
 FROM FEB  
 2019 → 1,516 × 3.5% = 53 (2.6%)  
 +53  
 +1  
 2020 → 1,569 × 2.7% = \$42 = 1,611  
 +25  
 1,636  
 RAP RULING FROM OCT → -70  
 1,499 × 2.7% = \$40  
 +40  
 2021 → 1,539 → \$1,637 ACCORDING TO LANDLORD  
 (PAID JAN 2021)

YEAR	RENT	CPI	INCREASE
2008	\$1,135	3.2%	\$36
	+36		
	\$1,171	2.7%	\$32
	+32		
2011	\$1,203	2%	\$24
	+24		
2012	\$1,227	3%	\$37
	+37		
2013	\$1,264	2.1%	\$27
	+27		
2014	\$1,291	1.9%	\$25
	+25		
2015	\$1,316	1.7%	\$22
	+22		
2016	\$1,338	2%	\$27
	+27		
2017	\$1,365	2.3%	\$31
	+31		
2018	\$1,396	2.2%	\$31
	+31		
2019	\$1,427	2.6%	\$37
	+37		
2020	\$1,464		
	-70		
	\$1,394	2.7%	\$38
	+38		
2021	\$1,432		

\$25/FEE (2) +50(FEE) → \$1,185  
 \$1,171 (1) +25 → \$1,196  
 \$1,203 +25 = \$1,228 (1)  
 \$1,227 +25 = \$1,252 (1)  
 \$1,264 +25 = \$1,289 (1)  
 TILL JULY \$1,291 +25 = \$1,316 (1)  
 FROM OCT \$1,338 +25 = \$1,363  
 TILL FEB \$1,365 +25 = \$1,390  
 FROM FEB \$1,396 +25 = \$1,421 (1)  
 \$1,427 +25 = \$1,452 (1)  
 \$1,464 (1) +25 = \$1,489  
 -70 = \$1,419 (FROM OCT)  
 \$1,432 (1) +25 = \$1,457

NOTE: THE RECALCULATION RECENTLY CAME TO MY ATTENTION; PLEASE CHECK FOR ACCURACY...



THERE WERE 27 FILES SENT  $\frac{1}{3}$ , 22 FILES SENT  
THIS MORNING @ 10AM. THEY ARE THE DOCUMENTS  
I MAILED TO THE LANDLORD THIS AFTERNOON.  
PLEASE INFORM ME IF I MISSED ANYTHING.

THNX FOR YOUR ASSISTANCE 2/22/21 3<sup>40</sup> PM

REGARDS, GREGORY SMITH



City of Oakland Rent Adjustment Program  
 250 Frank H. Ogawa Plaza, Suite 5313  
 Oakland, CA 94612  
 (510) 238-3721

T21.0197 MF/AS

**TENANT PETITION**

**RECEIVED**

NOV -3 2021

RENT ADJUSTMENT PROGRAM  
**OAKLAND**

**Property Address:** 474 JEAN ST  
**Case:** Petition: 13924  
**Date Filed:** 11-03-2021

**Parties**

Party	Name	Address	Mailing Address	
Owner	Stuart MacIntyre	478 Jean st Oakland, CA 94610	478 Jean st Oakland, 94610	(510) 967-6031
Tenant	Gregory Smith	474 Jean Street Oakland, CA 94610		(510) 435-1687 galaxigigi@gmail.com

**Number of units on the property** 4

**Type of unit you rent** Apartment, Room or Live-work

**Are you current on your rent?** Yes

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

**Grounds for Petition**

**For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. I (We) contest one or more rent increases on one or more of the following grounds:**

I received a rent increase above the allowable amount.

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.)

**Rental History**

<b>Date you moved into the Unit</b>	1/10/2004
<b>Initial Rent</b>	\$ 1,000.00 /month
<b>Current Rent</b>	\$ 1,514.00 /month
<b>Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?</b>	No
<b>List the case numbers of any relevant prior Rent Adjustment case(s):</b>	
T21-0030; T21-0021; T20-0250; T20-0202	

**List all rent increases that you want to challenge.**

<b>Date you received the notice</b>	<b>Date increase goes into effect</b>	<b>Monthly rent increase From</b>	<b>Monthly rent increase To</b>	<b>Are you Contesting this Increase in this Petition? *</b>	<b>Did You Receive a Rent Program Notice With the Notice Of Increase?</b>
	01-01-1900	\$ 1,457.00	\$ 1,516.00	No	No
	01-01-1900	\$ 1,516.00	\$ 1,569.00	No	No
	01-01-1900	\$ 1,499.00	\$ 1,637.00	No	Yes
	01-01-1900	\$ 1,515.00	\$ 1,668.00	No	Yes

*\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)*

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

T21-0030; T21-0021; T20-0250; T20-0202

**Description of Decreased or Inadequate Housing Services**

---

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

**Loss of Service**

---

**Date Loss Began** 06-15-2020

**Date Owner Was Notified of Loss** 06-16-2020

**Estimated Loss** 910

**Reduced Service Description** Landlord disconnected my dryer on 06/15/2020 and replaced with a coin-operated dryer on 06/16/20230 and then stole my dryer on 09/14/2020 and threw away with a bulk garbage pick/up on 09/15/2020....decreased services created increased costs of \$70.00 per month (RAP ruling dated Oct 08, 2020), therefore 11 mos in 2021 and 2 mos in 2020 =13X 70= \$910 to this point

**Mediation**

Mediation is an optional process offered by the Rent Adjustment Program to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. The purpose of mediation is to find a mutual agreement that satisfies both parties. A trained third party will discuss the issues with both sides, look at relative strengths and weaknesses of each position, and consider both parties' needs in the situation. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing process. 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 want to request mediation for your case.

**I/We agree to have my/our case mediated by a Rent Adjustment Program staff mediator.** Yes

**Consent to Electronic Service**

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will only send documents electronically and not by first class mail.

**I/We consent to receiving notices and documents in this matter electronically at the email address(es) provided in this petition.** Yes

**Interpretation Services**

If English is not your primary language, you have the right to an interpreter in your primary language 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:** No

STUART, YOU HAVE ENGAGED IN  
AT LEAST HALF OF THE VIOLATIONS  
LISTED BELOW

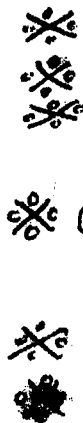


## Notice of Tenant Protection Ordinance

On November 5, 2014, the Oakland City Council adopted the Tenant Protection Ordinance (TPO), which prohibits various harassing behaviors by owners against tenants – thereby bolstering existing laws and leases that protect tenants. The TPO creates remedies that could be enforced by private civil rights of action.

Among other things, the Tenant Protection Ordinance prohibits conduct that may coerce a tenant to vacate a rental unit involuntarily. The following is only a summary of the illegal conduct, for a complete list, you are advised to review the attached copy of the Tenant Protection Ordinance or review Oakland Municipal Code 8.22.600.

### Landlords must not, in bad faith, engage in any of the following conduct:



1. Disruption of services to the rental unit.
2. Fail to perform repairs and maintenance.
3. Failing to perform due diligence when completing repairs.
4. Abuse the Owner's right of access to the rental unit.
5. Remove personal property, furnishings, or any other items without the prior written consent of the tenant.
6. Threats regarding immigration Status.
7. Offer payments to a Tenant to vacate more than once in six (6) months.
8. Threaten the tenant, by word or gesture, with physical harm.
9. Interfere with a Tenant's right to quiet use and enjoyment of the rental unit.
10. Refuse to accept or acknowledge receipt of a Tenant's lawful rent payment.
11. Refuse to cash a rent check for over thirty (30) days unless a written receipt for payment has been provided to the Tenant.
12. Interfere with a Tenant's right to privacy.

**Note: A tenant aggrieved by violations of the Tenant Protection Ordinance may bring a civil action in court against the landlord. Violators may be held liable for damages including emotional distress. For violations related to repairs, Tenants must first provide fifteen days' notice of violation.**

The TPO requires owners to post a notice of the TPO in rental units located in a building with an interior common area. The notice must be placed in at least one such common area in the building using the form prescribed by the City Staff.

If you are experiencing any of the conduct detailed above, you may contact the Rent Adjustment Program for more information, at (510) 238 – 3721.

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

October 29, 2021

Francis Tabor  
474 Jean St.  
Oakland, CA 94610

#205 OVER JUSTIFIED  
RENT ?

RE: Change in Rent Notice

Dear Tenant,

Please be advised that effective January 1, 2022, the monthly rent for the rented premises you now occupy as my Tenant shall be increased to **\$1637.00 per month**, payable on or before the first day of each month during your continued tenancy. This is a change from your present rent of \$1668.00 per month. All other terms of your tenancy shall remain as presently in effect.

WHAT! WHERE  
IS THIS FIGURE  
FROM ???

~~INCORRECT~~  
THE PRESENT RENT IS \$1,514 DOWN \$25 FROM \$1,539  
SINCE END OF JULY WHEN 1 PERSON MOVED OUT? ~~2021~~

Sincerely,



Stuart MacIntyre  
478 Jean St. Oakland, CA 94610  
510-967-6031

000215

November 1, 2021

Francis Tabor  
474 Jean St  
Oakland, Ca 94610

RE: Correction to Change in Rent Notice for  
474 Jean St  
Oakland, Ca 94610

Dear Tenant,

Please be advised that effective January 1, 2022, the monthly rent for the rented premises you now occupy as my Tenant shall be increased to \$1668.00 per month, payable on or before the first day of each month during your continued tenancy. This is a change from your present rent of \$1637.00 per month. All other terms of your tenancy shall remain as presently in effect.

Please discard the incorrect notice sent on October 30, 2021. I apologize for an confusion or concern this has caused.

Sincerely,

Stuart MacIntyre  
478 Jean St. Oakland, CA 94610  
510-967-6031

000216



RENT

LANDLORD STATED  
AND  
INCORRECT AS OF 2009  
PAID (EXCEPT \*)

OVER PAID

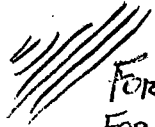
CORRECT COMPUTATION

% % % % %

Year	Incorrect Landlord Stated	Over Paid	Correct Computation
2008	\$1,185 (including \$50/mo water fee)		\$1,135 (50 water fee \$25/mo/person for 2 person)
2009	1,223 (2x5mo) = 10 (27x7mo) = 189	10 189	1,221 (1,171 + 50 till June 5mo) [1 of 2 person moved out] 1,196 (1,171 + 25 from June 7mo)
2010	1,223 (27x12mo) = 324	324	1,196
2011	1,256 (28x12mo) = 336	336	1,228 (1,203 + 25)
2012	1,281 (29x12mo) = 348	348	1,252 (1,227 + 25)
2013	1,314 (30x12mo) = 360	360	1,289 (1,264 + 25)
2014	1,347 (31x6mo) = 186 (56x6mo) = 336	186 336	1,316 (1,291 + 25 till July 6mo) 1,291 (from July 6mo) [2nd of 2 person moved out]
2015	1,373 (57x12mo) = 684	684	1,316
2016	1,396 (58x9mo) = 522 (33x3mo) = 99	522 99	1,338 (till Oct 9mo) 1,363 (1,338 + 25 from Oct 3mo) [1 person moved in]
2017	1,424 (34x1mo) = 34 (59x11mo) = 649	34 649	1,390 (1,365 + 25) till Feb/1mo 1,365 (from Feb/11mo) [1 person moved out]
2018	1,457 (4x1mo) = 61 (36x11mo) = 396	61 396	1,396 (till Feb/1mo) 1,421 (1,396 + 25 from Feb 11mo) [1 person moved in]
2019	1,516 (44x12mo) = 768	768	1,452 (1,427 + 25/12mo)
2020	1,569 (40x12mo) = 960 RAP RULING OCT -70 NOV-DEC (1,499) (9x8mo) = 240	960 240	1,489 (1,464 + 25/9mo) -70 1,419 (1,394 + 25/3mo)
2021	(1,637*) 1,539 (82x7mo) = 574	574	1,457 (1,432 + 25 till Aug 7mo)
2021	(1,514) (82x3mo) = 410 (25x3mo) = 75	410 75	1,432 (from Aug/3mo) [1 person moved out]

THRU OCT 2021

= \$7,082  
 \$1,140  
 \$7,222  
OVER PAID



LANDLORD STATED

RECALCULATION 1/28/2021

2006 → 1,065 × 3.3% = \$35  
 +35  
 2007 → 1,100 × 3.3% = \$36 BUT LANDLORD \$35  
 +35  
 2008 → 1,135 + 50 FEE (2 PEOPLE)  
 1,185 × 3.2% = \$38  
 +38  
 2009 → 1,223 × 2.7% = \$33  
 +33  
 2010 → 1,256 × 2.0% = 25  
 +25  
 2012 → 1,281 × 3.0% = 38  
 +38  
 2013 → 1,319 × 2.1% = 28  
 +28  
 2014 → 1,347 × 1.9% = 26  
 +26  
 2015 → 1,373 × 1.7% = 23  
 +23  
 2016 → 1,396 × 2.0% = 28  
 +28  
 2017 → 1,424 × 2.3% = 33  
 +33  
 2018 → 1,457 × 3.9% = 59 (2.2%)  
 +59  
 2019 → 1,516 × 3.5% = 53 (2.6%)  
 +53  
 2020 → 1,569 × 2.7% = \$42 = 1,611  
 +25  
 1,636  
 RAP RULING FROM OCT → -70  
 1,499 × 2.7% = \$40  
 +40  
 2021 → 1,539 → \$1,637 ACCORDING TO LANDLORD  
 (PAID JAN 2021)

FROM 2008 TILL PRESENT \$50. FEE INCLUDED IN ANNUAL CPI INCREASE \*INACCURATE PPP

YEAR	RENT	CPI	INCREASE
2008	\$1,135	3.2%	\$36
	+36		
	\$1,171	2.7%	\$32
2009	+32		
	\$1,203	2%	\$24
2010	+24		
	\$1,227	3%	\$38
2011	+38		
	\$1,265	2.1%	\$27
2012	+27		
	\$1,291	1.9%	\$25
2013	+25		
	\$1,316	1.7%	\$22
2014	+22		
	\$1,338	2%	\$27
2015	+27		
	\$1,365	2.3%	\$31
2016	+31		
	\$1,396	2.2%	\$31
2017	+31		
	\$1,427	2.6%	\$37
2018	+37		
	\$1,464		
2019	-70		
	\$1,394	2.7%	\$38
2020	+38		
	\$1,432		
2021			

NOTE: THE RECALCULATION RECENTLY CAME TO MY ATTENTION; PLEASE CHECK FOR ACCURACY...



TAI. 0203  
EL/B2

City of Oakland Rent Adjustment Program  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612  
(510) 238-3721

**TENANT PETITION**

**RECEIVED**

**NOV -9 2021**

**RENT ADJUSTMENT PROGRAM  
OAKLAND**

**Property Address:** 474 JEAN ST  
**Case:** Petition: 13930  
**Date Filed:** 11-09-2021

**Parties**

Party	Name	Address	Mailing Address	
Owner	Stuart MacIntyre	478 Jean St Oakland, CA 94610	478 Jean St Oakland, 94610	(510) 967-6031 stuartmacintyre11@gmail.com
Tenant	Gregory Smith	474 Jean St Oakland, CA 94610		(510) 435-1687 galaxigigi@gmail.com

**Number of units on the property** 4

**Type of unit you rent** Apartment, Room or Live-work

**Are you current on your rent?** Yes

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

**Grounds for Petition**

**For all of the grounds for a petition see OMC 8.22.070 and OMC 8.22.090. I (We) contest one or more rent increases on one or more of the following grounds:**

I received a rent increase above the allowable amount.

I received a rent increase and do not believe I should have to pay it because a government agency has cited my unit for serious health, safety, fire, or building code violations. (You must attach copy of citation to petition.)

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.)

**Rental History**

<b>Date you moved into the Unit</b>	1/11/2004
<b>Initial Rent</b>	\$ 1,000.00 /month
<b>Current Rent</b>	\$ 1,514.00 /month
<b>Is your rent subsidized or controlled by any government agency, including HUD (Section 8)?</b>	No

**List the case numbers of any relevant prior Rent Adjustment case(s):**  
 T21-0030; T21-0021; T20-0050; T20-0202

**List all rent increases that you want to challenge.**

<b>Date you received the notice</b>	<b>Date increase goes into effect</b>	<b>Monthly rent increase From</b>	<b>Monthly rent increase To</b>	<b>Are you Contesting this Increase in this Petition? *</b>	<b>Did You Receive a Rent Program Notice With the Notice Of Increase?</b>
11-01-2021	01-01-2022	\$ 1,514.00	\$ 1,668.00	No	Yes
12-12-2020	01-01-2021	\$ 1,499.00	\$ 1,637.00	No	Yes
12-08-2019	01-01-2020	\$ 1,516.00	\$ 1,569.00	No	No
12-08-2018	01-01-2019	\$ 1,457.00	\$ 1,516.00	No	No
11-29-2017	01-01-2018	\$ 1,424.00	\$ 1,457.00	No	No
11-07-2016	01-01-2017	\$ 1,396.00	\$ 1,424.00	No	No
11-07-2015	01-01-2016	\$ 1,373.00	\$ 1,396.00	No	No
11-29-2014	01-01-2015	\$ 1,347.00	\$ 1,373.00	No	No
11-29-2013	01-01-2014	\$ 1,319.00	\$ 1,347.00	No	No
11-12-2012	01-01-2013	\$ 1,281.00	\$ 1,319.00	No	No
11-12-2011	01-01-2012	\$ 1,256.00	\$ 1,281.00	No	No
12-14-2010	01-01-2011	\$ 1,223.00	\$ 1,256.00	No	No
04-22-2009	06-01-2009	\$ 1,185.00	\$ 1,223.00	No	No
01-01-2008	02-01-2008	\$ 1,135.00	\$ 1,185.00	No	No
12-30-2006	02-01-2007	\$ 1,065.00	\$ 1,100.00	No	No

*\* You have 90 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you did not receive a RAP Notice with the rent increase you are contesting but have received it in the past, you have 120 days to file a petition. (O.M.C. 8.22.090 A 3)*

List case number(s) of all Petition(s) you have ever filed for this rental unit and all other relevant Petitions:  
 T21-0030; T21-0021; T20-0050; T20-0202

### Description of Decreased or Inadequate Housing Services

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for problems in your unit, or because the owner has taken away a housing service, you must complete this section.

#### Loss of Service

**Date Loss Began** 04-07-2017

**Date Owner Was Notified of Loss** 04-08-2017

**Estimated Loss**

**Reduced Service Description** Peeling paint from upstairs patio and bathroom water leaks

**Date Loss Began** 06-15-2020

**Date Owner Was Notified of Loss** 06-16-2020

**Estimated Loss** 910

**Reduced Service Description** My dryer was disconnected by landlord initially in April 2020 and then permanently disconnected on 6/15/2020 and then stolen on 9/14/2020 and put outside with a bulk garbage pickup on 9/15/2020

**Date Loss Began** 01-11-2004

**Date Owner Was Notified of Loss** 09-28-2020

**Estimated Loss**

**Reduced Service Description** Of 19 windows, 3 Don't open at all; 3 are extremely difficult; 10 open but Don't stay open due to missing counterweights; Only 3 open and stay open according to Oakland Building Codes

**Date Loss Began** 12-08-2020

**Date Owner Was Notified of Loss** 12-08-2020

**Estimated Loss**

**Reduced Service Description** Heater filter not changed according to Mfg's written instructions

**Mediation**

Mediation is an optional process offered by the Rent Adjustment Program to assist parties in settling the issues related to their Rent Adjustment case as an alternative to the formal hearing process. The purpose of mediation is to find a mutual agreement that satisfies both parties. A trained third party will discuss the issues with both sides, look at relative strengths and weaknesses of each position, and consider both parties' needs in the situation. If a settlement is reached, the parties will sign a binding agreement and there will not be a formal hearing process. 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 want to request mediation for your case.

**I/We agree to have my/our case mediated by a Rent Adjustment Program staff mediator.** Yes

**Consent to Electronic Service**

Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will only send documents electronically and not by first class mail.

