

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

July 26, 2018

7:00 P.M.

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

AGENDA

1. CALL TO ORDER

2. ROLL CALL

3.. CONSENT ITEMS

i. Approval of Minutes

a. June 14, 2018

b. June 28, 2018

c. July 12, 2018

ii. Minutes Available for Review

a. June 21, 2018

5. OPEN FORUM

6. NEW BUSINESS

A. Appeal Hearings in:

1) L17-0171, Berger v. Tenants

2) T16-0683, Prager v. Lagos

3) L16-0011, Tyler v. Tenants

B. Director of Housing and Community Development-Discussion of Board membership, attendance, and procedure for removal of members

C. Staff Report Re Recommended Revisions to Substantial Rehabilitation Exemption

D. Board discussion re establishment of regular policy committee

2018 JUL 19 PM 3:31
OFFICE OF THE CITY CLERK
OAKLAND, CALIFORNIA

7. SCHEDULING AND REPORTS
8. ADJOURNMENT

Accessibility. This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin or Spanish interpreter, please email sshannon@oaklandnet.com or call (510) 238-3715 or California relay service at 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

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

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

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

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

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

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

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
Meeting
June 14, 2018
6:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

The HRRRB was called to order at 6:00 p.m. by Board Chair Jessie Warner

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
U. Fernandez	Tenant	X		
D. Me saros	Tenant			X
T. Mason	Tenant alt.		X	
Ed Lai	Homeowner Alt.			
R. Stone	Homeowner	X		
M. Cook	Homeowner	X		
J. Warner	Homeowner	X		
K. Blackburn	Homeowner Alt.			
K. Friedman	Landlord	X		
B. Scott	Landlord Alt.	X		
D. Madison	Landlord Alt.		X	

Staff Present

Kent Qian Deputy City Attorney
Barbara Kong-Brown Senior Hearing Officer

3. Board Training

Kent Qian, Deputy City Attorney, conducted a Board training regarding substantive law for rent increases, types of petitions, exemptions from the Rent Ordinance, requirement for owners to file petitions for rent increases, time limitations for filing a petition, owner and tenant requirements for filing and responding to petitions, processing of petitions, just cause for eviction.

The training also included Board Procedures, including Robert's Rules, the role of the Board, appeal procedures, and the appeal process; that the Board function is to determine if the Hearing Decision is supported by substantial

evidence; Board may not hear new evidence at the appeal hearing; no de novo hearing. Board authority includes overturn, affirm, or remand the case.

CONSENT ITEMS

a. Approval of Board minutes, April 26, 2018

R. Stone moved to approve the minutes. B. Scott seconded. The word "subsgtantial" is corrected to "substantial."

Aye: U. Fernandez, M. Cook, D. Mesaros, R. Stone, J. Warner, B. Scott
Nay: 0
Abstain: K. Friedman

The motion carried.

b. The Board panel minutes of May 10, 2018, are corrected to reflect that the panel adjourned at 9:37 p.m. not 7:37 p.m.

The Board resumed its regular meeting at 7:00 p.m. Debbie Mesaros did not attend the regular meeting.

4. OPEN FORUM

i. James Vann

5. NEW BUSINESS

Hearing in appeal cases:

i.

a. T16-0076, Lee v. Millar

Board member Benjamin Scott recused himself from participation in this case due to a conflict of interest.

Appearances: Mary Lee Tenant Appellant
Bruce Millar Owner Appellee

Tenant Appeal

The tenant appealed from denial of the tenant petition for decreased housing service claims, which focused on issues regarding her stove. The tenant contended the decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior Board decisions; the decision is not supported by substantial evidence; she was denied a sufficient opportunity to present her claim.

The owner contended that the tenant's stove was a fire hazard. She eventually cleaned the stove and he subsequently replaced the stove with a new stove.

After questions to the parties and Board discussion, K. Friedman moved to affirm the Hearing Decision based on substantial evidence. R. Stone seconded. The Board voted as follows:

Aye: U. Fernandez, M. Cook, R. Stone, J. Warner, K. Friedman
Nay: 0
Abstain:

The motion was approved by consensus.

b. T17-0305, Mountain v. CNML Crescent

Appearances: Georgina Mountain Tenant Appellant
Elizabeth Hart Owner Appellee Representative

Tenant Appeal

In May 2017 the tenant filed a petition which contested the rent increase effective September 1, 2017, totaling \$295.00. The hearing officer issued an administrative decision which dismissed the tenant petition on the grounds that a prior Hearing Decision in L15-0065, entitled CNML Crescent Properties v. Tenants, granted a capital improvement pass-through totaling \$295.39.

In that case, the tenant was notified of the owner's petition and the various hearing dates. However, the tenant did not file a response or attend the hearing. After the decision in L15-0065 was issued the tenant did not file an appeal to the decision.

The tenant filed an appeal to the administrative decision, and contended that the decision violated federal, state or local law; that the hearing decision stated that rents of tenants who moved in after November 1, 2014, would not be increased, and she moved into her unit on May 16, 2015. The tenants whose rents did not increase filed responses to the prior petition which stated the date on which they moved into their units and/or appeared at the prior hearing.

The Board noted that the proof of service on the tenant appeal was defective, because the appeal was not served on the owner.

During Board discussion, it was evident that the tenant did not follow the rules and procedure regarding her case, and the issue was whether the Board could provide equitable relief because there was no dispute that the tenant moved into her unit after November 1, 2014. There was further discussion whether this was setting a dangerous precedent by giving the tenant a second bite at the apple when she did not follow the established rules and procedures

R. Stone moved to remand the hearing decision to the hearing officer to rule on the substance of the tenant's petition, using the tenant's move-in date of May 16, 2015, and that she be treated like other similarly situated tenants who moved in after the work for the capital improvement pass-through was completed. This was seconded by K. Friedman. J. Warner offered a friendly amendment, to direct the hearing officer to hold an evidentiary hearing on the current tenant petition, which was timely filed, and to allow all parties to present evidence. The amendment was accepted by R. Stone. The Board voted as follows:

Aye: M. Cook, R. Stone, J. Warner, B. Scott, K. Friedman
Nay: U. Fernandez
Abstain:

The motion carried.

c. L16-0065, DODGE Corporation v. Tenants

The owner appellant dismissed his appeal.

6. SCHEDULING & REPORTS

- a. The Board requested hearing decisions regarding substantial rehabilitation

This item will be agendaized as soon as possible.