**I/We consent to receiving notices and documents in this matter electronically at the email address(es) provided in this petition.** Yes

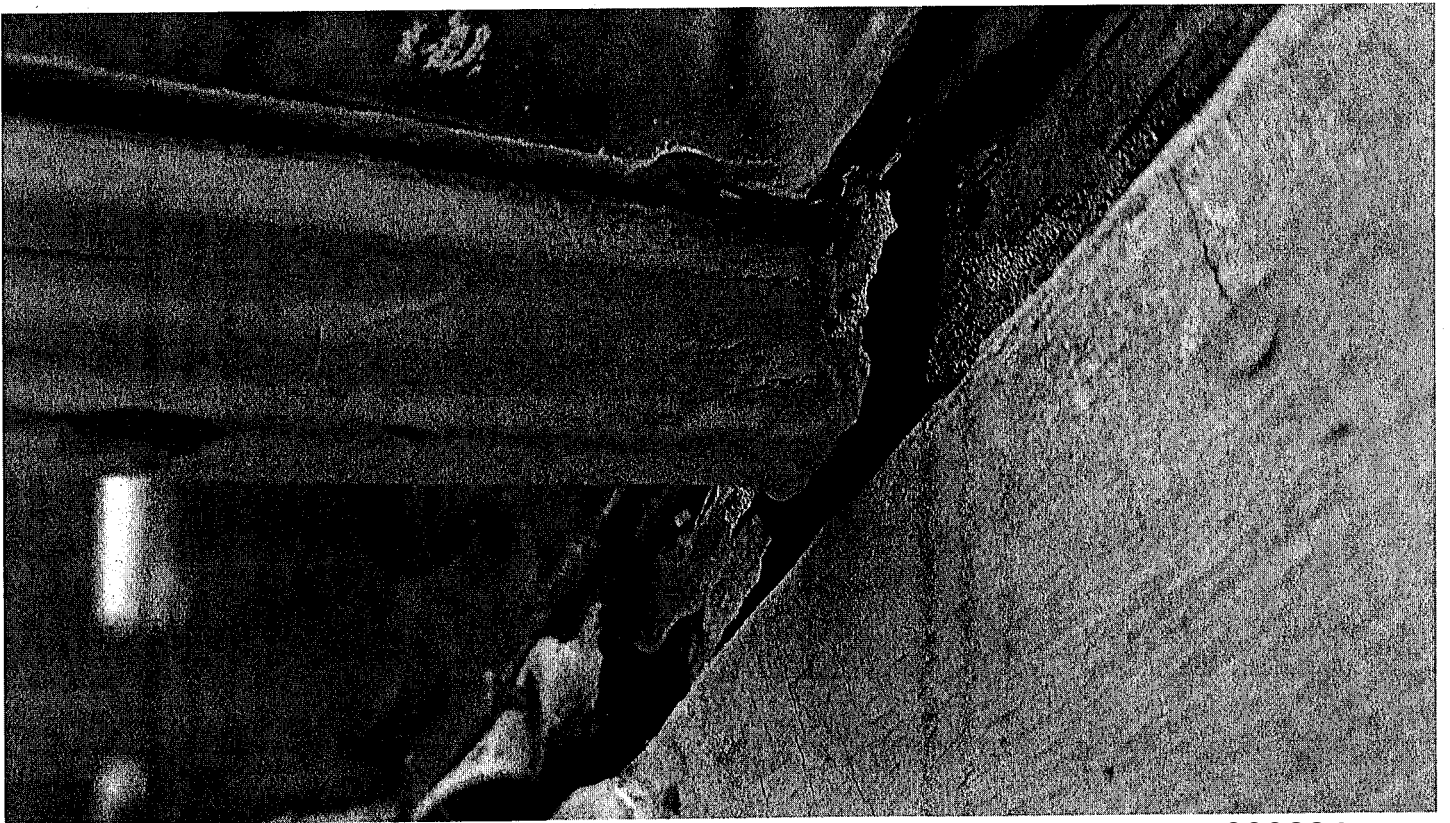
**Interpretation Services**

If English is not your primary language, you have the right to an interpreter in your primary language 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:** No

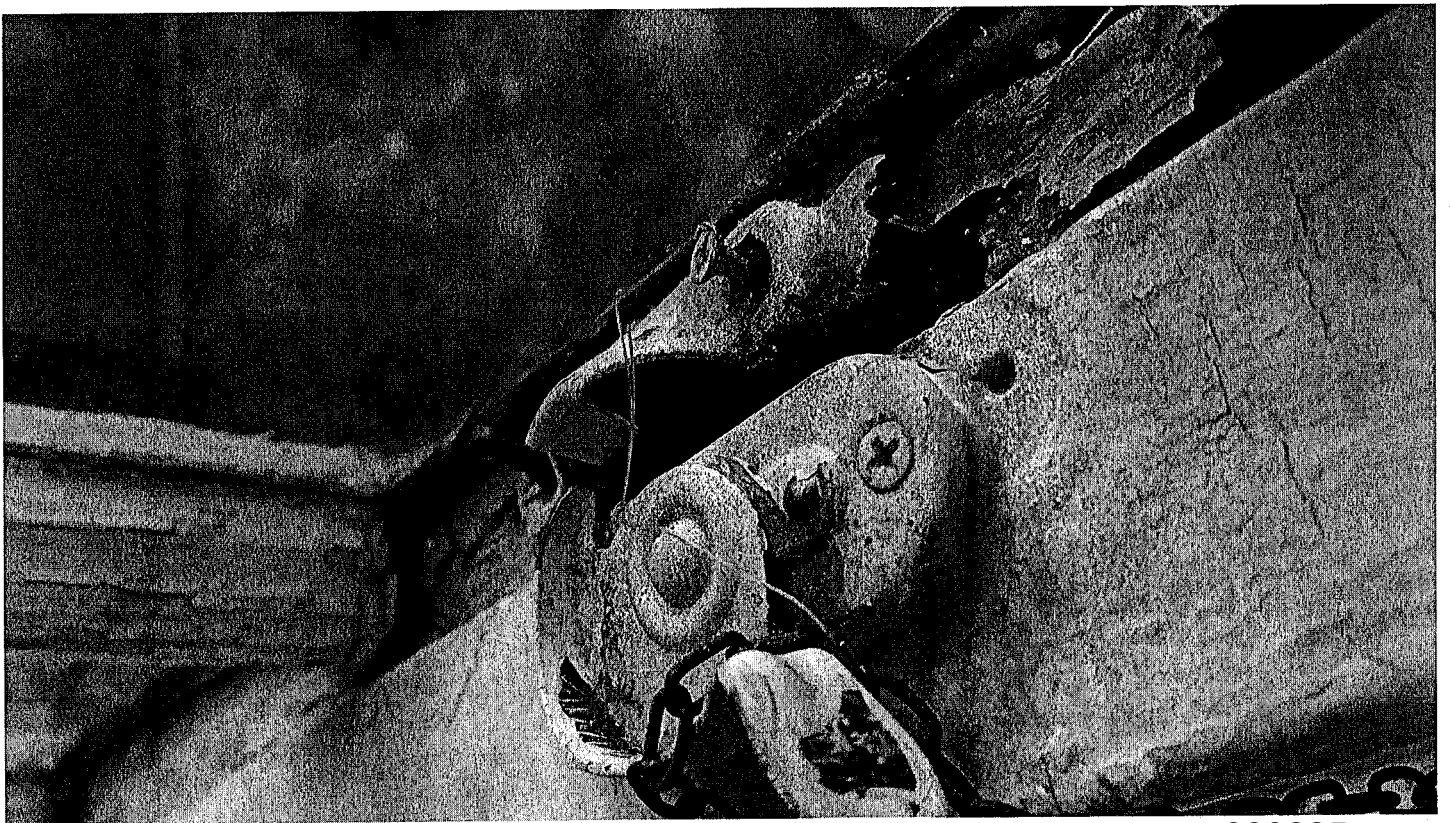


000223

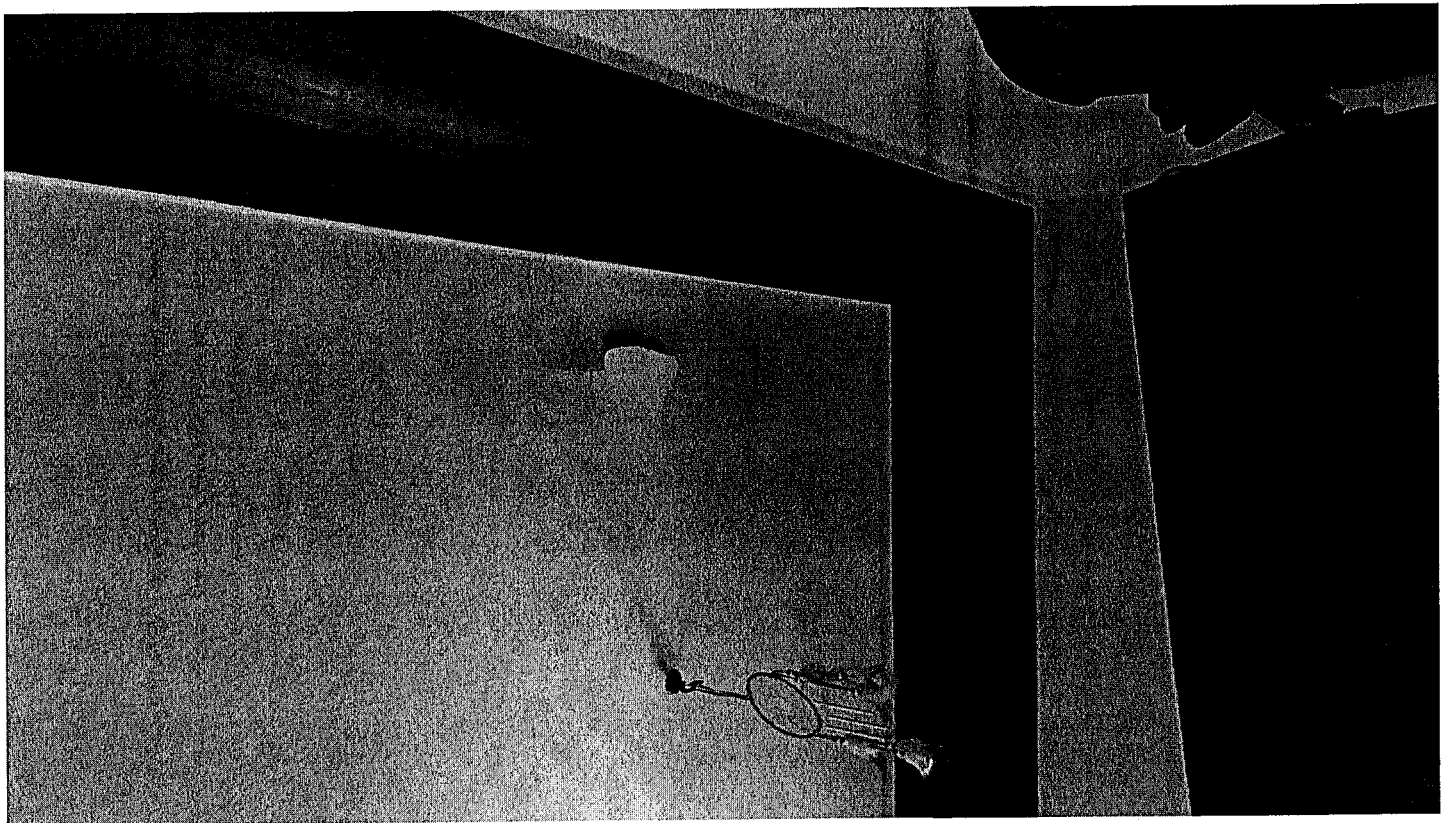


000224

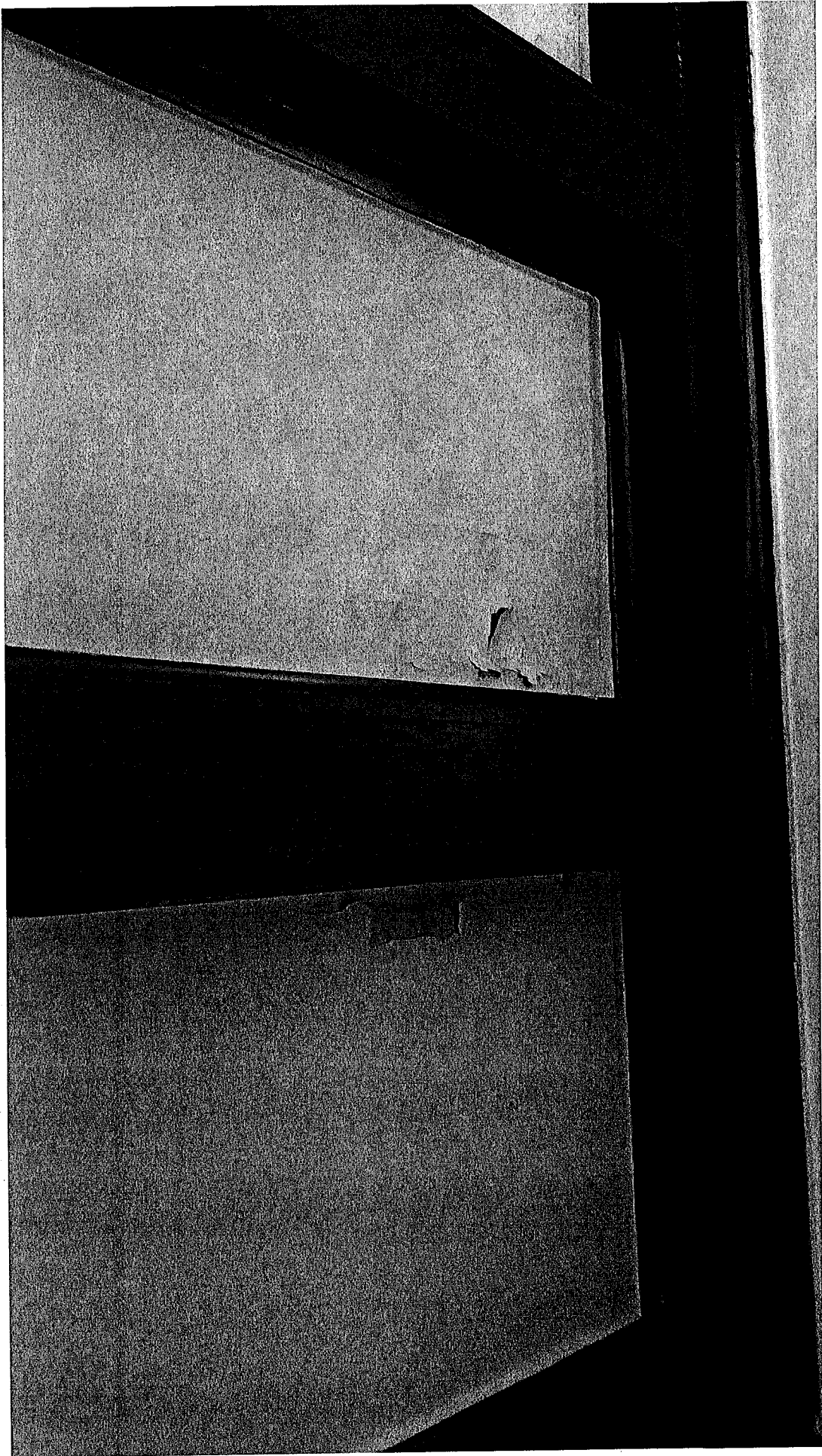




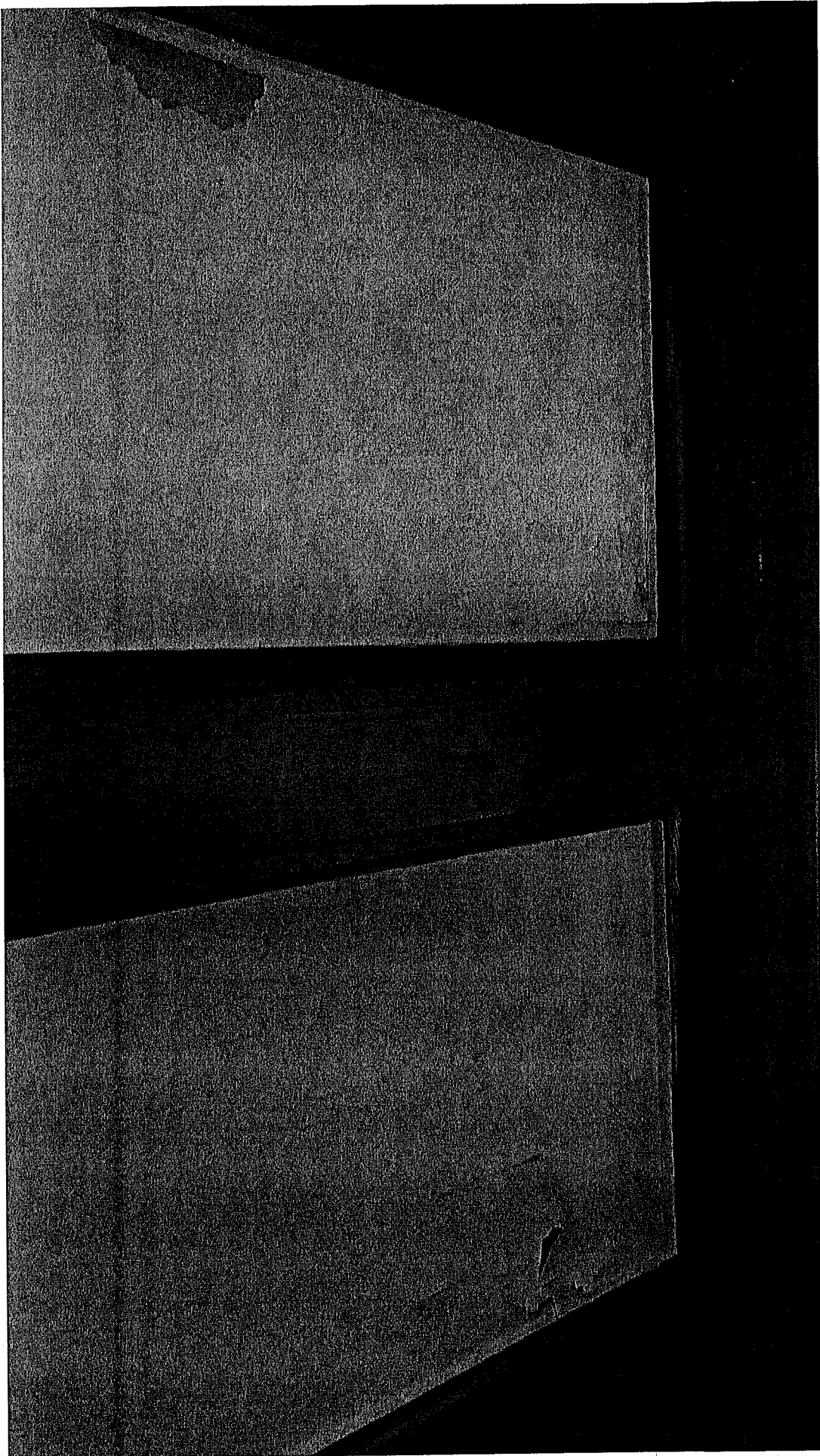
000225



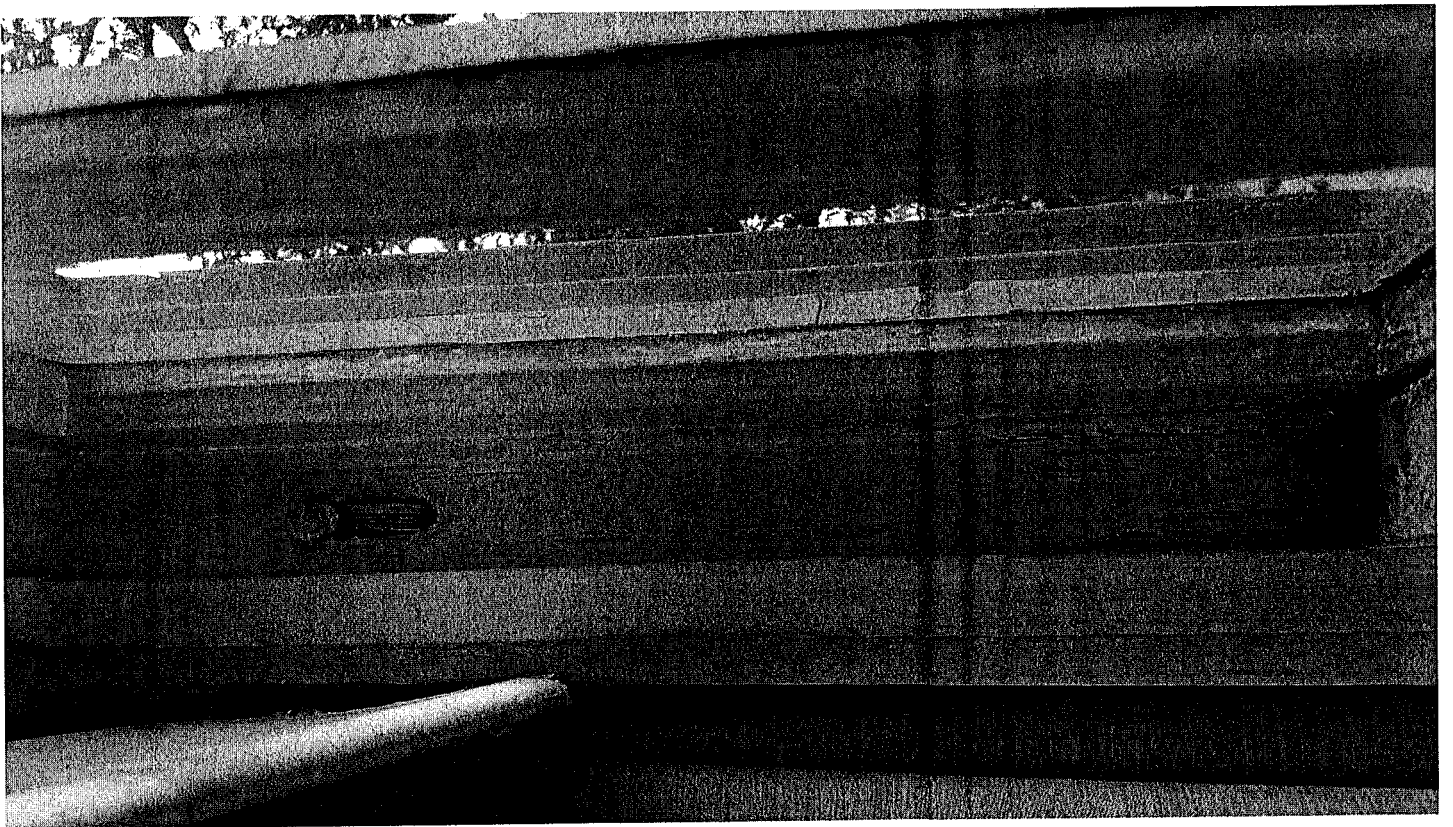
000226



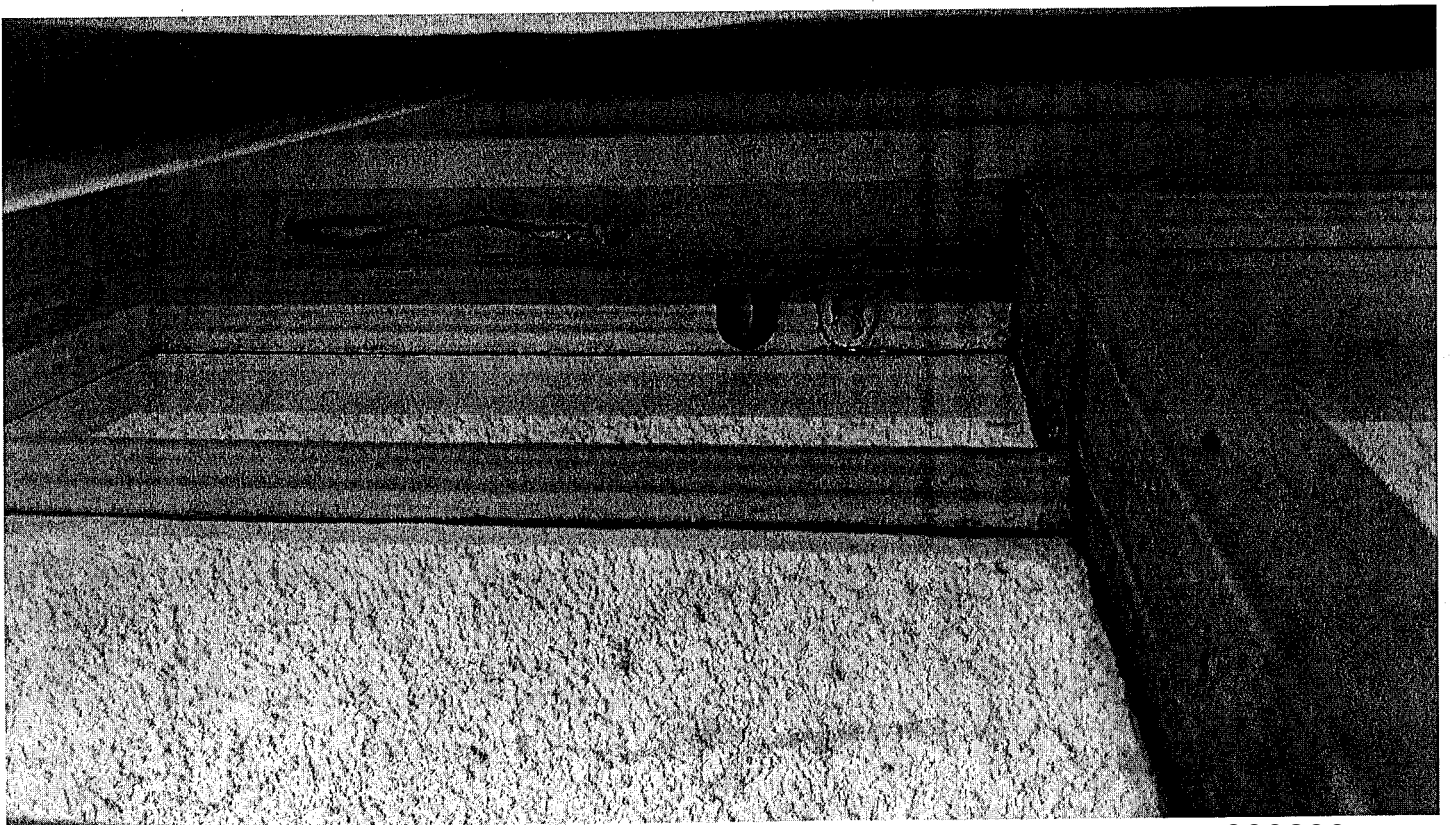
000227



000228



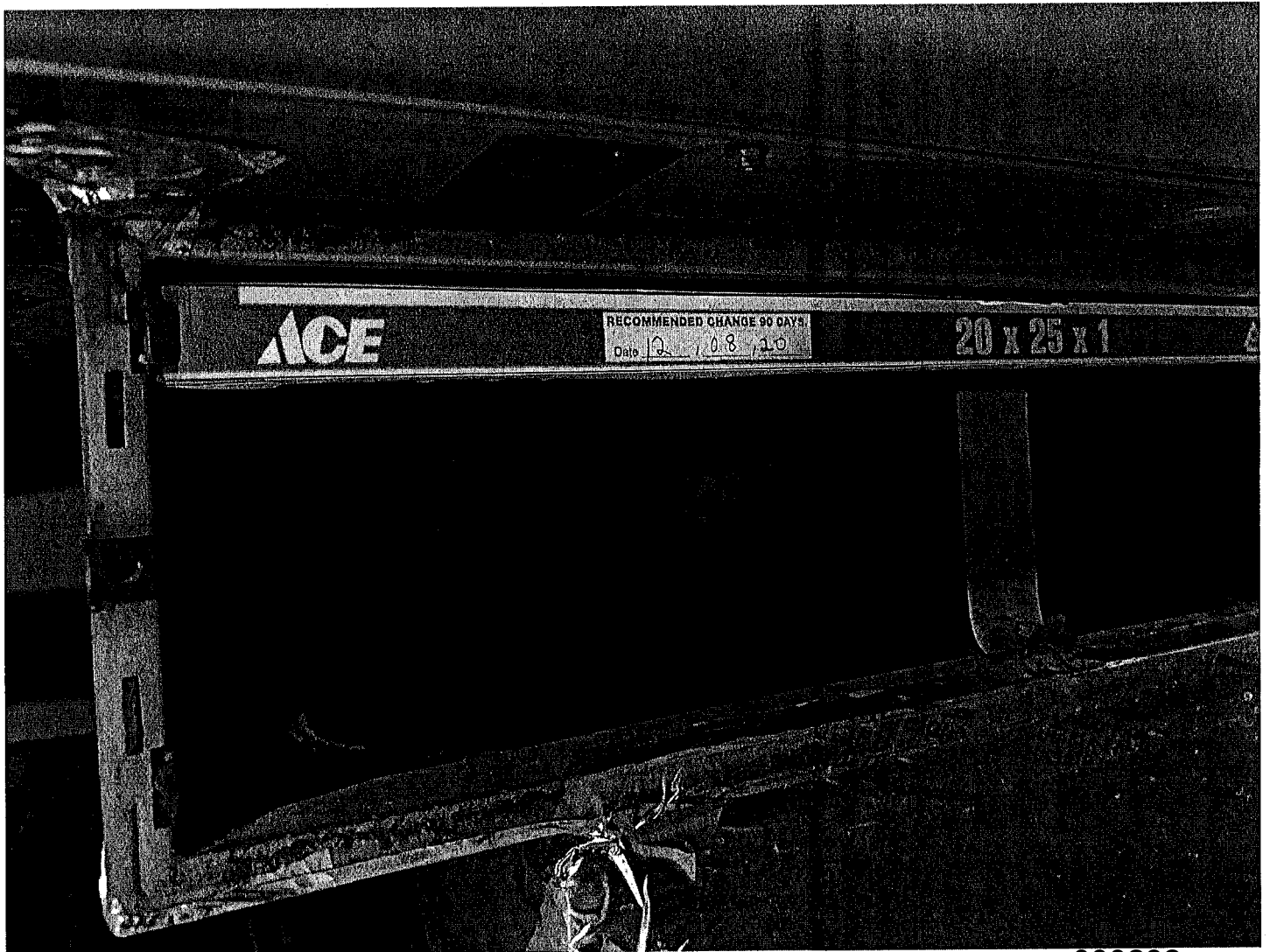
000229



000230

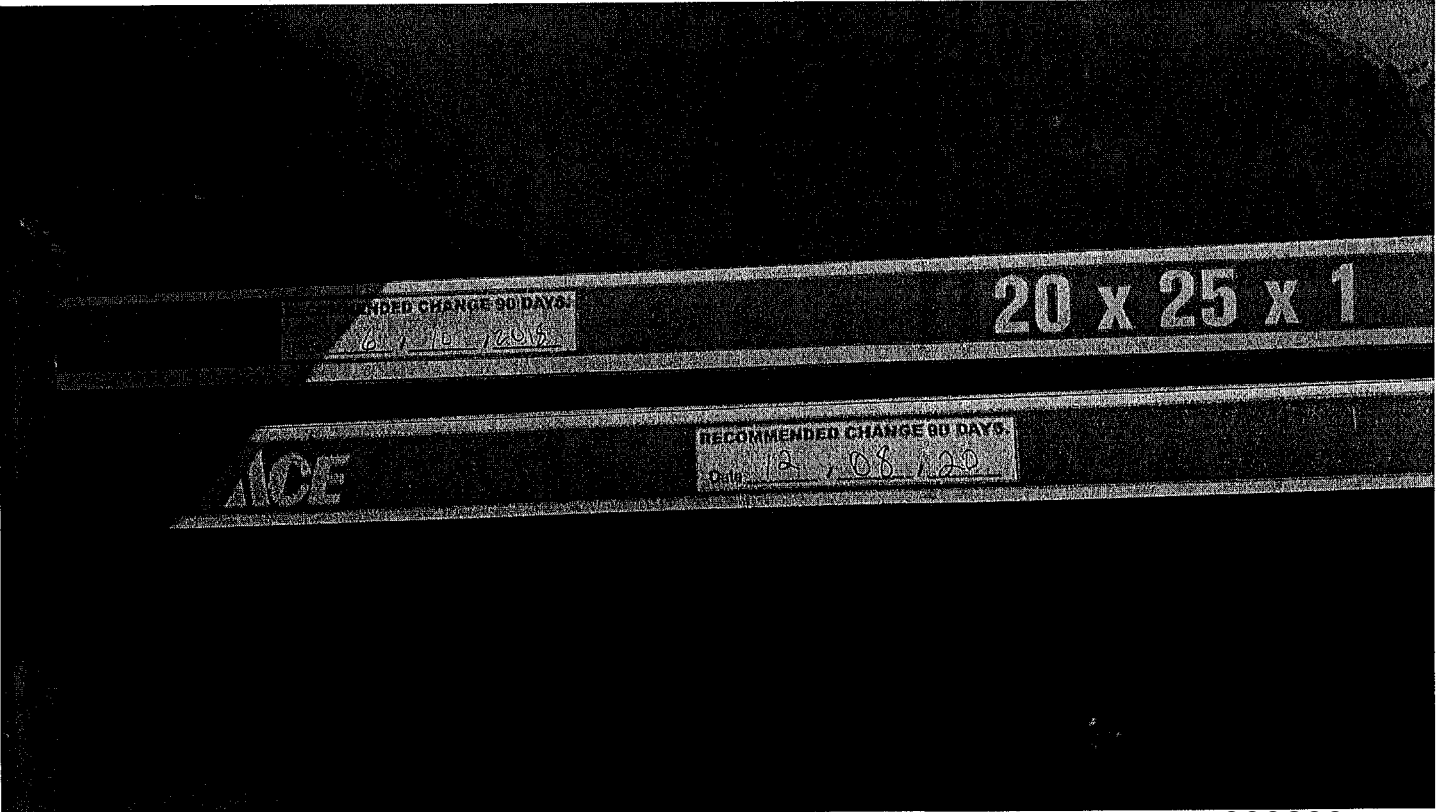


000231



000232





RECOMMENDED CHANGE 90 DAYS

20 x 25 x 1

RECOMMENDED CHANGE 90 DAYS

Date: 12/08/20

WINDOWS ADJUSTMENT  
(UNSTICKING PAINTED SHUT WINDOWS)  
PERFORMED WED 26 MAY 2021

FROM 11A - 6PM BY LANDLORD'S SON & MYSELF

PUT IN MAILBOX Stuart's  
2:45pm 05/28/21

May 29, 2021

Dear Stuart, thank you so much for finally (after almost 2 decades) correcting the painted shut windows issue. However the vast majority of the windows are missing the counterweights that allow windows to remain open on their own without having to place some sort of brace that precludes them from dropping. Also 1 window is in such condition (rotten frame) that your son stated: "if unstuck, it would fall apart & the glass portion would drop out". Therefore as a concession to you, I agreed to leave it as is. Another concession regards leaving the largest window in the living room as is, for your son stated concerns about the frame of that window being compromised & in jeopardy of failing when opening & closing. I also made major concessions for the vast majority of the other windows (10 of 19) by not requiring you to replace the counterweights (in deference to you because it's a very expensive task) <sup>at this point</sup>

Window breakdown: 2 as is; 2 OK; 2 on back porch not used; 2 in the kitchen and 1 in the bathroom now Ok after unsticking = 9 of 19.

In exchange for such major concessions, I would greatly appreciate if you could find & procure expandable screens for 7 of the remaining problematic 10 windows. (3) must be 48 inches long X 6 inches tall; (3) must be 36 inches long X 6 inches tall; (1) must be 66 inches long X 6 inches tall. The 6 inch tall height is because without more extensive & time consuming work on those 7 windows, they will not raise higher even after your son & I used soap to facilitate them going up even that far. The remaining (3 at 36 inches long) can accommodate the standard 10 inch tall screens, which I purchased and will provide you with the receipt so you can reimburse that expenditure to me prior to the upcoming month's rent. I have spent time searching the internet, however I was unable to find screens that are shorter than the standard 10" tall. You having been a general contractor can, I'M sure; locate and/or order and procure the shorter screens which would be in place of having to replace the counterweights. If you don't agree to provide the shorter screens (this is a voluntary measure and concession on my part to save you money and a major expense that would otherwise be required according to building codes and the law). Kindly inform me of your decision within several days so I know how to proceed.

Thank you very much for your consideration, cooperation and timely response to this matter.

Regards, Gregory Smith

000234



CITY OF OAKLAND

CASE # 2003806  
INSPECTOR WAN

250 FRANK H. OGAWA PLAZA - SUITE 2340 - OAKLAND, CALIFORNIA 94612-2031

Planning and Building Department  
Bureau of Building  
Building Permits, Inspections and Code Enforcement Services  
[inspectioncounter@oaklandca.gov](mailto:inspectioncounter@oaklandca.gov)

(510) 238-3381  
FAX: (510) 238-2959  
TDD: (510) 238-3254

### NOTICE OF VIOLATION

October 14, 2020

*Certified and Regular mail*

To: MACINTYRE B S TR SURVIVORS TRUST  
& MACINTYRE ETAL  
478 JEAN ST;  
OAKLAND CA 94610-2622

Code Enforcement Case No.: 2003806

Property: 474 JEAN ST, OAKLAND 94610  
Parcel Number: 010-0822-010-00

Re-inspection Date/Correction Due Date: November 19, 2020

Code Enforcement Services inspected your property on September 17, 2020 and confirmed:

- that the violations of the Oakland Municipal Code (OMC) identified below (p. 2) are present and need to be addressed as specified under "Required Actions". Photographs of the violations are enclosed where applicable.
- that work was performed without permit or beyond the scope of the issued permit and you are receiving this Notice of Violation because you did not get the required permit within three (3) days of receiving the Stop Work Order. You must contact the inspector indicated below before the Re-inspection Date to stop further code enforcement action.

At this point, no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations and contact Inspector Benson Wan, who is assigned to your case, before the re-inspection date shown above to schedule an inspection. Your inspector is available by phone at 510-238-6195 and by email at [bwana@oaklandca.gov](mailto:bwana@oaklandca.gov).

*If the Property Owner Certification is included in this notice you may also complete the form and include photographs of the corrected violations.*

**Note: If a complaint is filed regarding the same or similar violation(s) and it is confirmed within 24 months from the date of this notice an immediate assessment of \$1,176.00 will be charged as a Repeat Violation. In addition, if violation(s) remain uncorrected after you receive a Re-inspection notice, further enforcement action(s) will include additional fees.**

#### Additional Code Enforcement Actions:

- If the re-inspection verifies that all violations have not been corrected, you will be charged for inspection and administrative costs that can total \$2,665.00.
- Property Blight may be abated using City contractors and you will be charged for the contracting and administrative costs.
- The Notice of Violation may be recorded on your property title with associated fees for processing and recording.
- If it is necessary for tenants to vacate so that repairs can be made, you are required to comply with the Code Enforcement Relocation Program (OMC 15.60.010).
- Violations determined to be Investor-Owned (OMC 8.58) or Foreclosed and Defaulted (OMC 8.54) properties will be assessed fees to include re-inspection costs if violations are not corrected and Administrative/Civil penalties.

- 1 -

000235

# Violations

Property Address: 474 JEAN ST.

Complaint #: 2003806

## Property Maintenance (Blight) - (Checklist of Violations attached)

Description of Violation	Required Action	OMC Section

## Building Maintenance (Housing)

Description of Violation	Required Action	OMC Section
House has electrical problems, cause by the 2nd floor water leak through the ceiling, and lighting sockets need to be update for safty issues.	Repair/replace. Obtain permits, inspections and approvals. Fix the leak, patch and paint.	15.08.120 15.08.150 15.08.050 15.08.260 C
Bathroom shower and tiles grout is missing may cause the water leak through the wall.	Fix/Repair.	15.08.050 15.08.230 G
<del>MOST</del> Few windows in the house can not open.	Repair.	15.08.050

## Zoning (Minor)

Description of Violation	Required Action	OMC Section

## Zoning (Major)


Description of Violation	Required Action	Required Action

**Zoning Violations:** Major Zoning violations require a Zoning Determination before an appeal to the Planning Commission. If you wish to appeal a Major Zoning violation, please see the process or filing for a Zoning Determination in the Appeal Section of this notice.

FILED ONLINE 06/04/2021

 Login

For best results, use one of the following browsers: Internet Explorer 11, Google Chrome 42, Mozilla Firefox 37, or Safari 8.

Global Search... 

**Home Building Planning Enforcement Fire**



**File a Complaint Search Complaint Records**

**Record 2102532:  
Housing Habitability Complaint  
Record Status: OP-Case Intake - InspSch**

Record Info 

Custom  
Component

**Processing Status**

-  ▶ Case Intake
  - Courtesy Letter
-  ▶ 1st Inspection
  - Notice of Violation
  - Follow-up Inspection
  - Compliance Plan
- ▶ Sub-Standard
  - Bid Package Preparation
  - Cleanup Process
  - Case Status

- 3 -

## Record Details

CASE # 2102532

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### Case Description:

Windows don't open half way& missing counterweights& don't stay open& rotten windows;shower stall grout disintegrated, mold;peeling paint from upstairs patio & bathroom leak; possible electric issues

### ▼More Details

#### ▣ Parcel Information

##### Parcel Number:

010 082201000

- 4 -

FILED ONLINE 11/07/2021

For best results, use one of the following browsers: Internet Explorer 11, Google Chrome 42, Mozilla Firefox 37, or Safari 8.

Global Search...

Home Building Planning Enforcement Fire

File a Complaint Search Complaint Records

Housing Habitability Complaint

1 2 3 4 5 Review

6 Complaint Submittal

Your Code Enforcement case has been successfully submitted.

Thank you for using our online services.

Your Code Enforcement Case Number is 2105691.

You will need this number to check the status of your code enforcement case.

For Complaints - Property Owners will be given the opportunity to correct the alleged violations. If the violations are not corrected progressive code enforcement will begin. This online complaint is subject to the Oakland Sunshine ordinance and may be used for investigative or legal action.

Other Contacts:

- Alameda County Vector Control: 510-567-6800 to report rats and other vector
- Animal Control: 510-535-5602
- Dust control: 800-334-6367
- Police: 510-777-8622 to report non-emergencies  
510-777-8622 to report abandoned vehicles on streets  
510-777-8538 to report inoperable/abandoned vehicles on private property
- Public Works: 510-615-5566 to report sidewalk and street blight, park maintenance, illegal dumping, sewer/storm drain issues, street light, traffic signs, tree issues, sidewalk damage, parking meters, pot holes, flooding, graffiti, and other street maintenance issues

View Record Details » (You must post the record in the work area.)

[File a Complaint](#)

[Search Complaint Records](#)

**Record 2105691:  
Housing Habitability Complaint  
Record Status: Created**

[Record Info](#)

[Custom Component](#)

**Property Address**

**474 JEAN ST  
94610**

Firefox

<https://aca-prod.accela.com/OAKLAND/Cap/CapDetail.aspx?Modul>

**Case Description:**

1) Peeling paint from ceilings of 2 rooms resulting from upstairs patio water leak 2) Of 19 windows, ONLY 3 open according to the Building Codes. The above listed issues were cited in a Notice of Violation dated Oct 14, 2020 from an inspection dated Sept 17, 2020 with a re-inspection/correction date of Nov 19, 2020. Absolutely NOTHING done by the landlord to rectify issues cited. I filed a subsequent habitability complaint for the same issues online on 06/04/2021 (Case# 2102532) and an Inspector noted and verified nothing had been done by the landlord on 06/08/2021

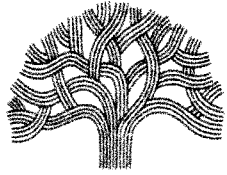
**More Details**

**Parcel Information**

**Parcel Number:**  
010 082201000

- 6 -





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](http://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: 11/10/2021 I served a copy of (check all that apply):

- TENANT PETITION** plus 23 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: 11 PHOTOS INCLUDED IN TOTAL ABOVE

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 Rent Adjustment Program

## Owner Response

Case **T21-0203**  
 Property Address **474 JEAN ST**

### Parties

Party	Name	Address	Mailing Address
Tenant	Gregory Smith (510) 435-1687 galaxigigi@gmail.com	474 Jean St Oakland, CA 94610	
Owner	Stuart MacIntyre (510) 967-6031 stuartmacintyre11@gmail.com	478 Jean St Oakland, CA 94610	

### Business Information

Date of which you aquired the building	<b>1-1-1960</b>
Total Number of Units	4
Is there more than one street address on the parcel?	No
Type of Unit	Apartment, Room or Live-work
Is the contested increase a capital improvements increase?	No
Business License	00052171
Have you paid your business license?	No
Have you paid the Rent Adjustment Program Service Fee (\$101 per unit)?	No

### Rent History

The tenant moved into the rental unit on	1-1-2006
Initial monthly rent	

City of Oakland

## City of Oakland Rent Adjustment Program

### Owner Response

Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to all of the petitioning tenants?	I don't know
---	--------------

On what date was the notice first given?	
--	--

Is the tenant current on the rent?	No
------------------------------------	----

## City of Oakland Rent Adjustment Program

### Owner Response

Are you claiming an Exemption? **No**

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### Owner Responses on Petition Grounds

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#### Questions

#### Owner Response

Tenant did not receive proper notice, was not properly served, and/or was not provided with the required RAP form with rent increase(s)

No Response Submitted

A government agency has cited the unit for serious health, safety, fire, or building code violations.

No Response Submitted

The owner is providing tenant(s) with fewer housing services and/or charging for services originally paid for by the owner.