7. ADJOURNMENT

The meeting was adjourned by consensus at 9:25 p.m.

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**PANEL MEETING
June 21, 2018
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

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

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
Ubaldo Fernanez	Tenant	X		
Robert Stone	Homeowner	X		
Benjamin Scott	Owner	X		

Staff Present

Luz Buitrago	Deputy City Attorney, Office of the City Attorney
Linda M. Moroz	Hearing Officer, Rent Adjustment Program
Kelly Rush	Acting Program Analyst, Rent Adjustment Program

3. OPEN FORUM

Franki Velez

4. NEW BUSINESS

- i. Appeal Hearing in cases:
 - a. E17-0002; Husain v. Tenant
E17-0003; Husain v. Tennat
 - b. T17-0082; Holman v. Eastshore Properties
 - c. T17-0221; Kaufman v. Nguyen

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**a. E17-0002, Husain v. Tenant
E17-0003, Husain v. Tenant**

Appearances:

Urfana Husain	Owner
Alana Grice Conner	Attorney for Owner Appellant
No appearance by Tenants	

Owner appealed the Hearing Decision which denied the owner's petition to extend time for tenant vacancy to make repairs.

Board Discussion

After argument made by the owner's attorney, questions to the owner's attorney, and Board discussion, U. Fernandez moved to affirm the Hearing Decision based on substantial evidence but striking the following language on the page 3 of the Hearing Decision, in the last paragraph before the Order: "and they [the tenants] were therefore constructively evicted." B. Scott seconded.

The Board panel voted as follows:
Aye: U. Fernandez, R. Stone, B. Scott
Nay: 0
Abstain: 0

The Motion was approved by consensus.

b. T17-0082, Holman v. Eastshore Properties

Appearances:

Lee McEachern	Representative for Owner Appellant
Tasha Holman	Tenant Appellee

Owner appealed the Hearing Decision which granted the claim for decreased housing services with respect to the carpet.

Board Discussion

After arguments made by the owner's representative, the tenant, and questions to the parties, U. Fernandez moved to affirm the Hearing Decision based on substantial evidence. B. Scott seconded.

The Board panel voted as follows:
Aye: U. Fernandez, R. Stone, B. Scott
Nay: 0

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Abstain: 0

The Motion was approved by consensus.

c. T17-0221; Kaufman v. Nguyen

Appearances:

Michael Kaufman	Tenant Appellant
James Vann	Representative for Tenant Appellant
Jennifer Nguyen	Owner Appellee

Tenant appealed the Hearing Decision which denied the tenant petition and held that the rent increase was valid and justified by banking.

Board Discussion

After arguments made by the parties and panel discussion, U. Fernandez made a motion to remand the Hearing Decision back to the Hearing Officer to determine a specific issue of law as to whether the owner is entitled to the rent increases based on banking for those years prior to the first RAP Notice that was provided to the tenant. After further discussion, R. Stone offered a counter amendment to the motion for the hearing officer to determine if the landlord, after having served the RAP notice, can claim banking for those years for which the RAP notice was not properly served. U. Fernandez made a counter amendment to the motion for the hearing officer to determine the following: If no RAP notice was served at commencement of tenancy to the date when the RAP notice is served, can the landlord lawfully bank those rent increases for those years prior to the first RAP Notice. R. Stone offered friendly amendment to the motion to determine if a properly served RAP notice cures all prior rent increases.

Following further panel discussion of specific Sections 8.22.070B.5 and 8.22.060, R. Stone made a substitute motion to remand the matter to the Hearing Officer with direction to determine specifically the issue of law as to whether a properly served RAP Notice cures the defect of prior improperly served notices or failure to serve RAP Notice such that the landlord may then claim banking of rent increases that were not taken in the past. B. Scott seconded.

The panel also requested to emphasize to the Hearing Officer that they need to see deep discussion of the law and prior cases on this issue.

The Board panel voted as follows:
Aye: U. Fernandez, R. Stone, B. Scott
Nay: 0
Abstain: 0

The Motion was approved by consensus.

6. ADJOURNMENT

The meeting was adjourned at 8:50 p.m.

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
Meeting
June 28 2018
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

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

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
U. Fernandez	Tenant			X
D. Mesaros	Tenant	X		
T. Mason	Tenant alt.		X	
Ed Lai	Homeowner Alt.			
R. Stone	Homeowner			X
M. Cook	Homeowner	X		
J. Warner	Homeowner	X		
K. Blackburn. A.	Homeowner	X		
K. Friedman	Landlord	X		
B. Scott	Landlord Alt.			X
D. Madison	Landlord Alt.		X	

Staff Present

Kent Qian Deputy City Attorney
Barbara Kong-Brown Senior Hearing Officer

3. CONSENT ITEMS

None

Board panel minutes for June 7, 2018, were available for review.

4. OPEN FORUM

- i. James Vann
- ii. Frances Moore

5. NEW BUSINESS

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Hearing in appeal cases:

i.

a. T16-0663, Velez v. Huang

Appearances: Francesca Velez Tenant Appellant
 Michael McLaughlin Owner Representative Appellee

Petitioner Velez Appeal

The petitioner appealed from a hearing decision which determined that she lacked standing to file a petition against the owner; that she did not pay rent to either the former or current owner; and neither the former or current owner rented the subject unit to the petitioner.

The petitioner contended the decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior Board decisions; the decision is not supported by substantial evidence; she was denied a sufficient opportunity to present her claim; the decision denies her a fair return on her investment. She further contended that she is a tenant and was confused by the court date and missed the deadline to submit her evidence at the underlying hearing. She has a contract with the owner for her to occupy the unit which she presented to the Board upon appeal.

The owner representative contended that the petitioner is not a tenant; that the former owner denies that he received rent from her; that the signatures on her documents are fraudulent. There is an unlawful detainer pending before the Superior Court of Alameda County and they will have an expert testify regarding the lack of authenticity on the petitioner's documents. The current owner purchased the property at foreclosure from the Bank and there was only 1 tenant, Eleanor Mark, on the disclosure sheet. The realtor was unable to access the second unit and the owner did not know the petitioner was in the unit until she received a notice from the City.

After questions to the parties and Board discussion, M. Cook moved to remand the hearing decision to the hearing officer to consider the findings of the Alameda County Superior Court unlawful detainer proceeding and the new evidence submitted by the tenant in this appeal, which was not provided in the underlying hearing. D. Mesaros seconded. The Board voted as follows:

Aye: M. Cook, K. Blackburn, J. Warner, K. Friedman, D. Mesaros
Nay: 0
Abstain: 0

The motion was approved by consensus.

b.L16-0083, Fong et al. v. Tenants, T17-0015, Gaona v. Fong

Barbara Kong-Brown, Senior Hearing Officer, recused herself from participation in this case because she was the hearing officer in this case.

Appearances: Paul Katz Owner Appellant Representative

The owner appealed from a decision which denied an exemption from the Rent Adjustment Ordinance on the basis that the dwelling units were not sold separately by the subdivider to a bona fide purchaser for value. The Hearing Officer determined that the owner purchased the entire building, which consists of four units.

The owner representative contended that Golden State Ventures, Superior Court of California, County of Alameda, Hayward Hall of Justice, RG16834166, reversed the Rent Board's decision due to the Board's mistaken interpretation of the phrase "sold separately." The Court held that the meaning of the phrase "sold separately" means that a subdivider cannot convert a building to condominiums and obtain an exemption from rent control. The exemption only applies to persons who own the units after they are sold by the subdivider. The owners here were not the subdivider and were subsequent bona fide purchasers.

The court decision indicates that the Rent Board should reverse the hearing officer in this case. The four units are all condominiums with four separate parcel numbers and the owners are bona fide purchasers. This case was subsequently affirmed by the Court of Appeals.

After questions to the parties and Board discussion D. Mesaros moved to affirm the hearing decision based on substantial evidence. M. Cook seconded. The Board voted as follows:

Aye: M. Cook, K. Blackburn, J. Warner, D. Mesaros
Nay: K. Friedman
Abstain: 0

The motion was approved by consensus.

c. T17-0084, Ullman v. Rafaty, T17-0086, Hellman v. Rafaty, L17-0015, Rafaty v. Tenant, L17-0016, Rafaty v. Tenant

Appearances: Zev Hardman Owner Appellant Representative
Bree Ullman Tenant Appellee Representative

The owner appealed from decisions which denied his petitions for certificates of exemption on the grounds that the units were not sold to a bona fide purchaser, involved an unconventional transaction that did not involve a conventional mortgage, and was purchased sight unseen.

The owner contended that the hearing officer confused the two grant deeds, that they were not for the same unit, but for separate units. The hearing officer interpreted this as an attempt that the owner was trying to pull a fast one, and concluded that this was a sham transaction.

The owner's purchase was legitimate. The purchase of the two units have separate assessor parcel numbers. The grant deeds are similar but there are separate deeds for each unit.

A bona fide purchaser does not have to pay full value or use a bank loan, or visit the property personally prior to purchase. A relative purchased the units and knew the area and the purchase was a bona fide purchaser.

The tenant representative contended that the owner was not a bonafide purchaser. He sold the property to his cousin. The original owner financed the purchases. There was no confusion. The deeds did not have a description. The original subdivider sold the property to the original owner at below market prices in an area of skyrocketing property values. There was no appraisal, escrow, broker and the owner never visited the property. The totality of the circumstances indicates that the property was not purchased by a bona fide purchaser for value.

After Board discussion and questions to the parties K. Blackburn moved to affirm the hearing decision based on substantial evidence. M. Cook seconded. The Board voted as follows:

Aye: M. Cook, K. Blackburn, J. Warner, D. Mesaros, K. Friedman
Nay:
Abstain: 0

The motion was approved by consensus.

6. SCHEDULING & REPORTS

- a. The Board requested hearing decisions regarding substantial rehabilitation

This item will be agendized as soon as possible.

7. ADJOURNMENT

The meeting was adjourned by consensus at 9:25 p.m.

**CITY OF OAKLAND
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD
Meeting
July 12, 2018
7:00 p.m.
City Hall, Hearing Room #1
One Frank H. Ogawa Plaza, Oakland, CA**

MINUTES

1. CALL TO ORDER

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

2. ROLL CALL

MEMBER	STATUS	PRESENT	ABSENT	EXCUSED
U. Fernandez	Tenant	X		
D. Mesaros	Tenant	X		
T. Mason	Tenant alt.		X	
Ed Lai	Homeowner Alt.	X		
R. Stone	Homeowner			
M. Cook	Homeowner			X
J. Warner	Homeowner	X		
K. Blackburn.	Homeowner Alt.			X
K. Friedman	Landlord			X
B. Scott	Landlord Alt.	X		
D. Madison	Landlord Alt.		X	

Staff Present

Kent Qian Deputy City Attorney
Barbara Kong-Brown Senior Hearing Officer

3. CONSENT ITEMS

- a. Board minutes, June 14, 2018
- b. Board minutes, June 28, 2018

Board panel minutes for July 12, 2018, available for review.

4. OPEN FORUM

No speakers

5. NEW BUSINESS

Hearing in appeal cases:

- i.
 - a. T16-0496, Samatar v. Anastos

This was an owner appeal. The owner withdrew her appeal.

- b. T16-0237, Szymanski v. Madison Park Financial

Appearances: Ziaa Szymanski	Tenant Appellant
Leah Hess	Tenant Appellant Representative
Lerna Kazazic	Owner Appellee Representative

The tenant appealed from an administrative decision which denied her petition on the basis of an exemption from the Rent Ordinance granted in a prior case. The tenant representative contended that the prior exemption was based on mistake or fraud, and involved different units. The tenant did not have any input to the prior hearing, and this constitutes a due process violation. The Board has remanded cases when not all the units in a building had the opportunity to be heard, e.g. Sherman v. Michelson. The tenant requests remand of this case for a hearing on the merits.

The owner representative contended that the subject property is not subject to rent control and the Rent Board has no jurisdiction over this matter. The property was renovated in 1985. The California Court of Appeals ruled that the property is not subject to rent control in Vidor v. City of Oakland, Vulcan Properties LLP et al, Real Parties in interest and Respondents, A120973 (2009). The tenant wants the Board to overrule the Court of Appeals decision. This issue was litigated and upheld by the California Court of Appeals.