Mr. Smith is currently suing me regarding these issues. He has filed four of these petitions regarding the same issues at separate dates. Due to the legal action, I am reluctant to answer in detail without legal assistance.

Tenant(s) is/are being unlawfully charged for utilities.

see above

Rent was not reduced after a prior rent increase period for capital improvements.

see above

Tenant is contesting exemption based on fraud or mistake.

see above

Tenant's initial rent amount was unlawful because owner was not permitted to set initial rent without limitation (O.M.C. §

see above

City of Oakland

# City of Oakland Rent Adjustment Program

## Owner Response

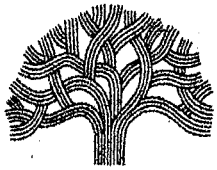
8.22.080C).

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-----END OF RESPONSE-----

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City of Oakland



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](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp

**DEC 14 2021**

**RENT ADJUSTMENT PROGRAM  
OAKLAND**

**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: 11 / 04 / 2021 I served a copy of (check all that apply):

**TENANT PETITION** plus 6 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.

///

///

///

**PERSON(S) SERVED:**

Name	STUART MACINTYRE
Address	478 JEAN ST
City, State, Zip	OAKLAND, CA 94610

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.

GEORGE SUITA  
PRINTED NAME

  
SIGNATURE

12/09/2021  
DATE SIGNED



T21.0203



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](http://www.oaklandca.gov/RAP)

for Rent Adjustment Program date stamp.  
**RECEIVED**

**DEC 14 2021**

**RENT ADJUSTMENT PROGRAM  
OAKLAND**

**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: 11 / 09 / 2021 I served a copy of (check all that apply):

- TENANT PETITION** plus 23 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: 11 PHOTOS INCLUDED IN TOTAL ABOVE

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.

///

///

///

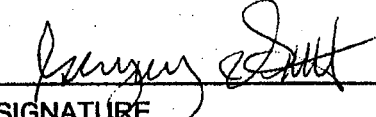
**PERSON(S) SERVED:**

Name	STUART MACINTYRE
Address	478 JEAN ST.
City, State, Zip	OAKLAND, CA 94610

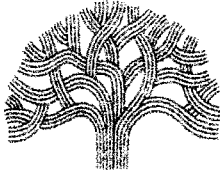
Name	
Address	
City, State, Zip	

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

GABRIEL SMITH  
\_\_\_\_\_  
PRINTED NAME

  
\_\_\_\_\_  
SIGNATURE

12/9/2021  
\_\_\_\_\_  
DATE SIGNED



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](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE** T21-0203

**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:

PROOF OF SERVICE - 2 PGS  
2021.05.26 OpenWin - 1 pg

(insert name of document served)

And Additional Documents

and (write number of attached pages) 1 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.

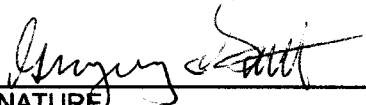
**PERSON(S) SERVED:**

Name	STUART MACINTYRE
Address	478 JEAN ST.
City, State, Zip	OAKLAND, CA 94610

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 12/28/2021 (insert date served).

MAILED

GREGORY SMITH  
PRINT YOUR NAME

  
SIGNATURE

12/28/2021  
DATE

WINDOWS ADJUSTMENT  
(UNSTICKING PAINTED SHUT WINDOWS)  
PERFORMED WED 26 MAY 2021  
FROM 11A - 1PM BY LANDLORD'S SON & MYSELF

ROT IN MAILBOX Stuart's  
2:45pm 05/28/21

May 29, 2021

Dear Stuart, thank you so much for finally (after almost 2 decades) correcting the painted shut windows issue. However the vast majority of the windows are missing the counterweights that allow windows to remain open on their own without having to place some sort of brace that precludes them from dropping. Also 1 window is in such condition (rotten frame) that your son stated: "if unstuck, it would fall apart & the glass portion would drop out". Therefore as a concession to you, I agreed to leave it as is. Another concession regards leaving the largest window in the living room as is, for your son stated concerns about the frame of that window being compromised & in jeopardy of failing when opening & closing. I also made major concessions for the vast majority of the other windows (10 of 19) by not requiring you to replace the counterweights (in deference to you because it's a very expensive task <sup>at this point</sup>)

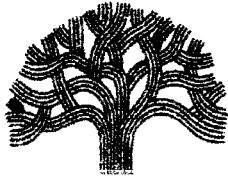
Window breakdown: 2 as is; 2 OK; 2 on back porch not used; 2 in the kitchen and 1 in the bathroom now Ok after unsticking = 9 of 19.

In exchange for such major concessions, I would greatly appreciate if you could find & procure expandable screens for 7 of the remaining problematic 10 windows. (3) must be 48 inches long X 6 inches tall; (3) must be 36 inches long X 6 inches tall; (1) must be 66 inches long X 6 inches tall. The 6 inch tall height is because without more extensive & time consuming work on those 7 windows, they will not raise higher even after your son & I used soap to facilitate them going up even that far. The remaining (3 at 36 inches long) can accommodate the standard 10 inch tall screens, which I purchased and will provide you with the receipt so you can reimburse that expenditure to me prior to the upcoming month's rent. I have spent time searching the internet, however I was unable to find screens that are shorter than the standard 10" tall. You having been a general contractor can; I'm sure; locate and/or order and procure the shorter screens which would be in place of having to replace the counterweights. If you don't agree to provide the shorter screens (this is a voluntary measure and concession on my part to save you money and a major expense that would otherwise be required according to building codes and the law). Kindly inform me of your decision within several days so I know how to proceed.

Thank you very much for your consideration, cooperation and timely response to this matter.

Regards, Gregory Smith

000253



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](http://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.**

~~PROOF OF SERVICE 2 Pgs~~  
2021.01.01 RENT REDUCTION 1 Pgs

I served a copy of:

STOLEN DRYER 2 Pgs  
(insert name of document served)  
 And Additional Documents

and (write number of attached pages) 2 3 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.

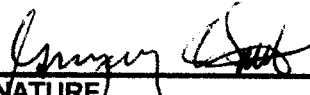
**PERSON(S) SERVED:**

Name	STUART MACINTYRE
Address	478 JEAN ST.
City, State, Zip	OAKLAND, CA 94610

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 ~~11/10/2021~~ (insert date served).

MAILED 12/16/2021

Gregory Smith  
PRINT YOUR NAME

  
SIGNATURE

12/16/21  
11/10/21  
DATE

I HAD TO EXPECT EXTRA EFFORT TO SECURE  
 QUARTERS FOR THE COIL-CREATED DEFEET.  
 I HAD TO EXPECT ADDED TIME, GAS FOR  
 VEHICLE, TO GO OUT OF MY WAY FOR  
 THE QUARTERS, IN ADDITION TO ACCOUNT  
 TYPE EXPENSE, I HAD DETERMINED IT  
 COST ME A RESPONSIBLE (TIME + GAS) EXPENDITURE  
 OF + \$30/MO. + \$43.25/MO AVERAGE FOR GAS  
 + 43.25  
\$ 73.25 Hence \$70/month

put LIBRA in our mind books  
 they are NOT here belonging in the  
 money room - only in the storage area  
 needed.

30	4/20/01	dryer machine	09/18	4400
09	02/20/01	"	07/22	4200
10	02/22/01	"	08/28	4100
11	02/22/01	"	08/28	4100
12	02/22/01	"	08/28	4100
13	02/22/01	"	08/28	4100
14	02/22/01	"	08/28	4100
15	02/22/01	"	08/28	4100
16	02/22/01	"	08/28	4100
17	02/22/01	"	08/28	4100
18	02/22/01	"	08/28	4100
19	02/22/01	"	08/28	4100
20	02/22/01	"	08/28	4100

2020	2021	2022
9/3	4/20/21	1/3
9/5	4/20/21	1/8
9/15	4/20/21	1/12
9/23	4/20/21	1/17
9/29	4/20/21	1/20
9/30	4/20/21	1/23
10/5	4/20/21	1/25
10/10	4/20/21	1/28
10/13	4/20/21	1/30
10/20	4/20/21	2/1
10/21	4/20/21	2/3
10/25	4/20/21	2/5
11/2	4/20/21	2/8
11/5	4/20/21	2/11
11/11	4/20/21	2/13
11/12	4/20/21	2/17
11/14	4/20/21	2/18
11/18	4/20/21	2/20
11/24	4/20/21	2/22
12/2	4/20/21	2/24
12/5	4/20/21	2/25
12/18	4/20/21	2/28
12/19	4/20/21	2/29
12/25	4/20/21	2/29
12/28	4/20/21	2/29
12/29	4/20/21	2/29
12/30	4/20/21	2/29



January 13, 2021

Greg,

In order for me to consider anyone as France's agent in regards to apartment issues I will need a letter stating this signed by Frances and witnessed by one of her other children.

I have tried to deal with you in a calm and considerate manner but you have harassed me and made false claims. A recent example is that I stole your dryer. First of all, the only dryer I gave permission to be installed in the basement belonged to Willow and Mike. They allowed all tenants to use it, and it was my understanding that other tenants contributed to repair costs. If you replaced that dryer with one of your own you did so without my permission. Secondly, I did not steal that dryer. When you started restricting other tenants from use it I put a dryer in the basement for all tenants to use. I took the dryer out of the basement since it could no longer be hooked up down there. What you did with it after that I do not know.

Another recent false claim is rent for the apartment has been paid in the middle of the month since 2018. The rent has always been due the first of the month, and is usually paid in a timely manner. Occasionally I have had to remind you that rent was late.

I have not ignored the notice form the Rent Adjustment Program dated 10/8/2020. As of that time I had not made any rent increases. The rent increase starting January 2021 is equal to the current CPI rent adjustment, which is clearly allowed according to the notice.

You are still in arrears for the April 2020 rent of \$1569 and \$98 withheld from January 2021 rent which is overdue. If I due not receive that money by the end of January 2021 I will have to consider small claims court.



-1-

000257

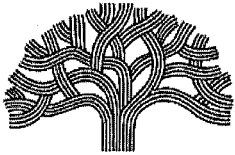
JAN 14, 2021

I GUESS, FOR 1.) YOU DIDN'T READ THE RAP NOTICE REGARDING NOT HAVING TO PAY DISPUTED AMOUNT (\$70.00) SINCE AT LEAST OCT, 2020, WHICH WE PAID UNTIL JAN 2021

2.) I GUESS YOU FORGOT MY SISTER ALSO HAD A WASHER & DRYER SET IN ADDITION TO WILLOW'S SET IN THE 1990'S.

3.) AND AS PER THE AGREEMENT WITH WILLOW'S OTHER TENANTS, WHOEVER DIDN'T PAY THEIR SHARE FOR REPAIRS LOST THEIR USE PRIVILEGES! AND SINCE YOUR DAUGHTER, MIKE OPTED OUT, THEY HAD NO RIGHT TO USE BECAUSE WE PAID THE FULL AMOUNT! AND THE FACT THAT YOU REMOVED THE DRYER, HAD YOUR SON PUT IT OUT WITH THE BULK PICK UP, YOU ARE RESPONSIBLE FOR ITS DISAPPEARANCE AS IT WAS GONE AFTER THE BULK PICK UP. AS FOR THE RAP NOTICE, WHEN FIGURING THE INCREASE, THE AMOUNT USED TO DETERMINE THE INCREASE IS: THE PRIOR YR'S AMOUNT MINUS THE \$70.00 ( $1,569 - 70 = 1,499$ ), WHEREAS YOU USED \$1,569 WHICH IS NOT CORRECT.

AND THE RENT 4 JAN 2021 WAS PUT IN YOUR MAILBOX; AS USUAL; ON JAN 6, 2021 ... SO WHAT DID YOU DO WITH IT?



CITY OF OAKLAND

Housing and Community Development Department  
Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612-2034

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

## **NOTICE OF REMOTE SETTLEMENT CONFERENCE AND HEARING**

File Name: Smith v. MacIntyre  
Property Address: 474 JEAN ST , Oakland, CA 94610  
Case Number: T21-0203

**Due to the continued Covid-19 pandemic in our City, and to protect the health and safety of the parties and City of Oakland employees, the Settlement Conference and Hearing will be held remotely, on Zoom, a free application for audio/video conferences.**

The Hearing Officer will conduct a Settlement Conference to attempt to resolve this matter unless the owner is seeking an exemption. If the Settlement Conference is not successful, the Hearing will begin immediately after the Settlement Conference. The Settlement Conference or Hearing (if there is no settlement conference) will begin on:

Date: February 14, 2022  
Time: 10:00 AM  
Place: REMOTELY via Zoom

**You will receive the Zoom invite prior to the hearing date. Please make sure the Analyst assigned to your case has your updated email address to assure timely communication as the Rent Adjustment Program Office remains closed and staff is working remotely. If you do not have an email address, please contact the Analyst by phone to discuss best ways to contact you.**

### **Submitting Evidence**

If you wish to submit other documents in addition to those submitted with the Petition or Response form, you may do so by emailing the documents to the assigned case Analyst and serving a copy of the documents on the other party. Documents must be received not less than seven (7) days prior to the scheduled Settlement Conference and Hearing date and must be submitted together with a proof of service indicating that the documents were served on the other party. There is a proof of service form on the RAP website that you can use for any documents you serve. See Blank Proof of Service Form. Documents submitted later (or without a proof of service) may be excluded from consideration.

We request that all documents you submit be numbered sequentially, but submissions of more than 15 pages must be numbered. Please black out all sensitive information, such as bank or credit card

**000259**

account numbers and Social Security numbers. The Hearing Officer can also use the official records of the City of Oakland and Alameda County Tax Assessor as evidence if provided by the parties for consideration. If you do not have access to email, the documents may be submitted to the case Analyst by mail.

### **Request to Change Date**

A request for a change in the date or time of the Settlement Conference and Hearing (“continuance”) must be made on a form provided by the Rent Adjustment Program, which can be found at the Rent Adjustment Program website: Request for Continuance. A continuance will be granted only for good cause and the Hearing Officer will issue an Order granting or denying the continuance.

### **Hearing Record**

The Rent Adjustment Program makes an audio recording of the Hearing. Either party may bring a court reporter to record the hearing at their own expense. The Settlement Conference is not recorded. If a settlement is reached, the Hearing Officer will draft a Settlement Agreement to be signed by the parties.

### **Representatives**

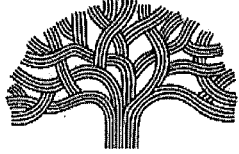
Any party to a Hearing may designate a representative in writing prior to the Settlement Conference or on the record at the Hearing.

### **Interpreter**

The Hearing must be conducted in English. The Rent Adjustment Program will provide interpreters if it is requested on the petition or response forms or in writing in advance of the Hearing. Any party may also bring a person to the Hearing to interpret for them. The interpreter will be required to take an oath that they are fluent in both English and the relevant other language and they will fully interpret the proceeding to the best of their ability.

### **Failure to Appear for Hearing**

If the petitioner fails to appear at the Hearing as scheduled, the Hearing Officer may either conduct the Hearing and render a decision without the petitioner’s participation or dismiss the petition. If the respondent fails to appear at the Hearing as scheduled, the Hearing Officer may either issue an administrative decision without a Hearing or conduct the Hearing and render a decision without the respondent’s participation.



CITY OF OAKLAND

Housing and Community Development Department  
Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612-2034

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

**December 17, 2021**

Owner  
Stuart MacIntyre  
478 Jean St  
Oakland, CA 94610

Tenant  
Gregory Smith  
474 Jean St  
Oakland, CA 94610

Dear Parties:

The Rent Adjustment Program has received a Petition filed by the **Petitioner** listed above. The Proof of Service attached to the Petition states that the Petition was served on the **Respondent(s)** listed above. If you are a Respondent, and you did not receive the Petition, please contact the analyst (listed below).

As instructed on the Petition, the Respondent(s) have 30 days from the date of service (if served personally) and 35 days (if served by mail) to file a Response to the Petition. To file a Response the Respondent(s) must serve a Response on the Petitioner and file the Response with a Proof of Service with the Rent Adjustment Program. The Tenant Response forms can be found at: <https://www.oaklandca.gov/services/respond-to-an-owner-petition-for-the-rent-adjustment-program> and the Property Owner response forms can be found at: <https://www.oaklandca.gov/services/respond-to-a-tenant-petition-for-the-rent-adjustment-program> and contain additional filing instructions. If you do not file a timely Response, the Petition may be granted without a Hearing, or if a Hearing does occur, you may not be permitted to produce testimony or evidence.

**The case has been assigned Case No. T21-0203**

000261

**The case title is Smith v. MacIntyre**

**The analyst assigned to your case is Brittini Lothlen , who can be contacted either by telephone at (510) 238-6415 or by email at [blothlen@oaklandca.gov](mailto:blothlen@oaklandca.gov).**

Please note that you are required to serve a copy of any documents filed with the Rent Adjustment Program on the other party. You must file a Proof of Service with the Rent Adjustment Program together with the document(s) being filed indicating that the document(s) have been served. Property Owner Petitions that include more than 25 pages of attachments with the petition are exempt from this requirement, and the owner may choose to not serve all tenants with those attachments. If the Owner Petition indicates that additional documents exist that are not being served pursuant to this exception, a tenant may request a copy of the documents in their Tenant Response form or view the documents by scheduling a file review with RAP. If the Tenant Response form indicates that the tenant wishes to receive copies of all attachments, the owner must provide them within 10 days.

All documents filed by either party are available for review at the Rent Adjustment Program Office **by appointment only**. If you wish to review the case file, call (510) 238-3721 to schedule an appointment.

If you have questions or need additional information, please contact your assigned analyst.

Thank you.

Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number T21-0203**

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, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Notice of Remote Settlement Conference and Hearing  
Notice to Parties  
Copy of Tenant Petition  
Landlord Response Form

**Owner**

Stuart MacIntyre  
478 Jean St  
Oakland, CA 94610

**Tenant**

Gregory Smith  
474 Jean St  
Oakland, CA 94610

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 **December 17, 2021** in Oakland, CA.

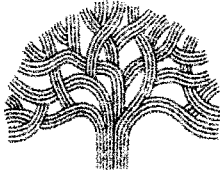
*Deborah Griffin*

---

Deborah Griffin

Oakland Rent Adjustment Program

000263



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](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE** T21-0203

**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:

PROOF OF SERVICE - 2 PGS  
2021.05.26 OpenWin - 1 pg

(insert name of document served)

And Additional Documents

and (write number of attached pages) 1 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:**

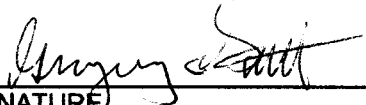
Name	STUART MACINTYRE
Address	478 JEAN ST.
City, State, Zip	OAKLAND, CA 94610



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 12/28/2021 (insert date served).

MAILED

GREGORY SMITH  
PRINT YOUR NAME

  
SIGNATURE

12/28/2021  
DATE

WINDOWS ADJUSTMENT  
(UNSTICKING PAINTED SHUT WINDOWS)  
PERFORMED WED 26 MAY 2021  
FROM 11A - 6PM BY LANDLORD'S SON & MYSELF

ROT IN MAILBOX Stuart's  
2:45pm 05/28/21

May 29, 2021

Dear Stuart, thank you so much for finally (after almost 2 decades) correcting the painted shut windows issue. However the vast majority of the windows are missing the counterweights that allow windows to remain open on their own without having to place some sort of brace that precludes them from dropping. Also 1 window is in such condition (rotten frame) that your son stated: "if unstuck, it would fall apart & the glass portion would drop out". Therefore as a concession to you, I agreed to leave it as is. Another concession regards leaving the largest window in the living room as is, for your son stated concerns about the frame of that window being compromised & in jeopardy of failing when opening & closing. I also made major concessions for the vast majority of the other windows (10 of 19) by not requiring you to replace the counterweights (in deference to you because it's a very expensive task <sup>at this point</sup>)

Window breakdown: 2 as is; 2 OK; 2 on back porch not used; 2 in the kitchen and 1 in the bathroom now Ok after unsticking = 9 of 19.

In exchange for such major concessions, I would greatly appreciate if you could find & procure expandable screens for 7 of the remaining problematic 10 windows. (3) must be 48 inches long X 6 inches tall; (3) must be 36 inches long X 6 inches tall; (1) must be 66 inches long X 6 inches tall. The 6 inch tall height is because without more extensive & time consuming work on those 7 windows, they will not raise higher even after your son & I used soap to facilitate them going up even that far. The remaining (3 at 36 inches long) can accommodate the standard 10 inch tall screens, which I purchased and will provide you with the receipt so you can reimburse that expenditure to me prior to the upcoming month's rent. I have spent time searching the internet, however I was unable to find screens that are shorter than the standard 10" tall. You having been a general contractor can, I'm sure; locate and/or order and procure the shorter screens which would be in place of having to replace the counterweights. If you don't agree to provide the shorter screens (this is a voluntary measure and concession on my part to save you money and a major expense that would otherwise be required according to building codes and the law). Kindly inform me of your decision within several days so I know how to proceed.

Thank you very much for your consideration, cooperation and timely response to this matter.

Regards, Gregory Smith

000266

## McGowan, Briana

---

**From:** GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <galaxigigi@gmail.com>  
**Sent:** Saturday, January 15, 2022 1:02 PM  
**To:** Hearings Unit; Lothlen, Brittni; Silveira, Ava  
**Subject:** ProofService& ConfiscatedDryerReceipt #T21-0203  
**Attachments:** DryerMotorReceipt135.pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Hearings unit et al., attached you will find the proof service and a receipt for the motor thus machine confiscated by the landlord and replaced by a coin-operated dryer which constitutes loss of services even though he (landlord) increased the rent. Also I was informed by The Oakland Building & Codes office in Dec. 2021 that the landlord received a fine in early July of 2021 with a pay by date of 15 days later, however the landlord ignored the notice triggering a Lien being placed on the property mid to late July 2021. The landlord is in possession of the Notices, however they (Oakland Build. & Codes) would not furnish me with a copt(ies), therefore I am unable to provide such notice(s) to RAP or the landlord. Please advise. Thank you for your cooperation regarding this matter, regards, Gregory Smith Case # T21-0203

--

GalaxiStudioAdoresU  
CIAO, Gregory

This transmission (including attachments, if any) is intended solely for the use of the individual or entity to which it is addressed and contains information that is privileged, proprietary, confidential and/or exempt from disclosure. If you are not the intended recipient, you are notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender, erase and destroy any copies of this transmission immediately.