The Board noted that the tenant petition did not check the box entitled "I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake". After questions to the parties and Board discussion B. Scott moved to affirm the hearing decision based on substantial evidence. There was no second. D. Mesaros moved to remand the hearing decision for a hearing on the merits, and that the Court of Appeals decision was not appropriate. U. Fernandez seconded. The Board voted as follows:

Aye:	E. Lai, U. Fernandez, J. Warner, D. Mesaros
Nay:	0
Abstain:	B. Scott

The motion carried.

c. T16-0495, Arnold v. Farley Levine Properties, LLC

Appearances: Barbara Farley Owner Appellant
 David Arnold Tenant Appellee

The owner appealed from a decision which granted only \$24.00 monthly for capital improvement pass-throughs. The owner spent over \$100,000 in capital improvements to the subject property. The hearing decision disallowed costs for dry rot, which the hearing officer determined was deferred maintenance, and that it should have been discovered through routine inspections. The owner contended that they purchased the building in 2014 and they did not have the opportunity to conduct any prior inspections of the property. She was only granted \$2,150.00 for work spent totaling \$117,000.

There was also an issue regarding a permit for the seismic retrofit and the hearing officer determined that there was no evidence that the initial permit included the seismic work performed on the project.

The owner contended that she obtained a permit initially for work totaling \$25,000. Her contractor advised that the building needed to be upgraded and retrofitted. The work consisted of new perimeter shingles, new drainage, foundation support beams. New ventilation, and bolting the foundation, removal of three stairwells with new walkways. The dry rot was in the laundry room and constituted \$29,000 of the \$117,000 in costs. The remainder of the costs was for building upgrades. The tenant has a new porch, a new laundry room, and new walkway. The owner further contended that the hearing officer's ruling was inconsistent with the city inspector, who said the work was all encompassing with the upgraded permit.

The owner also objected to denial of a capital improvement increase by the hearing officer for the work regarding the laundry room which included the cost of 3 water heaters, on the grounds that the machines are coin operated, is arbitrary.

The tenant contended that much of the work constituted repairs and that the owner did not request prior permits and the project was red tagged. The \$29,000 for repairs is based on an estimate. This is not the amount of the actual work. The project expanded as they discovered more damage. The owner originally did not request any permit. She then requested a permit for \$25,000 after she spent \$50,000 for demolition, repair-permit necessary work. She told the hearing officer that the \$25,000 permit covered the retrofit work. She had opportunity to produce evidence for the seismic work. She then went and got a whole new permit. The owner did not justify why the work benefited him.

After Board discussion and questions to the parties U. Fernandez moved to affirm the hearing decision based on substantial evidence. D. Mesaros seconded. The Board voted as follows:

Aye: J. Warner, D. Mesaros, E. Lai, U. Fernandez, U. Fernandez

Nay:
Abstain: 0

The motion was approved by consensus.

6. SCHEDULING & REPORTS

- a. The Board requests discussion of establishing a regular policy committee
- b. The director of Housing and Community Development will discuss board membership and attendance and procedure for removal of board members
- c. Staff will provide a proposed agenda report regarding amendments to Substantial Rehabilitation exemption

7. ADJOURNMENT

The meeting was adjourned by consensus at 8:25 p.m.

CHRONOLOGICAL CASE REPORT

Case No.: L17-0171
Case Name: Berger v. Tenants
Property Address: 1800 Madison St., Oakland, CA
(46 Units)
Parties: Cheryl & Randall Berger (Owner)
Liz Hart c/o Fried & Williams LLP (Owner Representative)

CERTIFIED FOR APPEAL BY THE HEARING OFFICER

<u>Activity</u>	<u>Date</u>
Owner's Petition filed	June 30, 2017
Tenant Responses filed	None
Hearing Decision issued	May 31, 2018
Owner's Objection to Appeal filed	June 25, 2018

L17-0171 MS, BKB

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721</p>	<p>For date stamp. RENT ADJUSTMENT PROGRAM JUN 30 PM 4:33 <p style="text-align: center;"><u>LANDLORD PETITION</u> <u>FOR CERTIFICATE OF EXEMPTION</u> (OMC §8.22.030.B)</p> </p>
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Please Fill Out This Form Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed. Attach to this petition copies of the documents that prove your claim. Before completing this petition, please read the Rent Adjustment Ordinance, section 8.22.030. A hearing is required in all cases even if uncontested or irrefutable.

Section 1. Basic Information

Your Name Cheryl & Randall Berger		Complete Address (with zip code) 1000 Marina Village Parkway Suite 130 Alameda, CA 94501	Telephone Day: 510-864-2100
Your Representative's Name Clifford Fried, Esq. Elizabeth Hart		Complete Address (with zip code) c/o Fried & Williams LLP 1901 Harrison Street 14th Floor Oakland, CA 94612	Telephone Day: 510-625-0100
Property Address 1800 Madison Street, Oakland			Total number of units in bldg or parcel. 46
Type of units (circle one)	Single Family Residence (SFR)	Condominium	Apartment or Room
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes	No
Assessor's Parcel No. 008-693-001			

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

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

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

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

RENT ADJUSTMENT PROGRAM
CI
JUL 28 2017 11:45:35
Single-Family or Condominium (Costa-Hawkins): Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), please answer the following questions on a separate sheet:

1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire, or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the current tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?
8. When did the tenant move into the unit?

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

<input type="checkbox"/>	New Construction
<input checked="" type="checkbox"/>	Substantial Rehabilitation
<input type="checkbox"/>	Single Family Residence or Condominium (Costa-Hawkins)

Section 4. Verification Each petitioner must sign this section.

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

 (Not under penalty of perjury)
Owner's  Representative

06-30-2017
Date


Owner's Signature

06-30-17
Date

Important Information

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

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

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA , SUITE 5313 · P.O. BOX 70243 · OAKLAND, CA
94612-2034

Housing and Community Development Department
Rent Adjustment Program

TEL (510) 238-3721
FAX (510) 238-6181
TDD (510)238-7629

HEARING DECISION

CASE NUMBER: L17-0171, Berger v. Tenants

PROPERTY ADDRESS: 1800 Madison Street
Oakland, CA

DATES OF HEARING: December 20, 2017
December 28, 2017

DATE OF DECISION: May 31, 2018

APPEARANCES: Randall Bergen Owner
Clifford Fried Attorney for Owner
Elizabeth Hart Owner Representative
Donna Brinkman Property Manager
No appearance by tenants

SUMMARY OF DECISION

The owner's petition is GRANTED.

INTRODUCTION

The owner filed a petition on June 30, 2017, requesting an exemption from the Rent Adjustment Ordinance based on substantial rehabilitation. A copy of the owner petition and notice of hearing was sent to all tenants in the subject building, which consists of 46 units, on August 25, 2017.