OCTE WILLIAMS  
510-517-0303

INVOICE 119653

DATE 9/18/2020

PROPOSED

COMPLETED

CUSTOMER'S PROPERTY IS  IS NOT  INSURED OR PROTECTED BY DEALER FOR ACTUAL CASH VALUE AGAINST LOSS FROM FIRE, THEFT, VANDALISM, OR OTHER CAUSES.

— CUSTOMER —

NAME \_\_\_\_\_ REMARKS \_\_\_\_\_

ADDRESS 474 - JEAN S

CITY OAKLAND

TERMS \_\_\_\_\_

MODEL WPL \_\_\_\_\_ MAKE \_\_\_\_\_ PHONE \_\_\_\_\_

QUANTITY \_\_\_\_\_ MATERIALS \_\_\_\_\_ SERIAL NUMBER \_\_\_\_\_

AMOUNT \_\_\_\_\_

WAS POOL DRYER

REPLACED MOTOR

PART - LABOR 250

(OVERLOAD WITH WET CLOTHES)

DO NOT OVERLOAD DRYER

BURN OUT THE MOTOR

LIMITED WARRANTY: Service Dealer's warranty is limited to thirty (30) days replacement without service charge, covering only the specific parts listed above. Manufacturer's product warranty extending beyond this thirty (30) days, remains the responsibility of the manufacturer (unless specifically stated otherwise) and not that of the service dealer. Service Dealer warrants only the parts installed and does not warranty anything else related to the repaired unit. In the event of unsatisfactory performance with the unit, the service dealer must be notified within seven (7) days after acceptance by the customer.

PARTS TOTAL 150

SERVICE CALL 0

TECHNICAL CHG. 0

REMOVE & INSTALL 100

TAX

CASH PRICE 250

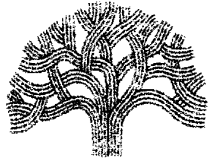
Customer's Signature

*[Signature]*

FORM NO. 688 COPYRIGHT 1976 - O.W. DONALD - FT. SMITH, ARKANSAS

THIS IS FOR THE DRYER MOTOR THUS MACHINE THAT WAS CONFISCATED; THROWN AWAY WITH A SCHEDULED BULK PICKUP BY THE LANDLORD WITHOUT MY PERMISSION. (REMOVED BY LANDLORD'S SON ON 9/14/20, PICKED UP BY GARBAGE PERSONS ON 9/15/20. IT WAS REPLACED BY COIN-OPERATED DRYER; REDUCED SERVICE, INCREASED RENT.

000268



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](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE T21-0203**

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- 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:

2pgs - PROOF OF SERVICE  
 1pg - DRYER MOTOR RECEIPT  
 (insert name of document served)  
 And Additional Documents

and (write number of attached pages) 1 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.
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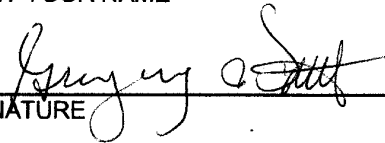
**PERSON(S) SERVED:**

Name	STUART MACINTYRE
Address	478 JEAN ST.
City, State, Zip	OAKLAND, CA 94610

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 01/14/2022 (insert date served).

MAILED

GREGORY SMITH  
PRINT YOUR NAME

  
SIGNATURE

01/14/2022  
DATE

**ORDER OF CONSOLIDATION AND CONTINUANCE**

**CASE NUMBERS:** T20-0202, T20-0250,  
T21-0021, T21-0030, T21-0203

**CASE NAMES:** Smith v. MacIntyre

**PROPERTY ADDRESS:** 474 Jean Street, Oakland, CA

**BACKGROUND**

Petition T20-0202 was filed on September 14, 2020. Thereafter, Petition T20-0250 was filed on December 11, 2020. Most recently, the Tenant filed a fifth petition on November 9, 2021. Previously, the Petitioner requested that the cases be consolidated for hearing. Said request was granted and the matters were continued to allow the parties to proceed under the jurisdiction of the Superior Court of Alameda County.

There are now a total of five cases pending that involve the same parties and the same property. Accordingly, they will be consolidated and set for hearing in one proceeding once the aforementioned litigation is resolved.

**GOOD CAUSE APPEARING, IT IS HEREBY ORDERED** that the above-referenced matters are consolidated for hearing, and the hearing on February 14, 2022, is hereby postponed.

Dated: January 20, 2022

---

Élan Consuella Lambert  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number(s): T20-0202, T20-0250,**

**T21-0021, T21-0030, T21-0203**

**Case Name: Smith v. MacIntyre**

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**

Order of Consolidation and Continuance

**Owner**

Stuart MacIntyre  
478 Jean St  
Oakland, CA 94610

**Tenant**

Gregory Smith  
474 Jean St  
Oakland, CA 94610

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 **January 21, 2022** in Oakland, California.

*Brittini Lothlen*

\_\_\_\_\_  
Brittini Lothlen  
Oakland Rent Adjustment Program



## McGowan, Briana

---

**From:** GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <galaxigigi@gmail.com>  
**Sent:** Sunday, January 23, 2022 5:59 PM  
**To:** Hearings Unit; Lothlen, Brittni; Silveira, Ava  
**Subject:** Fwd: 474 Jean Street-Copy of Notice of Violation

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear RAP, I am forwarding emails I received from the supervisor of Inspector Wan of the City of Oakland Building and Codes Dept regarding 474 Jean St (Case # T21-0203). I was informed by Super Lai via the forwarded email that for reasons never explained that this is his response regarding my request for documents related to "The Notice of Fine" and subsequent "Lien" lodged against the landlord due to the landlord's failure to pay the Fine levied; both actions were performed in July of 2021. And since the landlord is in possession of such documents, what is required of me to have this included in the case ??? Your direction and advice is greatly appreciated. Thank you for your cooperation regarding this matter, regards, Gregory Smith Case # T21-0203

----- Forwarded message -----

**From:** GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <galaxigigi@gmail.com>  
**Date:** Tue, Dec 28, 2021 at 12:31 PM  
**Subject:** Re: 474 Jean Street-Copy of Notice of Violation  
**To:** Lai, Benjamin <BLai@oaklandca.gov>

Nevermind, I found out what I need and Will Not be bothering you anymore....Happy Holidays, regards Gregory Smith

On Tue, Dec 28, 2021, 11:44 AM GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <galaxigigi@gmail.com> wrote:

Thnx for the response however you have not listed the fine amount nor the Lien you personally told me had been lodged. And as I imparted to you on numerous occasions, I already have the original NOTICE of VIOLATION. I have repeatedly requested The Notice of Non-Compliance, Notice of Fine and Notice of Lien. The aforementioned are public records, therefore there is no prohibiting reason for you not to send those. I would greatly appreciate it if you would forward copies of those to me As Soon As Possible. If you are unable to accommodate me, kindly let me know who is the appropriate person to contact and I will Cease troubling you and I will act accordingly. Kindly respond in the next hour so I know how to proceed. Thnx for your time and cooperation regarding this long overdue matter. Regards, Gregory Smith Case#2003806; 2102532; 2105691

On Tue, Dec 28, 2021 at 10:54 AM Lai, Benjamin <BLai@oaklandca.gov> wrote:

Hello Mr. Smith,

Per our conversation earlier this week, fees have been assessed against the property for non-compliance on the outstanding repair items listing in the Notice of Violation, a copy of which was provided to you.

If you have any additional questions regarding the case, please contact inspector Wan for updates.

If I can provide additional assistance, please do not hesitate to contact me.

Benjamin

---

**From:** Lai, Benjamin  
**Sent:** Wednesday, November 24, 2021 11:02 AM  
**To:** [Galaxigigi@gmail.com](mailto:Galaxigigi@gmail.com)  
**Subject:** 474 Jean Street-Copy of Notice of Violation

Hello Mr. Smith,

Per our telephone conversation yesterday, I am attaching a copy of the original Notice of Violation that was issued to the property owner.

Please contact inspector Wan directly if you have specific questions regarding the case. A follow-inspection is scheduled for this coming Monday, November 29<sup>th</sup> with inspector Wan. He can be reached at 510-238-6195 or email: [BWan@Oaklandca.gov](mailto:BWan@Oaklandca.gov)

Do not hesitate to contact me if I can provide additional assistance.

Have a happy Thanksgiving.

Benjamin Lai  
Senior Specialty/Combination Inspector  
Bureau of Building  
(510) 238-6148

--  
GalaxiStudioAdoresU  
CIAO, Gregory

This transmission (including attachments, if any) is intended solely for the use of the individual or entity to which it is addressed and contains information that is privileged, proprietary, confidential and/or exempt from disclosure. If you are not the intended recipient, you are notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender, erase and destroy any copies of this transmission immediately.



CITY OF OAKLAND

Housing & Community Development  
Rent Adjustment Program

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, California 94612

(510) 238-3721  
FAX (510) 238-3691  
CA Relay Service 711

### REQUEST TO DISMISS PETITION

Date 01/31/22 JAN 31, 2022

TO: City of Oakland, Residential Rent Adjustment Program

I, CAROLY SMITH, filed a petition with the Oakland Rent Adjustment Program.

T21-0030 T21-0197; ALL 5 OF THEM  
T21-0021 PRIOR 5 PETITIONS  
T20-0250  
T20-0202

The Case Number is T20-0202. I request that my ~~petition~~ be dismissed.

- I've moved and my new address is:

\_\_\_\_\_ (Street Address)  
 \_\_\_\_\_ (City/State/Zip code)

- The reason for dismissing my petition is: I DESIRE TO FOCUS ON THE LATEST PETITION T21-0203 FILED NOV 9, 2021; THE PRIOR ONES ARE REDUNDANT

Signed *Carol Smith*  
Petitioner

Date 1/31/22

### ORDER

At the request of the Petitioner, case number \_\_\_\_\_ is dismissed without prejudice.

The hearing scheduled for \_\_\_\_\_ is cancelled.

Dated: \_\_\_\_\_

HEARING OFFICER

**Retaliation against tenants for using the Rent Adjustment process is prohibited by California Civil Code Section 1942.5 and Oakland Municipal Code Section 8.22.130.**



ORDER RE MEDIATION

CASE NUMBERS: T20-0202; T20-0250; T21-0021; T21-0300; T21-0203  
CASE NAME: MacIntyre v. Smith  
PROPERTY ADDRESS: 417 62<sup>nd</sup> Street, Oakland, CA

**BACKGROUND**

Petitioner herein filed the following petitions which were ordered consolidated for hearing :

T20-0202 on September 14, 2020;  
T20-0250 on December 11, 2020;  
T21-0021 on February 22, 2021;  
T21-0030 on March 13, 2021; and  
T21-0203 on November 9, 2021.

The above 5 cases were consolidated for hearing with the undersigned. Petition T21-0203 also included a request for mediation. Most recently, the Petitioner indicated that he would like to pursue mediation on the issues listed in T21-0203 and dismiss T20-0202, T20-0250, T21-0021, and T21-0030.

The undersigned is in receipt of a Request to Dismiss to Dismiss Petitions T20-0202, T20-0250, T21-0021, and T21-0030.

**GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

Petitions T20-0202, T20-0250, T21-0021, and T21-0030 are dismissed with prejudice; T20-0203 will proceed on February 15, 2022 for mediation between the parties.

A Mediation is now being scheduled for the purpose of the resolving petition T21-0203 and the issues raised therein.

The Mediation is scheduled as follows:

DATE: February 15, 2021  
TIME: 10:00 a.m.

Zoom Link

Topic: 2022.02.15 RAP Mediation - T21-0203 MacIntyre v. Smith  
Time: Feb 15, 2022 02:00 PM Pacific Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/83310369659?pwd=Z3BsaTVxcWowaktuTmx6SjhhMkY0UT09>

Meeting ID: 833 1036 9659

Passcode: 011649

One tap mobile

+16699009128,,83310369659#,,, \*011649# US (San Jose)

+13462487799,,83310369659#,,, \*011649# US (Houston)

Dial by your location

+1 669 900 9128 US (San Jose)

+1 346 248 7799 US (Houston)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 301 715 8592 US (Washington DC)

Meeting ID: 833 1036 9659

Passcode: 011649

Find your local number: <https://us02web.zoom.us/u/kd2g8ZXfXN>



Dated: January 31, 2022

---

Élan Consuella Lambert  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number(s): T20-0202, T20-0250,  
T21-0021, T21-0030, T21-0203  
Case Name: Smith v. MacIntyre**

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**

Order of Re Mediation

**Owner**

Stuart MacIntyre  
478 Jean St  
Oakland, CA 94610

**Owner Representative**

David Sternfeld  
Law Office of David Sternfeld  
420 3<sup>rd</sup> Street Ste 200  
Oakland, CA 94607

**Tenant**

Gregory Smith  
474 Jean St  
Oakland, CA 94610

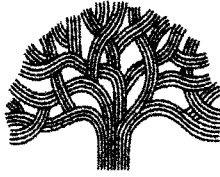
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 **January 31, 2022** in Oakland, California.

*Brittni Lothlen*

\_\_\_\_\_  
Brittni Lothlen  
Oakland Rent Adjustment Program

**000279**



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](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE**

T21-0203

**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:

RENT 2020 AND 2021 - 2 PGS  
2006 TO PRESENT RENT INCREASE - 5 PGS  
PROOF OF SERVICE - 2 PGS

(insert name of document served)

And Additional Documents

and (write number of attached pages) 7 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	STUART MACINTYRE
Address	478 JEAN ST.
City, State, Zip	OAKLAND, CA 94610



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 2/1/22 (insert date served).  
MAILED

GREGORY SMITH  
PRINT YOUR NAME

Gregory Smith  
SIGNATURE

2/1/22  
DATE

Rent increase letter.  
Dec,8,2019

#

Frances:

*Effective January 1, 2020 your rent will increase by \$53.00 to \$1569.00 per mo.*

Thank you

Stuart MacIntyre

- 1 -

SEE OVER



000282

DELIVERED 12/31/2020  
ALONG W/ 1ST PAGE OF RENT  
ADJUST PRO GRAM DATED 1/1/2021

Rent increase Letter - Revised  
December 14, 2020

Frances:

It has come to my attention that the law might not allow me to charge the \$69 fee for utility, tax and insurance costs.

Therefore effective January 1, 2021 your rent will increase by 2.7% \$42.00 to \$1637.00 per mo.

I have been trying to keep the rent as low as possible and still be able to pay my bills. Rising utilities costs make this difficult. Please be mindfully of your gas, electricity, and water use.

Additionally, the building is experiencing sewer problems cause by the use of flushable wipes. Please make sure that no one in you unit is using flushable wipes. The only thing safe to flush down the toilets is toilet paper or human wastes.

Thank you

Stuart MacIntyre

RESPONSE / CORRECTION

\$1,569.00 PRIOR RENT UP UNTIL YOU DISCONNECTED, STOLE & DISPOSED OF OUR DRYER  
- 70.00 ESTIMATED ADDED COST FOR DRYER/MO (SEE ATTACHED NOTIFICATION)  
1,499

# 1,499 x 2.7% CPI = \$40.473

ROUNDED ≈ \$40.00

# 1,499.00

# 1,539.00

(+ 25.00)

~~\$1,569.00~~  
\$1,539.00

THIS IS A SURREPTITIOUS DOUBLE DIP  
AND POSSIBLY ILLEGAL  
AS OF 01/01/2021

NOTE: NO ONE IS USING WIPES HERE AS I INFORMED YOU IN MAY (MAY 4, 2018) SINCE THE INCIDENT IN SEPT, 2018.

NOTE: THE EXTRA \$25.00 FEE WITH 2 HAS BEEN FIGURED IN TO THE YEARLY INCREASE ALREADY AND YOU HAVE BEEN ADDING IT 2X SURREPTITIOUSLY? FOR MANY YEARS

#

Rent increase letter.  
Dec,8,2019

Frances:

*Effective January 1, 2020 your rent will increase by \$53.00 to \$1569.00 per mo.*

Thank you

Stuart MacIntyre

Rent increase letter.

November 29 2017

Frances:

Effective January 1, 2018 your rent will increase by \$33.00 to ~~\$1457.00~~

*1457.00*

Thank you

Stuart MacIntyre

Rent increase letter.

November 7 2016

Frances:

Effective January 1, 2017 your rent will increase by 2% or \$28.00 from \$1396.00 to \$1424.00

Thank you

Stuart MacIntyre



- 3 -

Rent increase letter.

November 7 2015

Frances:

Effective January 1, 2016 your rent will increase by 1.7% or \$23.00 from \$1373.00 to 1396.0

Thank you

Stuart MacIntyre

---

Rent increase letter.

November 29 2014

Frances:

Effective January 1, 2015 your rent will increase by 1.9% or \$26.00 to \$1373.00

Thank you

Stuart MacIntyre



- 4 -

000285

**Rent increase letter.**

**November 29 2013**

**Frances:**

**Effective January 1, 2014, your rent will increase by 2.1% or \$28.00 to \$1347.00**

**Thank you**

**Stuart MacIntyre**

---

**Rent increase letter.**

**November 12, 2011**

**Frances:**

**Effective January 1, 2013, your rent will increase by 3% to \$1319.00.**

**Thank you**

**Stuart MacIntyre**

November 12, 2011

Frances:

Effective January 1, <sup>2012</sup> 2021, your rent will increase by 2% to \$1281.00.

Thank you

Stuart MacIntyre



December 14, 2010

Frances:

Effective January 1, 2011, your rent will increase by 2.7% to \$1256.00.

Thank you

Stuart MacIntyre



April 22, 2009

Francis Tabor:

Effective June 1, 2009 your rent will increase by 3.2% to \$1223 per month

Sincerely,

Stuart MacIntyre



1/1/08

Francis:

Utility costs are soaring as they try to get us to conserve. We are waging the rents as of February 1, 2008 the allowed 3.3%. Your current rent is \$1100 per month + \$25 each for additional people. Your new monthly rent will be \$1135 + \$50 for grandkids.

Thanks Joan and Stu

12/30/2006

Frances:

2 years since a rent raise so up it goes on 2/1/2007

Your rent will be  $\$1065 \times 3.3 = \$1100 + \$25$  per month for each occupant over two to cover water and electrical costs.

Thanks

Joan & Stu

~~MS~~ - 7 -

000288



**From:** [Silveira, Ava](#)  
**To:** [Qian, Kent](#); [Fa-Kaji, Marguerita](#)  
**Cc:** [Ramirez, Victor](#)  
**Subject:** FW: Attn: Ms Lambert re:T21-0203  
**Date:** Tuesday, June 13, 2023 4:58:31 PM

---

**From:** GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <[galaxigigi@gmail.com](mailto:galaxigigi@gmail.com)>  
**Sent:** Wednesday, November 2, 2022 4:46 PM  
**To:** Silveira, Ava <[ASilveira@oaklandca.gov](mailto:ASilveira@oaklandca.gov)>  
**Subject:** Fwd: Attn: Ms Lambert re:T21-0203

Here is what my attorney wrote in response.... regards, Gregory Smith

----- Forwarded message -----

From: **Andrew Wolff** <[andrew@awolfflaw.com](mailto:andrew@awolfflaw.com)>  
Date: Wed, Nov 2, 2022, 4:41 PM  
Subject: Re: Attn: Ms Lambert re:T21-0203  
To: Que K. <[que@awolfflaw.com](mailto:que@awolfflaw.com)>, GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <[galaxigigi@gmail.com](mailto:galaxigigi@gmail.com)>

The agreement itself is confidential but I am telling you that settlement does not involve or relate to the rent board petition related to rent increase and base rent. If the landlord disagrees, let him agree to let me provide the agreement to you so you can see for yourself. If he refuses, then you have your answer that I am correct.

Alternatively, if you as a hearing officer order me to produce the release versus merely ask me for it, I believe that I am required and allowed to provide it to you.

On Wed, Nov 2, 2022 at 4:30 PM Que K. <[que@awolfflaw.com](mailto:que@awolfflaw.com)> wrote:

----- Forwarded message -----

From: **GalaxiStudio/GregorySmith Yamazakura/Kouzo/** <[galaxigigi@gmail.com](mailto:galaxigigi@gmail.com)>  
Date: Wed, Nov 2, 2022 at 4:04 PM  
Subject: Fwd: Attn: Ms Lambert re:T21-0203  
To: Que Kong <[que@awolfflaw.com](mailto:que@awolfflaw.com)>

This is what the RAP Board sent me

----- Forwarded message -----

From: **Silveira, Ava** <[ASilveira@oaklandca.gov](mailto:ASilveira@oaklandca.gov)>  
Date: Wed, Nov 2, 2022, 2:45 PM

000289

Subject: Re: Attn: Ms Lambert re:T21-0203

To: GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <[galaxigigi@gmail.com](mailto:galaxigigi@gmail.com)>

Dear Mr. Smith:

We need something in writing giving us the disposition of the case. You need not disclose any confidential provisions.

---

**From:** GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <[galaxigigi@gmail.com](mailto:galaxigigi@gmail.com)>

**Sent:** Wednesday, November 2, 2022 2:40 PM

**To:** Silveira, Ava <[ASilveira@oaklandca.gov](mailto:ASilveira@oaklandca.gov)>

**Subject:** Re: Attn: Ms Lambert re:T21-0203

And I can honestly say that I didn't win nor lose given that the issue of the rent was not addressed... regards, Gregory Smith

On Wed, Nov 2, 2022, 9:51 AM Silveira, Ava <[ASilveira@oaklandca.gov](mailto:ASilveira@oaklandca.gov)> wrote:

Hi Mr. Smith,

We cannot proceed without a written copy of the Settlement Agreement. If you cannot provide us with a copy of the Settlement Agreement, we need written consent from you and the opposing party to proceed based on the rent issue not being addressed in the court case.