No tenants filed a response and no tenants appeared at the Hearing. The notices of hearing were sent to all tenants with a proof of service and have not been returned to staff. The Hearing was properly noticed and proceeded without the tenants.

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THE ISSUE

Is the subject unit exempt from the Rent Adjustment Program on the grounds of substantial rehabilitation?

EVIDENCE

The owner testified that the subject building is the Lake Merritt building which has a business license for hotel stays but has occupancies greater than 30 days. The building contains a buildable area of 44,155 feet and the owner provided supporting documentation of this square footage from the Alameda County Assessor. The lot size is 13,307 square feet.¹ Randall and Cheryl Berger purchased the subject property on July 10, 2006.²

The owners contracted with NCR Construction on May 7, 2007, to convert apartment units to independent senior housing units, provide off-street parking, spa and recreation room, elevator, accessible entrance, and voluntary life-safety and accessibility upgrades at the Lake Merritt hotel. The contract amount was for \$2,948,966.³ The contract amount increased to \$3,082,571 on August 11, 2008, due to change orders and modifications/repairs.⁴

On June 14, 2007, the owners executed a contract with Gelfand Partners, Architects.⁵ They provided a copy of the architectural plans for the property.⁶

Building Permit Number B0700999 was issued on July 19, 2007, for voluntary sprinkler installation, voluntary accessible path of travel upgrades, no structural work, and minor remodel. The work required electrical, plumbing and mechanical permits. The work was "finalized" and deemed "okay to occupy" on December 5, 2008.⁷

The owner testified and provided documentation that the subject building is Type V, wood frame construction on level ground, and that each of the expenses contained in an itemized summary report was paid.

The owner submitted over 1,400 pages of documents and the following documentary evidence of expenses in support of the owner's claim of exemption based on substantial rehabilitation was submitted and received into evidence totaling \$5,439,134:

¹ Ex. No. 1

² Ex. No. 7-9

³ Ex. Nos. 1435-1445

⁴ Ex. No. 117

⁵ Ex. Nos. 1446-1508

⁶ Ex. Nos. 10-22

⁷ Ex. Nos. 3-7

Vendor	Task	Amt.	Payment-Ck.	Date
Barbary Dev. ⁸	Development	\$131,168	1064,1129,1209,1258,1321	11/31/06-3/28/08
Bellaire Engr ⁹	Awning	\$ 5,420	1273,1313	6/3/08;12/31/0
Camozzi Carpet ¹⁰	Carpet	\$ 2,988	1313,1154,1200,1219	4/07-11/07
City of Oakland ¹¹	Permits	\$ 9,287 \$ 358	1025,1164	3/9/07;7/31/07
Coast Construction	Toilet partitions	\$ 8,000	1285, 1416	7/31/08
Diablo Flooring ¹²	Carpet	\$ 46,418	1259,1274,1288,1017,1322	3/13/08-1/31/09
Dick's Carpet ¹³	Carpet	\$ 74,023	1006,1323,1264	1/08-7/08
EBMUD	pipe	\$ 14,081	1210	11/8/07
Ezell's Tel.	rewiring	\$ 3,400	1165,1217	5 to 6/07
Gelfand & Assoc. ¹⁴	Architect	\$ 230,377	1053,1090,1128,1146,1147,1162,1174,1197,1223,1228,1237,1248,1266,1280,1291, 1306,1319	12/06-10/08
Graham Tree ¹⁵	Tree removal-ADA	\$ 1,500	1216	12/6/07
Heatherwick Consulting ¹⁶	Design	\$ 89,299	1167,1168,1188,1201,1208,1220,12254,1232,1247,1257,1272,1018,1310,1215,1320	6/07-10/08
LakeMerritt ¹⁷ Hotel	Construction	\$ 14,760	1292,1298,1275,1031,1034	7/31/08-10/31/08
LJ Kruse	Install radiator	\$ 855	1275	7/31/08
LMH ¹⁸	Cabinets/painting	\$ 2,290	1246,1250	2/28/08
Magic Brush Painting ¹⁹	Painting	\$ 7,600	1035, 1245	3/08-12/08

⁸ Ex. Nos. 1381;1389

⁹ Ex. Nos. 1414,1426

¹⁰ Ex. Nos. 1389,1397,1402

¹¹ Ex. Nos.88,139

¹² Ex. Nos. 59-60; 159-161

¹³ Ex. Nos. 95-100;192-194

¹⁴ Ex. Nos. 70-71;195-196;199

¹⁵ Ex. No. 1402

¹⁶ Ex. Nos. 134-137

¹⁷ Ex. No. 54-55; 190-191

¹⁸ Ex. Nos. 1408,1409

¹⁹ Ex. Nos. 1409,1421

Vendor	Task	Amt.	Payment-Ck.	Date
NCR Construction ²⁰	Construction	\$2,996,966	1013,1016,1082,1083,114 4,1161,1175,1179,1192,12 14,1222,1226,1236,1249,1 251,1289,1008,1312,1324	2/26/07-8/14/0
PSS Print	Phone system	\$1,856	Wells Fargo bank statement	8/28/08
Ponderosa Tree Svc. ²¹	Tree removal	\$2,380	1005	8/31/08
Sima Tawakoli ²²	Bldg. Drawings Measurements	\$3,900	1055	9/15/06
Synergy Co ²³	Asbestos	\$2,700	1180,1234	8/22/07-1/08
Teledata ²⁴	Phones	\$3,252	1202,1205,1243	10/07-11/45/07
Tizzi Glass ²⁵	Windows	\$10,485 ²⁶	1287,1294	4/30/08
Tom Martin ²⁷	Water heater	\$8,600	1294	7/11/08
Tom's Metal Specialists ²⁸	Fire Escape	\$10,200	1316	10/2/08
Universal Designers ²⁹	ADA consulting for exterior ramp	\$1160	1163	8/31/07

Total Allowable Expenses \$3,536,751

The following expenses were disallowed³⁰:

Vendor	Amount
1. A & A Office Equipment	\$ 3,800
2. Adam Stephens Marketing	\$ 1,298
3. ADR Services	\$ 786
4. American Society on Aging	\$ 120
5. AND Architecture	\$ 4,074

²⁰ Ex. Nos. 1384,1389,1391,1393,1395,1397,1398,1402,1406,1408,1412,1416,1418,1420,1427