Thank you,  
Ava

---

**From:** GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <[galaxigigi@gmail.com](mailto:galaxigigi@gmail.com)>

**Sent:** Tuesday, November 1, 2022 8:42 PM

**To:** Silveira, Ava <[ASilveira@oaklandca.gov](mailto:ASilveira@oaklandca.gov)>

**Subject:** Re: Attn: Ms Lambert re:T21-0203

Ms Silveira, no I don't, but I can tell you honestly that the issue of the rent was not addressed nor the NOV from the city Building & Codes Dept, because it was settled prior to a trial in court, where I'm sure it would have, & the settlement includes a Confidentiality Clause. So, what do you advise me to do ??? Thnx for your cooperation regarding this matter Gregory Smith

On Tue, Nov 1, 2022, 3:37 PM Silveira, Ava <[ASilveira@oaklandca.gov](mailto:ASilveira@oaklandca.gov)> wrote:

Hi Mr. Smith,

000290

This email is to confirm receipt of your email sent on October 24, 2022. Do you have paperwork that you could provide to the Rent Adjustment Program showing that the civil case has resolved and that the rent issue was not addressed?

---

**From:** GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <[galaxigigi@gmail.com](mailto:galaxigigi@gmail.com)>  
**Sent:** Monday, October 31, 2022 10:36 AM  
**To:** Hearings Unit <[hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov)>; Silveira, Ava <[ASilveira@oaklandca.gov](mailto:ASilveira@oaklandca.gov)>; Lothlen, Brittni <[BLothlen@oaklandca.gov](mailto:BLothlen@oaklandca.gov)>  
**Subject:** Fwd: Attn: Ms Lambert re:T21-0203

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Good day, I, Gregory Smith, I have not received confirmation of my email of October 24, 2022, therefore I am forwarding that email to you. Kindly send confirmation/acknowledgement and please setup a hearing date re: T21-0203. Thank you for your cooperation regarding this matter Gregory Smith

----- Forwarded message -----

**From:** GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <[galaxigigi@gmail.com](mailto:galaxigigi@gmail.com)>  
**Date:** Mon, Oct 24, 2022, 9:33 AM  
**Subject:** Attn: Ms Lambert re:T21-0203  
**To:** Hearings Unit <[hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov)>

Good morning Ms Lambert, the civil case has concluded & the rent issue was not addressed, therefore, I would greatly appreciate scheduling a hearing as soon as possible & at your earliest convenience for the petition # T21-023. Your cooperation & consideration & subsequent immediate scheduling is much appreciated. Thank you ever so much, Petitioner, Gregory Smith

--

Andrew Wolff, Esq.  
Law Offices of Andrew Wolff, P.C.  
The Cathedral Building  
[1615 Broadway, FL 4,  
Oakland, CA 94612](https://www.google.com/maps/place/1615+Broadway,+Oakland,+CA+94612)  
510-834-3300  
FAX 510-834-3377

**\*\*PLEASE NOTE\*\*** This email and any documents attached to this transmission may contain

**000291**

privileged and/or confidential information, and is intended solely for the addressee(s) named above. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this email information is strictly prohibited and may result in legal action against you. Please reply to the sender advising of the error in transmission, and immediately delete/destroy the message and any accompanying documents. Thank you.

... and assigns of the Plaintiff.

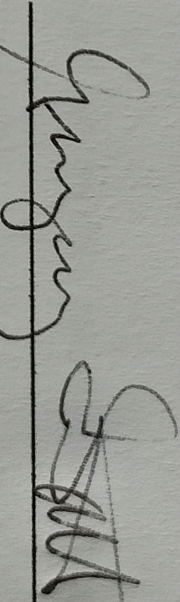
000293

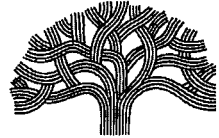
**19. Excluded Claims**

This Agreement excludes Plaintiff's petition and the proceedings with the City of Oakland Residential Rent Adjustment Program as it relates to rent increase and/or base rent.

I, the undersigned, have read the foregoing Settlement Agreement and Release and acknowledge understanding and agreement to the contents thereof.

Dated: OCTOBER 7, 2012

  
\_\_\_\_\_  
GREGORY SMITH (Plaintiff)



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

**ORDER TO PRODUCE SETTLEMENT AGREEMENT AND  
RELEASE**

**CASE NAME/NUMBER: T21-0203/Smith v. MacIntyre**

**PROPERTY ADDRESS: 474 Jean Street  
Oakland, CA 94610**

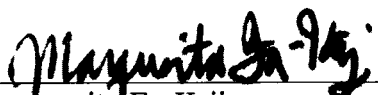
Procedural History

The petition in this case was filed on November 9, 2021, contesting a number of rent increases and claiming a number of decreased service items. Pursuant to an *Order of Consolidation and Continuance*, dated January 20, 2022, this case was suspended pending the resolution of a case between the parties in Superior Court.

On October 24, 2022, tenant Gregory Smith emailed the Rent Adjustment Program (RAP) and asserted that the civil case had been settled, with the exception of the rent issue. Tenant Smith requested that a Settlement Conference and Hearing be scheduled regarding the rent issue. Via email on November 21, 2022, tenant’s attorney Andrew Wolff stated that the Settlement Agreement is confidential and can be provided to the Rent Adjustment Program only pursuant to an Order from the RAP Hearing Officer.

Therefore, in order to determine whether the Rent Adjustment Program continues to have jurisdiction over the rent increase issues raised in the instant petition, the tenant’s attorney is hereby ordered to provide to the Rent Adjustment Program a copy of the Settlement Agreement and Release in the Superior Court case between the parties. This document will be labeled as CONFIDENTIAL in the RAP records.

Dated: November 2, 2022

  
\_\_\_\_\_  
Marguerita Fa-Kaji  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number T21-0203**

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 document 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, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Document Included**

Order to Produce Settlement Agreement and Release

**Owner**

Stuart MacIntyre  
478 Jean Street  
Oakland, CA 94610

**Owner Representative**

Law Office of David Sternfeld  
Attn: David Sternfeld  
420 Third Street, Suite 200  
Oakland, CA 94607

**Tenant**

Gregory Smith  
474 Jean Street  
Oakland, CA 94610

**Tenant Representative**

Andrew Wolff, Esq.  
1615 Broadway, Floor 4  
Oakland, CA 94612

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **November 04, 2022** in Oakland, CA.

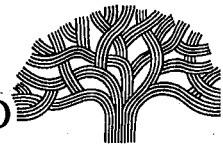
**000295**



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Ava Silveira  
Oakland Rent Adjustment Program





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

## **HEARING DECISION**

**CASE NUMBER:** T21-0203, Smith v. MacIntyre  
**PROPERTY ADDRESS:** 474 Jean Street, Oakland, CA  
**DATE OF HEARING:** February 22, 2023  
**DATE OF DECISION:** April 20, 2023  
**APPEARANCES:** Gregory Smith, Petitioner  
Stuart MacIntyre, Owner  
David Sternfeld, Owner Representative

## **SUMMARY OF DECISION**

The tenant's petition is granted in part. The legal rent for the unit is set forth in the Order below.

## **PROCEDURAL MATTER**

The petitioner originally filed six petitions against the owner: T20-0202, T20-0250, T21-0021, T21-0030, T21-0197 and the instant petition T21-0203. Pursuant to an Order of Consolidation and Continuance, issued on January 20, 2022, all of these petitions (except T21-0197) were consolidated for hearing, and then continued to allow the parties to proceed pursuant to a case in the Superior Court of Alameda. Subsequently, on January 31, 2022, the petitioner submitted a Request to Dismiss Petition for five of the cases (T20-0202, T20-0250, T21-0021, T21-0030, and T21-0197), which was granted on February 16, 2022, leaving only the current case (T21-0203) still open. After the Superior Court case concluded, the petitioner contacted the Hearing Office to request that a hearing be scheduled on the issue remaining between the parties regarding the rental amount for the unit.

## **CONTENTIONS OF THE PARTIES**

Gregory Smith filed petition T21-0203 on November 9, 2021, contesting a number of rent increases on the following ground: that he received a rent increase above the allowable amount.

In his petition, the Mr. Smith contested the following rent increases:

1. from \$1,065 to \$1,100, effective February 1, 2007;
2. from \$1,135 to \$1,185, effective February 1, 2008;
3. from \$1,185 to \$1,223, effective June 1, 2009;
4. from \$1,223 to \$1,256, effective January 1, 2011;
5. from \$1,256 to \$1,281, effective January 1, 2012;
6. from \$1,281 to \$1,319, effective January 1, 2013;
7. from \$1,319 to \$1,347, effective January 1, 2014;
8. from \$1,347 to \$1,373, effective January 1, 2015;
9. from \$1,373 to \$1,396, effective January 1, 2016;
10. from \$1,396 to \$1,424, effective January 1, 2017;
11. from \$1,424 to \$1,457, effective January 1, 2018;
12. from \$1,457 to \$1,516, effective January 1, 2019;
13. from \$1,516 to \$1,569, effective January 1, 2020;
14. from \$1,499 to \$1,637, effective January 1, 2021; and
15. from \$1,514 to \$1,668, effective January 1, 2022.<sup>1</sup>

The *Tenant Petition* states that the petitioner moved into the unit on January 11, 2004, at an initial rent of \$1,000 per month.

Additionally, the petitioner alleged that the owner is providing him with fewer housing services than he received previously. As mentioned above, however, these claims were addressed in the Superior Court case between the parties and will not be addressed in this Hearing Decision.

The owner, Stuart MacIntyre, filed a *Property Owner Response* on December 9, 2021. The owner's response stated "I don't know" regarding the question as to whether he had provided the *RAP Notice* to the petitioner. The owner stated that the petitioner moved into the unit on January 1, 2006, but did not provide the initial monthly rent amount or any history of rent increases on the unit. The *Property Owner Response* also did not provide any response to the petitioner's claim that the rent increases were above the allowable amount.

## THE ISSUES

1. Does the petitioner have standing to contest the rent increases?
2. When, if ever, was the proper *RAP Notice* first served on the petitioner?
3. What, if any, rent increases can the petitioner contest?
4. What is the base rent, and what, if any, restitution is owed between the parties?

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<sup>1</sup> The petitioner answered "Yes" to having received the *RAP Notice* with the most recent two contested rent increases, and "No" to having received the *RAP Notice* with any of the previous contested rent increases. At the hearing, the petitioner testified that the initial amounts (\$1,499 and \$1,514) listed for the final two rent increases are what he was actually paying during those time periods.

## EVIDENCE

Rental History: The petitioner testified that he moved into the unit, the ground floor of a building that has one unit (the one he resides in) downstairs and two units upstairs, in January 2004. He lives there with his mother (Frances Tabor), who has lived in the unit since the end of the 1980s or early 1990s. The original rental agreement on the property was between an extended family member of the petitioner (Tannis Rhinehertz) and Stuart MacIntyre.<sup>2</sup> The petitioner does not know when Ms. Rhinehertz moved out of the unit.<sup>3</sup>

The petitioner believes that the rent on the unit was approximately \$1,030 a month when he first moved into the unit in January 2004.<sup>4</sup> He was not given the *RAP Notice* when he moved in. The petitioner states that both he and his mother, in separate conversations, received the owner's permission verbally for him to move into the unit. He testified that, when he asked the owner if he could move in, the owner responded that "he had no problem with that." He also stated that the owner, who lives next door, can see him every day from the owner's kitchen window and out of the owner's back door.

The petitioner stated that, at various periods, his son and daughter have also both lived in the unit. The petitioner's daughter lived in the unit from 2005 until 2009. Immediately prior to the petitioner's daughter moving in so that she could attend high school in the area, the petitioner asked the owner for permission for his daughter to move in. The owner granted permission, as long as the petitioner paid an extra \$25 per month towards the water bill for each person over two occupants in the building.

The petitioner's son also moved into the unit in 2007. The petitioner asked the owner for permission and he said "OK." The petitioner's son moved out in 2013 or 2014. The petitioner's son then moved back into the unit in 2018, and lived there until 2021.

The petitioner introduced the copy of a letter from the owner (and his late wife) to the petitioner's mother, dated December 30, 2006, that states in part:

2 years since a rent raise so it goes up on 2/1/2007.

Your rent will be  $\$1065 \times 3.3 = \$1100 + \$25$  per month for each occupant over two to cover water and electrical costs.<sup>5</sup>

The petitioner introduced the copy of a letter from the owner (and his late wife) to the petitioner's mother, dated January 1, 2008, that states in part:

---

<sup>2</sup> Neither party submitted a copy of the rental agreement into the record.

<sup>3</sup> Ms. Rhinehertz is now deceased.

<sup>4</sup> This testimony differs slightly from the rental amount of \$1,000 provided on the *Tenant Petition*.

<sup>5</sup> Tenant Exhibit 1, p. 7.

Your current rent is \$1100 per month + \$25 each for additional people.  
Your new monthly rent will be \$1135 + \$50 for grandkids.<sup>6</sup>

The monthly rent checks are written to the owner from Frances Tabor's checking account, except for a period from approximately 2018 to 2021, when the petitioner's son wrote the monthly rent checks to the owner from his own account.

According to the petitioner, his mother is mentally incapable of filing a petition due to her old age. She is 93 years old, and will turn 94 in a couple of months. She has not been officially declared mentally incompetent, and the tenant does not possess a power of attorney for his mother. He informed her that he had filed the instant petition.

The petitioner submitted seven pages of written exhibits, which consisted of rent increase notices addressed from Owner Stuart MacIntyre to the petitioner's mother Frances (other than the two mentioned above that were signed by both the Owner and his late wife). The owner did not submit any written exhibits. Neither party submitted copies of any *RAP Notices* that were served.

The petitioner states that all written communications he and his mother received from the owner were placed in their mailbox. If the petitioner and/or his mother write back to the owner, they place their written communications in the owner's mailbox. The parties do not use the U.S. Mail to communicate with one another.

The petitioner testified that the first *RAP Notice* received from the owner was on approximately December 12, 2020, when it was placed in the tenants' mailbox by the owner, along with a rent increase notice. He stated that he only received the first page of the *RAP Notice*. The copy of the rent increase notice submitted by the petitioner was dated December 14, 2020, and states that the rent will increase "by \$42 2.7% to \$1,637.00" per month, effective January 1, 2021.<sup>7</sup> The rent increase notice did not include the language required pursuant to the City of Oakland Rent Increase Moratorium, enacted on March 27, 2020.

Although he did not submit a copy of the most recent rent increase notice, the petitioner testified that, on November 1, 2021, it was placed in the tenants' mailbox, along with a *RAP Notice*. The petitioner testified that this rent increase notice also did not include the language required pursuant to the City of Oakland Rent Increase Moratorium.

The petitioner further testified that, before December 2020, no *RAP Notice* was provided with each of the other rent increases notices he submitted into evidence, and that each of these notices were placed in the tenants' mailbox (rather than being sent via U.S. Mail): a rent increase to \$1,569 per month, effective January 1, 2020;<sup>8</sup> a rent increase to \$1,457 per month, effective January 1, 2018;<sup>9</sup> a rent increase to \$1,424 per

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<sup>6</sup> Tenant Exhibit 1, p. 7.

<sup>7</sup> Tenant Exhibit 1, p. 2.

<sup>8</sup> Tenant Exhibit 1, p. 1.

<sup>9</sup> Tenant Exhibit 1, p. 3.

month, effective January 1, 2017;<sup>10</sup> a rent increase to \$1,396 per month, effective January 1, 2016;<sup>11</sup> a rent increase to \$1,373 per month, effective January 1, 2015;<sup>12</sup> a rent increase to \$1,347 per month, effective January 1, 2014;<sup>13</sup> a rent increase to \$1,319 per month, effective January 1, 2013;<sup>14</sup> a rent increase to \$1,281 per month, effective January 1, 2012;<sup>15</sup> a rent increase to \$1,256 per month, effective January 1, 2011;<sup>16</sup> a rent increase to \$1,223 per month, effective June 1, 2009;<sup>17</sup> a rent increase to \$1,135 per month, effective February 1, 2008;<sup>18</sup> and a rent increase to \$1,065 per month, effective February 1, 2007.<sup>19</sup>

The petitioner did not submit into evidence the rent increase notices that took effect on January 1, 2019, or January 1, 2022.

The petitioner testified that the tenants paid the rent amounts requested through December 2020. As of January 2021, through December 2021, the tenants started paying only \$1,499 per month. As of January 2022, through the date of the hearing, the tenants started paying \$1,514 per month.

The owner, Stuart MacIntyre, testified that he originally entered into a rental agreement with Tannis Rhinehertz on March 31, 1995. Approximately two years later, Tannis moved out of the unit, and Frances Tabor and her daughter moved into the unit. According to Owner MacIntyre, Frances and her daughter "took over" the existing rental agreement.<sup>20</sup> Although Owner MacIntyre does not recall the exact date that Petitioner Smith moved into the unit, he stated that it was in approximately January 2004, and that he was aware the petitioner had moved in. Owner MacIntyre asserted that he only found out about Petitioner Smith's moving in when he questioned the petitioner's mother and he was informed by both Frances and the petitioner that the petitioner was only going to live in the unit temporarily. Owner MacIntyre stated that he never asked the petitioner to move out of the unit, and that he is aware that the petitioner's residency has not been temporary. He stated that he is 98 years old, and that his wife passed away in November 2008. Owner MacIntyre stated that he "presumed" the petitioner has not been served with the *RAP Notice* until the last two rent increase notices, and that all of the rent increase notices have been served by either his late wife's or his placing them in the tenants' mailbox .

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<sup>10</sup> Tenant Exhibit 1, p. 3.

<sup>11</sup> Tenant Exhibit 1, p. 4.

<sup>12</sup> Tenant Exhibit 1, p. 4.

<sup>13</sup> Tenant Exhibit 1, p. 5.

<sup>14</sup> Tenant Exhibit 1, p. 5.

<sup>15</sup> Tenant Exhibit 1, p. 6.

<sup>16</sup> Tenant Exhibit 1, p. 6.

<sup>17</sup> Tenant Exhibit 1, p. 7.

<sup>18</sup> Tenant Exhibit 1, p. 7.

<sup>19</sup> Tenant Exhibit 1, p. 7.

<sup>20</sup> Owner MacIntyre did not introduce a copy of the rental agreement, or any other documents, as evidence at the hearing.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### **Does the petitioner have standing to contest the rent increases?**

A tenant is allowed to file petitions with the Oakland Rent Adjustment Program to challenge certain rent increases.<sup>21</sup> The term "Tenant" is defined in the Rent Adjustment Ordinance as "a person entitled, by written or oral agreement to use or occupancy of any covered unit."<sup>22</sup>

Although the parties' testimony was in conflict as to whether Owner MacIntyre verbally agreed to the petitioner's moving into the unit, in terms of whether the petitioner's residency was temporary versus long-term, it is clear from the testimony of both parties that the Owner has been aware of the petitioner's residency on the premises since approximately January 2004, and has "never" (in the owner's own words) taken any steps to evict the petitioner. The failure of the owner to object to the petitioner's occupancy weighs in favor of a finding that the owner agreed to the petitioner's occupancy.

Although there is no written rental agreement between the petitioner and the owner, there is also no written rental agreement between the petitioner's mother and the owner. The owner has also allowed the petitioner's two children to live in the unit at various periods while the petitioner has resided there. According to the petitioner, he obtained the owner's verbal agreement to his children moving in, and the owner did not dispute this at the hearing.

The two letters from the owner and the owner's late wife, dated December 30, 2006, and January 1, 2008, established their knowledge of - and agreement to - the petitioner's children residing in the unit.<sup>23</sup> The letters establish that the owners allowed two people to live in the unit at the current rental rate, but then added a \$25 per person per month charge for the petitioner's children to live in the unit, ostensibly to cover increased water and utility costs.<sup>24</sup>

For all of the reasons stated above, it is found that the petitioner meets the definition of a "tenant" under the Rent Adjustment Ordinance, as someone who is entitled by oral agreement to use or occupancy of the instant unit, and therefore has standing to file the instant petition challenging the rent increases on the unit.

### **When, if ever, was the proper RAP Notice first served on the petitioner?**

The Rent Adjustment Ordinance requires an owner to serve the *RAP Notice* at the start of a tenancy<sup>25</sup> and together with any notice of rent increase or change in the terms of a

<sup>21</sup> OMC Section 8.22.090.A.1.a.

<sup>22</sup> OMC Section 8.22.020

<sup>23</sup> Tenant Exhibit 1, p. 7.

<sup>24</sup> Tenant Exhibit 1, p. 7. The tenant did not challenge the imposition of these additional charges by the owner.

<sup>25</sup> O.M.C. § 8.22.060(A).

tenancy.<sup>26</sup> An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until six (6) months after the first *RAP Notice* is given.<sup>27</sup> Furthermore, the *RAP Notice* provided at the inception of the tenancy must be provided in three languages (English, Spanish and Chinese) for all tenancies that commenced on or after September 21, 2016.<sup>28</sup>

There is no dispute between the parties as to whether or not the petitioner was given a *RAP Notice* when he first moved into the unit. The petitioner testified that he did not receive the *RAP Notice* until December 2020, and he wrote "No" regarding whether he had received the *RAP Notice* with the first 13 rent increases he was challenging on his petition. The owner admitted in his testimony that he "presumed" he did not provide the petitioner with the *RAP Notice* before December 2020.<sup>29</sup> The owner also did not assert that he had ever provided the petitioner's mother with the *RAP Notice*.

In terms of whether the petitioner has EVER been given a *RAP Notice*, the petitioner stated at the hearing that the owner provided the tenants with the "first page" of the *RAP Notice* along with the rent increase they received in their mailbox in December 2020.<sup>30</sup> The petitioner did not submit a copy of this *RAP Notice*, but stated on his petition under penalty of perjury that he had received the *RAP Notice* along with the rent increase he received on December 12, 2020.

Because the tenancy began prior to September 21, 2016, the owner was not required to provide the tenants with the *RAP Notice* in all three languages. Therefore, the petitioner is found to have received the *RAP Notice* on approximately December 12, 2020.