²¹ Ex. Nos. 90-94; 1418

²² Ex. No. 1381

²³ Ex. No. 1395,1406

²⁴ Ex. Nos.1398,1409

²⁵ Ex. Nos. 146,1416,1427

²⁶ Ex. Nos. 39-46

²⁷ Ex. No. 1427

²⁸ Ex. Nos. 182-189; 1414

²⁹ Ex. No. 1393

³⁰These expenses were disallowed because there was either no proof of payment or the expense was not related to hard costs of rehabilitation of the building, e.g. accounting, legal, marketing, outreach, interest payments, furniture for model units

Vendor	Amount
6. Armistead Maupin	\$ 35,000
7. Art Deco Society	\$ 100
8. Asia Hawkins	\$ 2,875
9. ATS Amertel	\$ 2,385
10. Ayala's Color Concepts	\$ 1,900
11. Barbary Development Group	\$ 12,595
12. Bay Times	\$ 1,094
13. Cartwright & Co.	\$ 21,925
14. Channel 5 News	\$ 179
15. Cohen Financial	\$ 76,250
16. Container Store	\$ 2,275
17. Contra Costa Newspaper	\$ 867
18. Daniel Hernandez	\$ 1,350
19. Datagraphics	\$ 125
20. David Garland	\$ 600
21. David Kerr ³¹	\$ 12,008
22. David Latina ³²	\$ 8,632
23. Donna Inscho	\$ 3,343
24. Duane Cramer Photography	\$ 2,584
25. EMG	\$ 7,765
26. Fast Signs	\$ 448
27. First National Bank	\$ 942,769
29. Fluorescent Lighting & signs	\$ 3,350
30. Gerontological Services	\$ 13,000
31. Gladstone & Assoc.	\$ 1,212
32. Graham Hammond	\$ 1,650
33. Grubb & Barshay	\$ 9,850
34. Hamilton Ricci Appraiser	\$ 21,000
35. Hanson Bridgett	\$ 7,568
36. Harry Fox	\$ 3,968
37. Indico	\$ 390
38. Hendrickson Consulting	\$ 1,940
39. Janin, Morgan & Brenner	\$ 46,550
40. Jo Ann Driscoll Mktg.	\$ 25,064
41. Joanna Leonard	\$ 5,766
42. KQED Radio	\$ 2,040
43. Lake Merritt Hotel	\$ 16,100
44. LMH Operating Reserve	\$ 370,635
45. Merrill Sign	\$ 1,450
46. NCR Construction	\$ 153,098 ³³
47. New Lifestyles	\$ 1,320
48. Oakland East Bay Symphony	\$ 500

³¹ Ex. Nos. 138-140

³² Ex. No. 45

³³ No proof of payment

49. Power Boiler Sales	\$ 7,020 ³⁴
50. PR News Wire	\$ 1,005
51. PS Print	\$ 3,993
52. Reflection Design	\$ 2,730
53. Reimbursements BDG/LMH	\$ 11,686
54. Restaurant Equipment Design	\$ 3,140
55. Sarah Gonquist	\$ 390
56. Scout Staging	\$ 13,269
57. Stagebridge	\$ 150
58. Starving Students	\$ 805
59. Structural Design Engineers	\$ 472
60. Sullivan Communications	\$ 250
61. Super Print	\$ 10,555
62. Synergy Companies	\$ 2,700
63. Teledata	\$ 3,000
64. Magic Brush Painting	\$ 2,900
65. Open House	\$ 1,500
66. Ultimate Moves	\$ 1,410
67. US DATA	\$ 1,800

TOTAL EXPENSES DISALLOWED \$1,902,373

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicable Law: O.M.C. 8.22.030(A) (6) states that dwelling units located in “substantially rehabilitated buildings” are not “covered units” under the Rent Ordinance.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.³⁵

The tables issued by the Building Services agency refer to a dollar amount per square foot. Therefore, in order to make the necessary mathematical computation, an owner must present sufficient evidence of the square footage of the building, as well as the cost of the rehabilitation project.

The Calculation: Table “A” lists square foot construction costs, effective February 1, 2007.

³⁴ No proof of payment

³⁵ O.M.C. Section 8.22.030(B)(2)

These tables are used as follows: (1) On Table "B," determine the number for the year of construction, geographical district, and type of construction; The resulting percentage is then multiplied by the number derived when the square foot cost shown on Table "A" is multiplied by the number of square feet in the building.

The buildable area of the subject building is 44,155 square feet. The appropriate cost table is for hillside construction costs. Construction costs in 2007 are stated below as follows:

The owner testified that the subject building is of wood frame construction. The table issued by the City of Oakland entitled "City of Oakland Building Services Construction Valuation for Building Permits", states if the renovation work were done in 2007 the square foot cost would be \$158.28 (Apartment R2; Category V-wood frame). This amount multiplied by 44,155 equals \$6,988,853. 50% of that amount is \$3,494,427. Therefore, if the owner expended \$3,494,427 on the construction project, the building is exempt from the Rent Ordinance.

The owner has substantiated expenses of \$3,536,761 which exceed the 50% threshold of \$3,494,427 for new construction. Therefore, the building has been "substantially rehabilitated." The rental units in the subject building are exempt from the Rent Ordinance.

ORDER

1. The owner's petition is granted.
2. The subject building is a "substantially rehabilitated" building and exempt from the Rent Adjustment Ordinance. A certificate of exemption for the subject building shall be issued when this decision becomes final.
3. The undersigned hearing officer certifies this Hearing Decision for appeal to the Rent Board. The appeal hearing is scheduled for July 26, 2018. A Notice of Appeal hearing shall be sent under separate cover.
3. **Right to Appeal:** **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) days after service of this decision. The date of service is shown on the attached Proof of Service. If the last day to file is a weekend or holiday, the appeal may be filed on the next business day.