### **What, if any, rent increases can the petitioner contest?**

A tenant may file a petition to contest rent increases. Where a tenant was served the *RAP Notice* at the inception of a tenancy, a tenant petition must be filed within 90 days of the date of service of a rent increase notice, if the rent increase notice was also served with a *RAP Notice*.<sup>31</sup> Where the tenant did not receive the correct *RAP Notice* at the inception of the tenancy, the tenant must submit a petition challenging rent increases within 90 days of first receiving the *RAP Notice*.<sup>32</sup>

Since the petitioner first received the *RAP Notice* on December 12, 2020, he was entitled to challenge any rent increases within 90 days of that date, which was March 12, 2021. Because he did not file the petition for this case until November 9, 2021, he is not

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<sup>26</sup> O.M.C. § 8.22.070(H)(1)(a).

<sup>27</sup> O.M.C. § 8.22.060(C).

<sup>28</sup> O.M.C. Section 8.22.060(A)(2) and Regulations Section 8.22.060(A)(1).

<sup>29</sup> On the Property Owner Response, the owner answered "I don't know" in response to the question of whether the owner had ever provided the *RAP Notice* to the petitioner.

<sup>30</sup> The complete *RAP Notice* required at the beginning of tenancies commencing on or after September 21, 2016, consists of five pages (one page in English, two in Chinese, and two in Spanish). For tenancies commencing prior to that date, the *RAP Notice* for English speaking tenants is a single page.

<sup>31</sup> O.M.C. § 8.22.090(A)(2)(a)(i).

<sup>32</sup> O.M.C. § 8.22.090(A)(2)(b).

entitled to challenge the first 14 of the 15 rent increases listed on his petition (those that took effect dating from February 1, 2007, through January 1, 2021).

The petitioner is, however, entitled to challenge the final rent increase he received, which – according to his petition – was served on November 1, 2021, and took effect January 1, 2022. Although the tenant wrote on his petition that this increase was from \$1,514 to \$1,668 per month, the previous rent increase notice submitted by the tenant established that this increase was actually from \$1,637 to \$1,668 per month.<sup>33</sup>

Although neither party submitted a copy of this most recent rent increase notice, the tenant testified (and the owner did not dispute) that the rent increase notice failed to include the language currently required pursuant to the City of Oakland Emergency Rent Moratorium in bold, 12-point font.<sup>34</sup> Therefore, the rent increase notice is invalid.

In addition, according to California state law,<sup>35</sup> a written notice of rent increase must be served either by delivering a copy to the tenant personally or by serving a copy via U.S. mail under the procedures prescribed in Code of Civil Procedure Section 1013. Placing items in the tenants' mailbox, without using the U.S. mail to deliver them, does not constitute proper service. The parties were in agreement that this is how all of the rent increase notices were served by the owner on the tenants. On this basis also, the most recent rent increase (that took effect January 1, 2022) is invalid.

### **What is the base rent, and what, if any, restitution is owed between the parties?**

In determining the base rent for the unit, although the petitioner is not entitled to challenge the rent increase that took effect on January 1, 2021, due to his untimely filing, the Hearing Officer needs to independently evaluate that rent increase, given the requirements set forth by the Oakland City Council in response to the current Local Emergency.

This was a rent increase served during the Local Emergency, dated December 14, 2020, raising the rent on the unit from \$1,569 to \$1,637 per month, effective January 1, 2021.<sup>36</sup>

This rent increase notice failed to include the language required pursuant to the City of Oakland Emergency Rent Moratorium in bold, 12-point font, and was served during the

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<sup>33</sup>The petitioner explained at the hearing that the \$1,514 amount is actually what the tenants have been paying to the owner in monthly rent since January 1, 2022.

<sup>34</sup>All rent increase notices served during the Local Emergency declared by the City of Oakland in March 2020 must include the following language required by the Emergency Rent Moratorium 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 for additional information and referrals.**

<sup>35</sup> Civil Code Section 827(b)(1)

<sup>36</sup> Tenant Exhibit 1, p. 2.



Local Emergency declared in March 2020. Therefore, this rent increase notice is also invalid.

Because the most recent two increases served on the tenants were invalid, the tenants' base rent is \$1,569 a month, the amount prior to the rent increase that took effect on January 1, 2021.

Because the tenants have not been paying this amount, but have been paying \$1,499.00 per month in 2021 and \$1,514.00 per month in 2022, there is an underpayment of rent owed to the owner by the tenants. Therefore, the owner is owed a total of \$1,610.00 for the underpaid rent, as noted on the chart below.

		UNDERPAID RENT				
From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Payments	Sub-total
1-Jan-21	31-Dec-21	\$1,499	\$1,569	\$ (70.00)	12	\$ (840.00)
1-Jan-22	22-Feb-23	\$1,514	\$1,569	\$ (55.00)	14	\$ (770.00)
<b>TOTAL UNDERPAID RENT</b>						<b>\$ (1,610.00)</b>
<b>RESTITUTION</b>						
MONTHLY RENT						\$1,569
<b>TOTAL TO BE REPAYED TO TENANT</b>						<b>\$ (1,610.00)</b>
<b>TOTAL AS PERCENT OF MONTHLY RENT</b>						<b>-103%</b>
<b>AMORTIZED OVER</b>		<b>24</b>	<b>MO. BY REG. IS</b>		<b>\$ (67.08)</b>	

An underpayment of this amount is normally adjusted over a period of 12 months, unless a longer period is warranted for extraordinary circumstances.<sup>37</sup> Given the long tenancy of the petitioner's mother, and the fact that she did not receive the *RAP Notice* until December 2020, the Hearing Officer finds that extraordinary circumstances exist here, and that the repayment period can be extended to 24 months.

Over a 24-month period, the extra payment due to the owner from the tenants is \$67.08 a month. The tenants must add this amount to their monthly rent after this Hearing Decision becomes final. The decision is final if no party has filed an Appeal within 20 days of the date the Hearing Decision is mailed to the parties.

**If the tenants wish to pay the owner in one lump sum, they have the authority to do so.** If the tenants pay the owner the entire underpayment amount, the tenants can cease adding the \$67.08 per month extra payment to their monthly rent.

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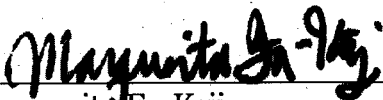
<sup>37</sup> Regulations, § 8.22.110(F)(4).

**ORDER**

1. Petition T21-0203 is partially granted.
2. The tenants' base rent is \$1,569 a month.
3. Due to past rent underpayments, the tenants owe the owner \$1,610.00. Therefore, the tenants' rent is adjusted by a rent increase for 24 months in the amount of \$67.08 a month, for a total of \$1,636.08 a month (\$1,569 + \$67.08).
4. The tenants must increase the rent per this order after the Hearing Decision becomes final.
5. If the tenants wish to, they can repay the amount owed to the owner at any time. If they do so, the monthly rental increase ends at the time the owner has been paid the entire \$1,610.00 amount.
6. After 24 months, at the end of the repayment period, the tenants' monthly rent will decrease by \$67.08 per month.

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

Dated: April 20, 2023

  
\_\_\_\_\_  
Marguerita Fa-Kaji  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number T21-0203**

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, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Hearing Decision

**Owner**

Stuart MacIntyre  
478 Jean St  
Oakland, CA 94610

**Owner Representative**

David Sternfeld, Law Office of David Sternfeld  
420 Third Street, Suite 200  
Oakland, CA 94607

**Tenant**

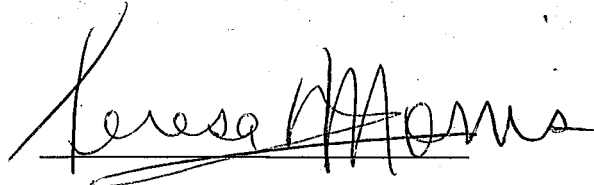
Gregory Smith  
474 Jean St  
Oakland, CA 94610

**Tenant Representative**

Andrew Wolff  
1615 Broadway Floor 4  
Oakland, CA 94612

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.  
Executed on **April 26, 2023** in Oakland, CA.



Teresa Brown-Morris  
Oakland Rent Adjustment Program

000307



**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 GREGORY SMITH		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant
Property Address (Include Unit Number) 474 JEAN ST, OAKLAND, CA 94610		
Appellant's Mailing Address (For receipt of notices) SAME AS ABOVE		Case Number T21-0203
		Date of Decision appealed EMAIL DATED ON DOCUMENT 4/20/23
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.)*

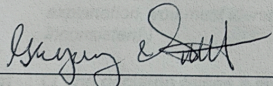
Revised January 10, 2022

- 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.)

*SEE ATTACHMENTS*  
 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: 4.

• 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 OR BEFORE MAY 28, 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:

<b>Name</b>	STUART MACINTYRE
<b>Address</b>	478 JEAN ST
<b>City, State Zip</b>	OAKLAND, CA 94610
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	EMAILED MAY 8, 2023
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

RE: T21-0203  
(T20-0202 - T21-0203)

APRIL 28, 2023

CAUSE FOR APPEAL

RE: T21-0203  
(T20-0202 - T21-0203)

APRIL 28, 2023

CAUSE FOR APPEAL

THIS APPEAL IS BASED UPON: (1) AN ERRONEOUS ASSUMPTION (CHICANEERY PRESENTED BY THE LANDLORD'S ATTORNEY ALLUDING TO THE NOVS { NOTICE OF HABITABILITY <sup>VIOLATIONS</sup> } CITED BY THE CITY OF OAKLAND BUILDING & CODES DEPT WOULD BE DEALT WITH IN THE CIVIL LAWSUIT) BY HEARING OFFICER MS. RA KASI. HAD THE HEARING OFFICER CONDUCTED ANY RESEARCH INTO THIS SERIOUS ISSUE, SHE WOULD HAVE DISCOVERED THAT THE INTENTIONAL DECEPTION PRESENTED BY THE LANDLORD'S ATTORNEY WAS PATENTLY FALSE. NOVS CANNOT BE WAIVED NOR DISMISSED IN A CIVIL LAWSUIT. THEREFORE THE FACT THAT THE HEARING OFFICER LIMITED THE HEARING TO THE CONTESTED RENT INCREASES ONLY, IS NOT ONLY INCOMPLETE BUT ERRONEOUS.

(2) I WAS TOLD AND INSTRUCTED BY HEARING OFFICER LAMBERT THAT IF I WANTED TO HAVE A HEARING, IT WOULD BE SUBSEQUENTLY SCHEDULED AFTER I DISMISS THE PRIOR 5 PETITIONS I FILED. HEARING OFFICER LAMBERT ALSO STATED THAT THE EVIDENCE & DOCUMENTS IN THOSE 5 PETITIONS WOULD BE AVAILABLE IN THE HEARING. AND BASED UPON THIS INFORMATION, I DISMISSED THE PRIOR 5 PETITIONS UPON ASSURANCES THAT THE EVIDENCE & DOCUMENTS IN THOSE 5 PRIOR PETITIONS WOULD BE HEARD. IT APPEARS HEARING OFFICER LAMBERT'S ASSURANCES WERE UNFOUNDED BASED UPON (1) ABOVE, AND A TRICK AND A LIE! THE HEARING WITH OFFICER LAMBERT WAS SCHEDULED IN FEB OR MARCH 2022 @ 10AM. I WAS THERE BUT NEITHER THE LANDLORD NOR HIS ATTORNEY WERE THERE. MS. LAMBERT

(1)

RE: T21-0203  
(T20-0202 - T21-0203)

CAUSE FOR APPEAL

APRIL 28, 2023

RE: T21-0203  
(T20-0202 - T21-0203)

CAUSE FOR APPEAL

APRIL 28, 2023

AND I WAITED @ 1 HR AND THEN <sup>SHE</sup> RESCHEDULED THE HEARING UNTIL 2 PM THAT SAME DAY; IN DEFERENCE TO THE LANDLORD. AT 2 PM THE LANDLORD'S ATTORNEY SHOWED UP BUT SAID HE WAS UNAWARE OF THE IDAM TIME FOR THE HEARING (PERFIDY). HE THEN STATED THAT NEITHER THE LANDLORD NOR HIMSELF (EMPHATICALLY) WOULD PARTICIPATE IN THE HEARING BECAUSE THEY DO NOT RECOGNIZE ME AS A LEGAL TENANT, EVEN THOUGH I HAD BEEN RESIDING AT 474 JEAN ST; AS A TENANT; FOR THE PREVIOUS 18 YRS. AS SUCH THE HEARING WAS CANCELLED BY THE HEARING OFFICER (MS. LAMBERT) WITHOUT ANY REPERCUSSIONS <sup>FOR THE LANDLORD</sup> WHATSOEVER. HAD I NOT SHOWED UP NOR PARTICIPATED, MY PETITION WOULD HAVE BEEN SUMMARILY DISMISSED <sup>OF FEB OR MAR 2022</sup>.

: (3) THEREFORE, AS A RESULT OF THE HEARING (PREDICATED ON DISMISSING THE PRIOR 5 PETITIONS) BEING CANCELLED, THE DISMISSAL OF THE PRIOR 5 PETITIONS IS NULL AND VOIDED, CANCELLED, THE SAME AS THE HEARING, AS THE HEARING WAS BASED ON CANCELING THOSE 5 PRIOR PETITIONS. AS THE HEARING OF FEB/MAR-2022 WAS CANCELLED, THE DISMISSAL OF THE 5 PRIOR PETITIONS IS NON-ENFORCEABLE AND THE DOCUMENTS; EVIDENCE THEREIN SHOULD HAVE BEEN CONSIDERED. AND HAD THE NOVS BEEN DEALT WITH IN THE CIVIL LAWSUIT, THERE WOULD NOT BE AN OUTSTANDING; UNPAID FINE; SUBSEQUENT LIEN; ALSO OUTSTANDING; ON THE PROPERTY (474 JEAN ST). THIS INFORMATION WAS; IS <sup>(3)</sup> READILY AVAILABLE TO HEARING OFFICER RA-KATI AND SHE WOULD HAVE REALIZED THAT THE REDUCTION

RE: T21-0203  
(T20-0202 - T21-0203)

CAUSE FOR APPEAL

APRIL 28, 2023

RE: T21-0203  
(T20-0202 - T21-0203)

CAUSE FOR APPEAL

APRIL 28, 2023

(SUPPOSED) IN RENT I PAID, AND THIS DETERMINED TO BE AN UNDER PAYMENT WAS IN FACT A RESULT OF DECREASED SERVICES THUS INCREASED COSTS DUE TO THE THEFT OF MY DRYER BY THE LANDLORD'S SON (AT THE LANDLORD'S BEHEST), REPLACING MY DRYER WITH A COIN-OPERATED DRYER. ALSO THE OUTSTANDING NOVS INCLUDE VIOLATIONS OF CITY, STATE AND FIRE LAWS; REGULATIONS. THESE VIOLATIONS ARE MAJOR DECREASED SERVICES WHILE THE LANDLORD CONTINUES TO DEMAND RENT. AND ACCORDING TO RAP, HABITABILITY ISSUES CAN BE SUBMITTED TO RAP VIA PETITION FOR ILLEGAL RENT COLLECTION; INCREASES AT ANYTIME HABITABILITY VIOLATIONS/CONDITIONS EXIST AND/OR ARE ONGOING; UNABATED.

: (4) BASED ON THE PRECEDING STATEMENTS, I REQUEST A REDETERMINATION THAT INCLUDES ALL THE ASPECTS OF MY PETITION(S).

I MIGHT ADD THAT I AM FLUMMOXED; INCREDULOUS REGARDING THE HEARING OFFICER'S LACK OF FACT CHECKING THE EXCUSE BY THE LANDLORD'S ATTORNEY FOR A POSTPONEMENT; HIS MISREPRESENTATION (INTENTIONAL CHICANERY) CONCERNING NOVS; CIVIL LAWSUITS. IT ALSO STATES ON THE RAP WEBSITE, TO BE GRANTED A POSTPONEMENT, ONE MUST HAVE A VALID; LEGITIMATE REASON FOR SUCH. HOWEVER I WAS TOLD THAT IT IS UPTO THE DISCRETION OF THE HEARING OFFICER... WHERE IS THE IMPARTIALITY; THOROUGH INVESTIGATION; RESEARCH CONSIDERING ALL THE EVIDENCE I'VE PROVIDED; PRODUCED ??? AND DUBIOUS STATEMENTS MADE BY LANDLORD'S ATTORNEY THAT WERE ACCEPTED IN LIEU OF VERIFICATION OR FACT CHECKING?

(3)



RE: T21-0203  
(T20-0202 - T21-0203)

CAUSE FOR APPEAL

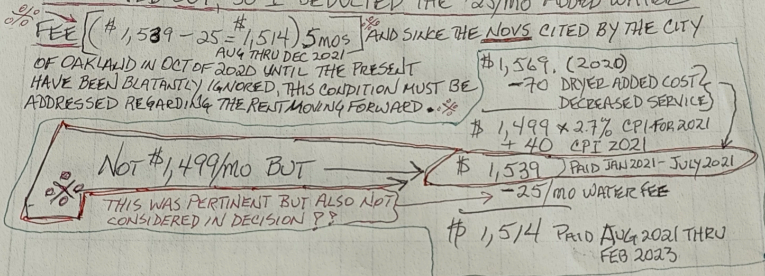
APRIL 28, 2023

RE: T21-0203  
(T20-0202 - T21-0203)

CAUSE FOR APPEAL

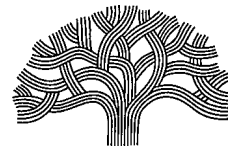
APRIL 28, 2023

(FILED 11/9/21)  
⑤ PETITION T21-0203 WAS IN RESPONSE TO A RENT INCREASE FOR 2022 DATED 10/26/21 FOR \$1,668 UP FROM \$1,639. T21-0203 WAS CONTESTING THE ANTICIPATED RENT INCREASE FOR 2022, THEREFORE IT WAS NOT FOR YEAR 2021; WHICH WAS PAID \$~~1,539~~<sup>1,539</sup>/MO FOR JAN 1, 2021 - JULY 30, 2021; BUT FOR 2022. IN AUG, 2021, MY SON MOVED OUT, SO I DEDUCTED THE \$25/MO ADDED WATER



**NOTE:**  
SEE: T20-0250  
SEE: T21-0021  
SEE: T21-0030

AND BASED UPON ①, IT IS APPARENT THAT MS. FA-KAJI DID NOT CONSULT MS. LAMBERT REGARDING MS. LAMBERT'S ASSURANCES TO ME  
ATTN: IN REFERENCE TO DISMISSING THE PRIOR 5 PETITIONS, WHICH CONSTITUTES A MAJOR BREACH OF PUBLIC TRUST IN RAP BEING IMPARTIAL & EXHIBITING INTEGRITY, FOR IT APPEARS MS. LAMBERT'S ASSURANCES WERE BLATANT CHICANERY AND INURED TO THE LANDLORD.



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 APPEAL FORM**

**CASE NAME/NUMBER:** T21-0203

**PROPERTY ADDRESS:** 474 Jean Street, Oakland, CA 94610

The Rent Adjustment Program received an *Appeal* from you on **May 9, 2023**.

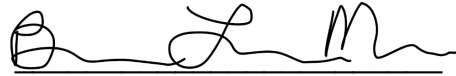
The *Appeal* that you attempted to file was incomplete. The chart below indicates what is missing from your filing:

Grounds for Appeal:	Needed
Math/clerical errors – <b>Explanation required</b>	<input type="checkbox"/>
Inconsistent with ordinance, regulations, or prior Board decisions – <b>Explanation required</b>	<input type="checkbox"/>
Inconsistent with prior hearing decisions – <b>Explanation required</b>	<input type="checkbox"/>
New policy issue – <b>Explanation required</b>	<input type="checkbox"/>
Violates federal, state or local law – <b>Explanation required</b>	<input type="checkbox"/>
Not supported by substantial evidence – <b>Explanation required</b>	<input type="checkbox"/>
Denied sufficient opportunity to present/respond – <b>Explanation required</b>	<input type="checkbox"/>
Denies Owner fair return – <b>Explanation + calculations required</b>	<input type="checkbox"/>
No grounds for appeal were selected – <b>Explanation required</b>	<input type="checkbox"/>
<b>Other:</b>	
1. <b>A valid Proof of Service must indicate that the Appeal Form has already been served on the opposing party.</b>	<input checked="" type="checkbox"/>
<b>PROOF OF SERVICE ON OPPOSING PARTY</b>	<input checked="" type="checkbox"/>
Dated Signature of Appellant or Representative	<input type="checkbox"/>

You have 30 days from the date of the mailing of this letter to submit the required information as noted above, or your Appeal may be administratively dismissed.

If you have any questions or concerns, feel free to contact our staff at [hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov).

**DATE:** May 9, 2023

A handwritten signature in black ink, appearing to read 'Briana Lawrence-McGowan', written over a horizontal line.

Briana Lawrence-McGowan  
Administrative Analyst II  
City of 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](http://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:

\_\_\_\_\_ (insert name of document served)

And Additional Documents

and (write number of attached pages) \_\_\_\_\_ 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	
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	

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 \_\_\_/\_\_\_/\_\_\_ (insert date served).

\_\_\_\_\_  
PRINT YOUR NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**PROOF OF SERVICE**  
**Case Number T21-0203**

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, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Deficiency Notice  
Copy of Proof of Service

**Tenant**


Gregory Smith  
474 Jean Street  
Oakland, CA 94610

**Tenant Representative**

Andrew Wolff  
1615 Broadway, Floor 4  
Oakland, CA 94612

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **May 11, 2023** in Oakland, CA.



Briana Lawrence-McGowan

Oakland Rent Adjustment Program



**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](http://www.oaklandca.gov/RAP)

For Rent Adjustment Program date stamp.