Dated: May 31, 2018


BARBARA KONG-BROWN, ESQ.
Senior Hearing Officer
Rent Adjustment Program

PROOF OF SERVICE

Case Number L17-0171

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

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

Documents Included

Hearing Decision

Owner

Cheryl & Randall Berger
1000 Marina Village Pkwy #130
Alameda, CA 94501

Owner Representative

Fried & Williams LLP/Liz Hart
1901 Harrison St 14th Flr.
Oakland, CA 94612

Tenants

Alexa Nakata
1800 Madison St #303
Oakland, CA 94612

Anne Roberts
1800 Madison St #601
Oakland, CA 94612

Audrey Ross
1800 Madison St #510
Oakland, CA 94612

Barbara Horton & John Moss
1800 Madison St #506
Oakland, CA 94612

Betty Ames
1800 Madison St #604
Oakland, CA 94612

Beverly Concannon
1800 Madison St #209
Oakland, CA 94612

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Cynthia Hall
1800 Madison St #407
Oakland, CA 94612

Diane Livingston
1800 Madison St #310
Oakland, CA 94612

Dolores Gandsey
1800 Madison St #206
Oakland, CA 94612

Dorothy Angulo
1800 Madison St #205
Oakland, CA 94612

Evelyn Benas
1800 Madison St #503
Oakland, CA 94612

Evelyn Thorne
1800 Madison St #404
Oakland, CA 94612

Franklin Torrence
1800 Madison St #606
Oakland, CA 94612

James Edmiston
1800 Madison St #305
Oakland, CA 94612

Jan Bergen
1800 Madison St #608
Oakland, CA 94612

Jane Dwight
1800 Madison St #304
Oakland, CA 94612

Jane Howell
1800 Madison St #501
Oakland, CA 94612

Jay & Judi Bloom
1800 Madison St #401
Oakland, CA 94612

John Baretta
1800 Madison St #306
Oakland, CA 94612

Judy Moore
1800 Madison St #610
Oakland, CA 94612

Karma Pippin
1800 Madison St #505
Oakland, CA 94612

Laura Hunt
1800 Madison St #607
Oakland, CA 94612

Lynne Creighton
1800 Madison St #301
Oakland, CA 94612

Marilyn Srebnik
1800 Madison St #204
Oakland, CA 94612

Mary Bray
1800 Madison St #210
Oakland, CA 94612

Mary Krenn
1800 Madison St #605
Oakland, CA 94612

Meghan Collins
1800 Madison St #309
Oakland, CA 94612

Mehdi Noorani
1800 Madison St #308
Oakland, CA 94612

Mitzi Trachtenberg
1800 Madison St #307
Oakland, CA 94612

Pam Garrett
1800 Madison St #609
Oakland, CA 94612

Pat Bassett
1800 Madison St #409
Oakland, CA 94612

Pat King
1800 Madison St #408
Oakland, CA 94612

000032

Patricia Taylor
1800 Madison St #507
Oakland, CA 94612

Peter Hewitt & Madeleine Reiter
1800 Madison St #504
Oakland, CA 94612

Resident
1800 Madison St #410
Oakland, CA 94612

Resident
1800 Madison St #406
Oakland, CA 94612

Resident
1800 Madison St #509
Oakland, CA 94612

Resident
1800 Madison St #508
Oakland, CA 94612

Resident
1800 Madison St #201
Oakland, CA 94612

Richard Whitaker
1800 Madison St #403
Oakland, CA 94612

Rita Weisman
1800 Madison St #405
Oakland, CA 94612

Vicki Blakeman
1800 Madison St #203
Oakland, CA 94612

Vicki Blakeman
1800 Madison St #202
Oakland, CA 94612

Violet Dardarian
1800 Madison St #207
Oakland, CA 94612

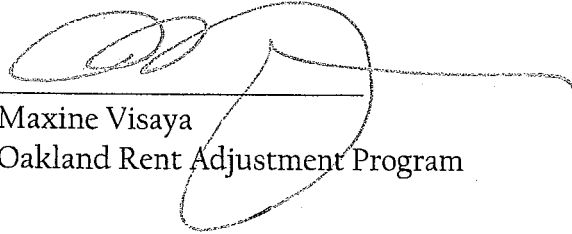
Warner Oberndoerfer
1800 Madison St #208
Oakland, CA 94612

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Wilhelmina Edwards
1800 Madison St #603
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 Jun 1, 2018 in Oakland, CA.



Maxine Visaya
Oakland Rent Adjustment Program

000034

2018 JUN 25 AM 9:24

1 Clifford E. Fried
2 Fried & Williams LLP
3 1901 Harrison Street, 14th Floor
4 Oakland, CA 94612
5 Phone: 510-625-0100
6 Email: cfried@friedwilliams.com

7 Representatives for Owner Randall Berger

8 **DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT**
9 **RENT ADJUSTMENT PROGRAM**
10 **CITY OF OAKLAND**

11
12 In re: 1800 Madison Street, Oakland

13
14 Berger v. Tenants

15
16 [No Tenants Have Responded or Appeared

CASE NO.: L17-0171

OBJECTION TO APPEAL

Hearing Dates: December 20, 2017 and
December 28, 2017

Date of Decision: May 31, 2018

17
18
19
20
21 This matter has been certified for appeal by the Hearing Officer. Owner Randall Berger
22 objects to the appeal for the reasons set forth herein.

23
24 **1. The Time It Is Taking the RAP to Hear and Decide Owner's Petition Is Too**
25 **Long.**

26 The Owner filed his Petition for a Certificate of Exemption, based on substantial
27 rehabilitation, on June 30, 2017. A hearing didn't take place until December 20, 2017 even
28 though no tenant at the building filed a Response to the Owner's Petition. No tenant

2018 JUN 25 AM 9:24

1 appeared at the Hearings on the Petition. It then took five months for the Hearing Officer
2 to issue the Hearing Decision dated May 31, 2018. Now, there will be a further delay
3 because the Hearing Officer certified the Hearing Decision for appeal to the Rent Board.

4 The Supreme Court of California warned that a Rent Board cannot force a landlord
5 to wait a prolonged period to issue decisions on rent matters. It has been almost one year
6 since the Owner asked for a Certificate of Exemption even though there is no opposition.
7 The lack of a response from any of the numerous tenants in the building indicates that
8 none of the tenants in the building seem to care about the exemption. The delays in
9 deciding the Owner's Petition violate the constitutional principles set forth in *Birkenfeld*
10 *v. City of Berkeley* (1976) 17 Cal.3d 129, 169-173.

11 **2. The RAP Staff Has Violated Its Own Rules on Appeal.**

12 An Appeal of a Hearing Decision must be done by filing a form provided by the
13 RAP. Reg. 8.22.120.A.1. An Appeal form is necessary to state the grounds for appeal. The
14 grounds for the appeal "must be stated sufficiently clearly for the responding party, and
15 the Board to reasonably determine the basis for the appeal so that the responding party
16 can adequately respond, and the Board can adequately adjudicate the appeal." Reg.
17 8.22.120.A.1. The RAP Staff did not complete an Appeal form. There are no grounds set
18 forth in the Hearing Decision.