**APPEAL**

Appellant's Name <i>GREGORY SMITH</i>		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>474 JEAN ST, OAKLAND, CA 94610</i>			
Appellant's Mailing Address (For receipt of notices) <i>SAME AS ABOVE</i>		Case Number <i>T21-0203</i>	Date of Decision appealed <i>EMAIL (DATED ON DOCUMENT 4/20/23)</i>
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

- 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 *MAY 23, 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:

<b>Name</b>	<i>STUART MACINTYRE</i>
<b>Address</b>	<i>478 JEAN ST.</i>
<b>City, State Zip</b>	<i>OAKLAND, CA 94610</i>
<b>Name</b>	<i>DAVID STEINFELD</i>
<b>Address</b>	<i>420-3RD ST</i>
<b>City, State Zip</b>	<i>OAKLAND, CA 94607</i>

*Gregory Smith* *5/23/23*

PIEDMONT  
195 41ST ST  
OAKLAND, CA 94611-9891  
(800) 275-8777

05/23/2023 03:25 PM

Product	Qty	Unit Price	Price
#10 envelope	1	\$2.19	\$2.19
<b>Grand Total:</b>			<b>\$2.19</b>

Credit Card Remit  
Card Name: VISA  
Account #: XXXXXXXXXXXX3434  
Approval #: 418730  
Transaction #: 559  
AID: A000000908040  
AL: US DEBIT  
PIN: Not Required

**PAID**

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

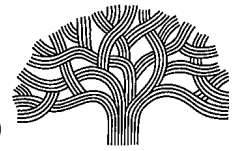
Preview your Mail  
Track your Packages  
Sign up for FREE @  
<https://informedelivery.usps.com>

All sales final on stamps and postage.  
Refunds for guaranteed services only.  
Thank you for your business.

Tell us about your experience.  
Go to: <https://postalexperience.com/ps>  
or scan this code with your mobile device.

or call 1-800-410-7420.





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 APPEAL DECISION**

**CASE NUMBER/NAME:** T21-0203, Smith v. MacIntyre

**PROPERTY ADDRESS:** 474 Jean St., Oakland, CA

A Hearing Decision in this case was issued on April 20, 2023, and mailed to all parties with a proof of service on April 26, 2023. The decision stated under Right to Appeal:

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

The tenant submitted an Appeal on May 8, 2023; however, the appeal form was incomplete.

On May 11, 2023, a Notice of Incomplete Appeal Form was mailed to the tenant informing him that the appeal, as submitted, was incomplete. The Notice stated that the appellant had not submitted a valid Proof of Service that “must indicate that the Appeal Form has already been served on the opposing party.” The appellant was given 30 days to submit this valid Proof of Service.

On May 23, 2023, the tenant submitted a copy of the top portion of the first page of the Appeal form, together with a Proof of Service and a copy of a receipt from the United States Postal Service, indicating that the tenant mailed the Appeal to the owner on May 23, 2023.

The appellant must file and serve all parties with the Appeal form within fifteen (15) days after service of the Hearing Decision.<sup>1</sup> The fifteen-day deadline to appeal is extended by an additional five (5) days for mailing.<sup>2</sup> The Appeal form also states in bold letters: “You

---

<sup>1</sup> O.M.C. §8.22.120.A(1)

<sup>2</sup> O.M.C. §8.22.160

must serve a copy of your appeal on the opposing parties, or your appeal may be dismissed.”<sup>3</sup>

Twenty (20) days from April 26, 2023, the date the Hearing Decision was mailed to the parties, was May 16, 2023. As of May 16, 2023, the appellant had not submitted a Proof of Service indicating that he served the appeal on the opposing party listed on the Appeal Form.

In addition, the Notice of Incomplete Appeal Form (dated May 9, 2023, and mailed to the tenant on May 11, 2023) required the tenant to submit a valid Proof of Service indicating that the Appeal Form had **already** been served on the opposing party. On May 23, 2023, the appellant submitted a document indicating that he served the appeal on the opposing parties on May 23, 2023, which was well after the date on the Notice of Incomplete Appeal Form and also well after the appeal deadline of May 16, 2023.

Therefore, the appeal is hereby dismissed with prejudice. The Hearing Decision issued on April 20, 2023, is the final decision of the City of Oakland.

The appeal hearing currently scheduled for this case on June 22, 2023, is hereby canceled.

### NOTICE TO PARTIES

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

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



Briana Lawrence-McGowan  
Board Designee  
Residential Rent and Relocation Board

June 15, 2023  
Date

<sup>3</sup> Appeal form, page 2

**PROOF OF SERVICE**  
**Case Number T21-0203**

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, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Administrative Appeal Decision

**Owner**

Stuart MacIntyre  
478 Jean St  
Oakland, CA 94610

**Owner Representative**

David Sternfeld  
Law Office of David Sternfeld  
420 Third Street, Suite 200  
Oakland, CA 94607

**Tenant**

Gregory Smith  
474 Jean St  
Oakland, CA 94610


**Tenant Representative**

Andrew Wolff  
1615 Broadway, Floor 4  
Oakland, CA 94612

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 15, 2023** in Oakland, CA.

**000323**

A handwritten signature in black ink, appearing to read 'Briana Lawrence-McGowan', is positioned above a horizontal line.

Briana Lawrence-McGowan

Oakland Rent Adjustment Program

## FW: Reason for Delay of Appeal T21-0203

Hearings Unit <hearingsunit@oaklandca.gov>

Thu 6/22/2023 1:13 PM

 1 attachments (4 MB)

IMG\_20230621\_104752.jpg;

Your statement has been received.

Thank you.

Hearings Unit  
City of Oakland Rent Adjustment Program

**From:** GalaxiStudio/GregorySmith Yamazakura/Kouzo/ <galaxigigi@gmail.com>

**Sent:** Thursday, June 22, 2023 12:18 PM

**To:** Hearings Unit <hearingsunit@oaklandca.gov>

**Subject:** Reason for Delay of Appeal T21-0203

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

To Hearings Unit and RAP Board; according to your Dismissal of my Appeal, there was a delay in providing the completed Appeal Form in accordance with the time limits.

I have a valid and justifiable situation that precipitated such a delay.

### REASON for DELAY

I was out of town & informed MsSilveira of this in an email dated April 24, 2023 in which I stated such & that I would not return until May 22, 2023, but it appears this information was not forwarded to the appropriate party(ies). And in fact I was out of the country from Feb4 - May 21, 2023 as is evidenced by (See Attached ticket). As a result of being out of town or in my case, out of the country, I was unaware of any time sensitive matters or correspondences other than the hearing Decision and an Appeal Form, which MsSilveira sent me via email (See emails dated April 24 & 25, 2023) & I did not receive the "Notice of Incomplete Appeal" notification electronically (which stated I had 30 days to correct this) but just by mail when I returned home the evening of May 21. I mailed the Proof of Service with the Appeal and the 4 pages comprising the justification for the Appeal on May 23, 2023 to all parties as soon as possible after I returned home so as to (I thought "fortunately") conform to the strict time limits set as 15 days (stated on the Appeal Form) from the filing of the Appeal (May 9, 2023) which was 14 days.

Kindly consider my reason as a valid reason, having provided substantiating proof.

Regards, Gregory Smith

PS: kindly confirm that this statement conforms to your protocols And please confirm receipt of my statement.

000325



CITY OF OAKLAND

Housing and Community Development Department  
Rent Adjustment Program  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612-2034

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

### NOTICE OF APPEAL HEARING

**Case Number:** T21-0203  
**Case Title:** Smith v. MacIntyre  
**Property Address:** 474 Jean Street, Oakland, CA 94610

#### THE HEARING ON THIS MATTER WILL BE HELD:

**Date:** July 27, 2023  
**Time:** 5:30 p.m. or as soon thereafter as the matter may be heard.  
**Place:** Hearing Room 1, City Hall, One Frank H. Ogawa Plaza, Oakland, CA

#### Important Information

**Pursuant to Regulation Section 8.22.120.H.1.c., a hearing has been set before the Housing, Residential Rent and Relocation Board (Board) on whether there is good cause for the late appeal in this case. If the Board finds good cause for the late appeal, the Board will also decide the appeal at the hearing.**

The Staff decision (Administrative Appeal Decision) in this case is suspended until a final decision is issued by the Board. The decision of the Board is the final decision in the administrative process of the City of Oakland. There is no appeal of the Board's decision to the City Council.

A request for a change in the date or time of the hearing must be made in writing. A form for requesting a postponement is available from the Rent Adjustment Program. A continuance will be granted only for good cause. See Regulation 8.22.120.C. A second request for continuance will be granted only under exceptional circumstances.

The Board will not hear oral testimony at the hearing. Each party will have a total of 15 minutes to present argument in favor of or in opposition to the appeal. This time includes opening argument and any rebuttal or response to the other party. However, the Board may increase or reduce the time, and/or specifically divide the time, such as 5 minutes each for opening argument, rebuttal, and questions from the Board. The appealing party presents their argument first. Any party may be assisted by an attorney or any other person designated by the party. You will be notified of the Board's action after the hearing.

000326

Board hearings are public. The Rent Adjustment Program makes an audio recording of the hearings. Any party may also bring a court reporter to record the proceedings at their own expense.

### **Service Animals/Emotional Support Animals**

The City of Oakland Rent Adjustment Program is committed to providing full access to qualified persons with disabilities who use service animals or emotional support animals. If your service animal lacks visual evidence that it is a service animal (presence of an apparel item, apparatus, etc.), then please be prepared to reasonably establish that the animal does, in fact, perform a function or task that you cannot otherwise perform.

If you will be accompanied by an emotional support animal, then you must provide documentation on letterhead from a licensed mental health professional, not more than one year old, stating that you have a mental health-related disability, that having the animal accompany you is necessary to your mental health or treatment, and that you are under his or her professional care. Service animals and emotional support animals must be trained to behave properly in public. An animal that behaves in an unreasonably disruptive or aggressive manner (barks, growls, bites, jumps, urinates or defecates, etc.) will be removed.

### **Accessibility:**

This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin or Spanish interpreter, please email [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) or call (510) 238-3721 or California relay service at 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Este lugar de reunión es accesible para sillas de ruedas. Para solicitar adaptaciones relacionadas con la discapacidad o solicitar un intérprete de ASL, cantonés, mandarín o español, envíe un correo electrónico a [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) o llame al (510) 238-3721 o al servicio de retransmisión de California al 711 al menos cinco días hábiles antes de la reunión. Absténgase de usar productos perfumados en esta reunión como cortesía para los asistentes con sensibilidades químicas.

這個會議地點適合輪椅使用者。要請求與殘障相關的住宿或請求ASL、粵語、普通話或西班牙語口譯員，請至少在會議前五個工作日發送電子郵件至 [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) 或致電 (510) 238-3721 或撥打加州中繼服務電話 711。出於對對化學物質敏感的與會者的禮貌，請不要佩戴有香味的產品參加本次會議。

## **Statement from Appellant Gregory Smith Explaining Late Appeal Filing**

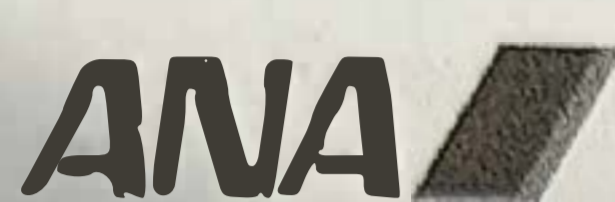
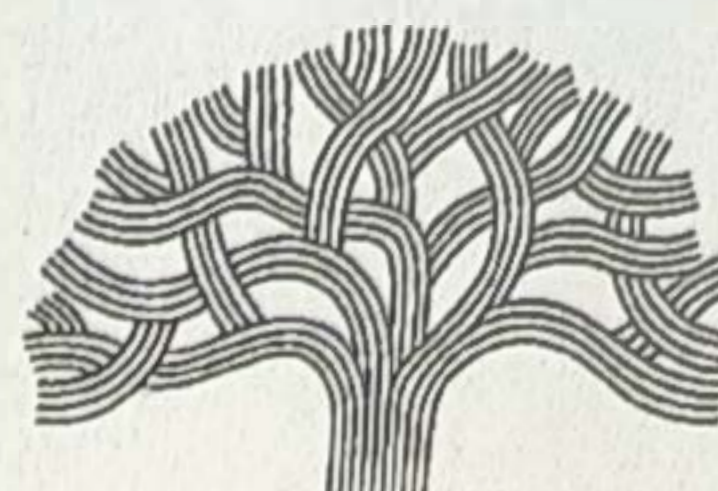
(Received via email on June 21, 2023)

I was out of the country from Feb 4 - May 21, 2023 (See Attached ticket). As a result of being out of the country, I was unaware of any time sensitive matters or correspondences & did not receive the "Notice of Incomplete Appeal" notification until I returned home the evening of May 21. I mailed the Proof of Service with the Appeal and the 4 pages comprising the justification for the Appeal to all parties a little over a day after returning.

Regards, Gregory Smith



CITY OF OAKLAND



A STAR ALLIANCE MEMBER

ELECTRONIC TICKET ITINERARY/RECEIPT



For International Self Service Unit

- Please present all necessary country specific travel documentation or data such as staying address, Itinerary/Receipt, and positive identification such as passport, when you are requested to do so at check-in, or at Immigration/Customs.
- Please retain Itinerary/Receipt throughout your journey. Itinerary/Receipt may be required in case of itinerary change or refund.

PASSENGER : SMITH/GREGORYJOHN MR  
 NAME  
 TICKET : 2052418100987-988 RESERVATION : 5FTAT2 DATE OF : 29DEC22  
 NUMBER  
 CODE  
 PLACE OF : USA - ANA SKY WEB US R ISSUING OFFICE : 05999162  
 ISSUE CODE

• The name of Haneda Airport's international passenger terminal building has changed as of March 2020. Please be aware that the terminal for ANA-operated international departures and arrivals at Haneda Airport varies by flight. Furthermore, the departure and arrival terminals for other flight reservations may also change. Please check the terminal on your departure date.

✈ ITINERARY

CITY/AIRPORT	TERMINAL	FLIGHT NO.	DATE	DAY	TIME	CLASS	FARE BASIS	STATUS	BAGGAGE	INVALID BEFORE/AFTER	
DEPARTURE			DEPARTURE								
[1] SAN FRANCISCO		NH107	04FEB23	SAT	0020	W(Y)	WLW77UG2	OK*	2PC	/04MAY	
ARRIVAL			ARRIVAL								
TOKYO (HANEDA)			05FEB23	SUN	0440						
DEPARTURE			DEPARTURE								
[2] TOKYO (HANEDA)		NH583	05FEB23	SUN	0710	W(Y)	WLW77UG2	OK*	2PC	/04MAY	
ARRIVAL			ARRIVAL								
MATSUYAMA			05FEB23	SUN	0845						

✈ ITINERARY

CITY/AIRPORT	TERMINAL	FLIGHT NO.	DATE	DAY	TIME	CLASS	FARE BASIS	STATUS	BAGGAGE	INVALID BEFORE/AFTER	
DEPARTURE			DEPARTURE								
[1] KOCHI		NH564	21MAY23	SUN	1005	W(Y)	WLW77UX4	OK	2PC	21MAY/21MAY	
ARRIVAL			ARRIVAL								
TOKYO (HANEDA)	2	17C	21MAY23	SUN	1125	ANA WINGS CO., LTD					
DEPARTURE			DEPARTURE								
[2] TOKYO (HANEDA)		SURFACE									
ARRIVAL			ARRIVAL								
TOKYO (NARITA)											
DEPARTURE			DEPARTURE								
[3] TOKYO (NARITA)	1	NH8	21MAY23	SUN	1700	W(Y)	WLW77UX4	OK	2PC	21MAY/21MAY	
ARRIVAL			ARRIVAL								
SAN FRANCISCO	I	31G	21MAY23	SUN	1035	ALL NIPPON AIRWAYS					

ALL NIPPON AIRWAYS CO., LTD.

**PROOF OF SERVICE**  
**Case Number T21-0203**

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, Suite 5313, 5th Floor, Oakland, California, addressed to:**

**Documents Included**

Notice of Appeal Hearing  
Statement from Appellant Explaining Late Appeal Filing

**Owner**

Stuart MacIntyre  
478 Jean Street  
Oakland, CA 94610

**Owner Representative**

David Sternfeld  
Law Office of David Sternfeld  
420 Third Street, Suite 200  
Oakland, CA 94607

**Tenant**

Gregory Smith  
474 Jean Street  
Oakland, CA 94610

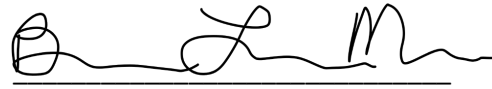
**Tenant Representative**

Andrew Wolff  
1615 Broadway, Floor 4  
Oakland, CA 94612

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 27, 2023** in Oakland, CA.

**000330**

A handwritten signature in black ink, appearing to read 'Briana Lawrence-McGowan', written over a horizontal line.

Briana Lawrence-McGowan

Oakland Rent Adjustment Program



## MEMORANDUM

**Date:** July 20, 2023  
**To:** Members of the Housing, Rent Residential & Relocation Board (HRRRB)  
**From:** Braz Shabrell, Deputy City Attorney  
**Re:** Appeal Recommendation in T21-0203, Smith v. MacIntyre  
**Appeal Hearing Date:** July 27, 2023

---

**Property Address:** 474 Jean Street, Oakland, CA  
**Appellant/Tenant:** Gregory Smith  
**Respondent/Owner:** Stuart MacIntyre

### **BACKGROUND**

Tenant Gregory Smith (“Petitioner”) filed a petition on November 9, 2021, contesting several rent increases (dating back to 2006) and alleging decreased housing services. The case was consolidated with four other petitions previously filed by the Petitioner during 2020 and 2021. Petitioner subsequently filed a request to dismiss the other cases, which was granted, leaving only the current case. A hearing on the case was postponed/suspended pending resolution of a civil case the tenant filed against the landlord in Superior Court.

On October 24, 2022, the Petitioner notified the Rent Adjustment Program that the civil case had settled, and the Petitioner wished to proceed with a RAP hearing on the remaining issues that had not been resolved in the civil case. A hearing took place on February 22, 2023.

### **RULING ON THE CASE**

The hearing officer issued a Hearing Decision on April 20, 2023 (mailed on April 26), granting the tenant’s petition in part. The hearing was limited to the issue of rent increases, since the decreased services claims were addressed in the civil case. The

hearing officer found that Petitioner first received the required RAP Notice in December 2020. To contest a rent increase, tenants must file a petition within 90 days after first receiving a RAP Notice. Since Petitioner filed the petition in this case in November 2021, the tenant was time-barred from contesting rent increases issued prior to March 12, 2021 (90 days after the tenant first received the RAP Notice). The only rent increase that was not time-barred was the most recent rent increase, which was served on or around November 1, 2021. This increase was invalid because the notice did not include language required by the Oakland rent increase moratorium, and because it was not properly served. The rent increase served in December 2020 was also invalid because of failure to include the required moratorium language. The tenant's rent was set to \$1,569 per month.

### **GROUND FOR APPEAL**

On May 8, 2023, tenant Petitioner filed an appeal of the Hearing Decision on the grounds that the decision was not supported by substantial evidence, the tenant was denied a sufficient opportunity to present their claims, and other reasons. First, the tenant alleges that it was erroneous to limit the hearing to the rent increases. Second, the tenant alleges that they dismissed their prior petitions based on the instruction of hearing officer Lambert, and was misled about the impact and purpose of dismissing those petitions. The tenant only dismissed the prior petitions because they were informed that the information included in those petitions would still be a part of the record, and that the tenant needed to dismiss the older cases in order to go forward with a hearing. The tenant appeared for the hearing that was initially scheduled at 10am on February 14, 2022 with hearing officer Lambert, but the owner failed to appear. Hearing officer Lambert rescheduled the hearing for 2pm that same day to allow the owner and owner's attorney to appear, at which point the owner refused to participate in the hearing because they denied the Petitioner's standing as a tenant. It was an error to cancel this hearing, and the dismissal of prior petitions should be null and void.

The tenant alleges it was an error to exclude decreased services claims, and the NOV's submitted by the tenant should have been considered when calculating the tenant's current rent and underpayments. The calculations also failed to consider that the Petitioner began paying less rent when their son moved out, since a prior rent increase was based on the addition of the son living there.

### **ADMINISTRATIVE APPEAL DECISION**

The tenant filed the appeal with RAP on May 8, 2023. The tenant did not serve the landlord with a hard copy of the appeal until May 23, 2023. Since the hearing decision was mailed on April 26, and parties have 20 days to file an appeal, the tenant was required to file the appeal by May 16, 2023. As of May 16, the tenant's appeal was considered incomplete since a proof of service had not yet been filed. Therefore, an Administrative Decision was issued on June 15, 2023, denying the tenant's appeal.

The tenant claims there is good cause for the late service/appeal because the tenant was out of the country until May 21, and therefore did not receive the notice of incomplete appeal until that time. The tenant mailed the proof of service and a copy of the appeal to all parties immediately upon return.

### **ISSUES**

1. Does the tenant have good cause for failing to meet the appeal filing deadlines? (The appeal itself was timely submitted, but proper service and proof thereof appear to be seven days late). If not, the Administrative Decision dismissing the tenant's appeal may be upheld.
2. Was the tenant instructed to dismiss their prior petitions, and/or misinformed or misled about the impact of dismissal? Should the tenant's voluntary dismissal of the prior petitions be upheld, and serve as the basis for denying tenant's claims in the current case as untimely? (If the prior petitions had not been dismissed, but rather remained a part of the consolidated case, the tenant's challenge to past rent increases would not be untimely, since prior petitions were filed on December 11, 2020, and February 22, 2021, which were within 90 days after the tenant first received the RAP Notice).
3. Was it an error to not consider the NOV's and the tenant's son moving out when determining the proper rent amount and restitution?

### **RECOMMENDED OUTCOME**

The Board must consider whether there is good cause to dismiss the appeal as untimely, or if the appeal should proceed on the merits. If the Board proceeds with the appeal on the merits, the Board should be prepared to ask questions around the tenant's voluntary dismissal of prior petitions on January 31, 2022. If the prior cases remained a part of the consolidated case file, the tenant's challenge to prior rent increases would have been timely.