19 There must be supporting argument and documentation served on the party
20 opposing the appeal within 15 days of the filing of the appeal. Reg. 8.22.120.A.2. It has
21 been more than 15 days since the Hearing Decision was signed by the Hearing Officer and
22 no supporting argument or documentation has ever been served on the Owner. The RAP
23 Staff never served Owner with supporting argument and documentation in violation of
24 the RAP's owner regulations.

25 Most importantly, there is an appeal now pending with no grounds for appeal. Reg.
26 8.22.120.B.1. set forth the possible grounds for an appeal. It is unknown what possible
27 grounds the RAP might have for its appeal. There can't be any.

2018 JUN 25 AM 9:25

1 **3. There is Nothing in the Decision That Warrants an Appeal.**

2 It is suspicious that the Hearing Decision was certified for appeal. This is a routine
3 Petition with absolutely no opposition from the tenants of the building. The Hearing
4 Officer gives no basis for the appeal in the Hearing Decision. Nothing was said by the
5 Hearing Officer during the Hearings that would indicate a problem or that the Petition
6 would be certified for appeal. Owner believes that someone other than the Hearing Officer
7 and tenants has improperly interfered with the RAP's Petition process and has asked that
8 the Hearing Decision be appealed. It is a violation of due process to deprive the Owner of
9 any opportunity to respond to the Appeal. This is a violation of Owner's due process rights
10 to not know who instigated the Appeal or why the Hearing Decision is even being
11 appealed.

12 **4. It is Illogical for the RAP to Appeal Its Own Decision.**

13 The Owner has nobody with an adverse interest challenging the Petition or filing
14 an Appeal. There can be no legal reason for the RAP to challenge its own decision.
15 Usually, a party aggrieved by a court or administrative ruling has the right to appeal. But
16 to allow the very administrative body that issued the ruling to file an appeal is illogical
17 and questions the integrity of the entire RAP system. The certification for appeal of the
18 Hearing Decision smacks of impropriety.

19 **CONCLUSION**

20 The Appeal should be dismissed administratively so that the Decision is now final.
21 The Owner requests that a Certificate of Exemption, based on substantial rehabilitation,
22 be issued forthwith.

23
24 Dated: June 25, 2018

Fried & Williams LLP

25
26 

27 By Clifford E. Fried,
28 Attorneys for Owner Randall Berger

CHRONOLOGICAL CASE REPORT

Case No.: T16-0683
Case Name: Prager v. Lagos
Property Address: 95 41st St., Unit #202, Oakland, CA
Parties: Marc Prager (Tenant)
Panos Lagos (Owner)

OWNER APPEAL

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	December 2, 2016
Owner Response filed	December 30, 2016
Hearing Decision issued	June 13, 2017
Owner Appeal filed	July 3, 2017

Ttl. 0680 KC/BC

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM Mail To: P. O. Box 70243 Oakland, California 94612-0243 (510) 238-3721</p>	<p>For date stamp.</p> <p style="text-align: center;">NOV 20 2015 OCT - 2 2015</p> <p style="text-align: center; font-size: small;">OAKLAND RENT ADJUSTMENT PROGRAM</p>
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Please Fill Out This Form As Completely As You Can. Failure to provide needed information may result in your petition being rejected or delayed.

TENANT PETITION

Please print legibly

Your Name Marc PRAGER	Rental Address (with zip code) 94611 95 41st St. Oakland Apt. 202	Telephone 510 913 3080
Your Representative's Name	Mailing Address (with zip code)	Telephone
Property Owner(s) name(s) Panos Lagos	Mailing Address (with zip code) 5032 Woodwinster Ln. Oakland 94602	Telephone 510 530 4078

Number of units on the property: 11

Type of unit you rent (circle one)	House	Condominium	Apartment , Room, or Live-Work
Are you current on your rent? (circle one)	Yes	No	Legally Withholding Rent. You must attach an explanation and citation of code violation.

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 checked="" type="checkbox"/>	(a) The increase(s) exceed(s) the CPI Adjustment and is (are) unjustified or is (are) greater than 10%.
<input type="checkbox"/>	(b) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/>	(c) The rent was raised <u>illegally</u> after the unit was vacated (Costa-Hawkins violation).
<input type="checkbox"/>	(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.)
<input checked="" type="checkbox"/>	(e) A City of Oakland form notice of the existence of the Rent Program was not given to me at least six months before the effective date of the rent increase(s) I am contesting.
<input checked="" type="checkbox"/>	(f1) The housing services I am being provided have decreased. (Complete Section III on following page)
<input type="checkbox"/>	(f2) At present, there exists a health, safety, fire, or building code violation in the unit. <u>If the owner has been cited in an inspection report, please attach a copy of the citation or report.</u>
<input type="checkbox"/>	(g) The contested increase is the second rent increase in a 12-month period.
<input type="checkbox"/>	(h) The notice of rent increase based upon capital improvement costs does not contain the "enhanced notice" requirements of the Rent Adjustment Ordinance or the enhanced notice was not filed with the RAP.
<input type="checkbox"/>	(i) My rent was not reduced after the expiration period of the rent increase based on capital improvements.
<input type="checkbox"/>	(j) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/>	(k) I wish to contest an exemption from the Rent Adjustment Ordinance (OMC 8.22, Article I)

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

Date you moved into the Unit: 3/3/2014 Initial Rent: \$ 1825.00 /month

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

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

List all rent increases that you want to challenge. Begin with the most recent and work backwards. If you need additional space, please attach another sheet. You must check "Yes" next to each increase that you are challenging.

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Date Notice Served (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
11/22/16	2/1/17	\$ 1825	\$ 2200	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

* You have 60 days from the date of notice of increase or from the first date you received written notice of the existence of the Rent Adjustment program (whichever is later) to contest a rent increase. (O.M.C. 8.22.090 A 2) If you never got the RAP Notice you can contest all past increases.

List case number(s) of all Petition(s) you have ever filed for this rental unit: 6

III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:

Decreased or inadequate housing services are considered an increase in rent. If you claim an unlawful rent increase for service problems, you must complete this section.


Are you being charged for services originally paid by the owner? Yes No
 Have you lost services originally provided by the owner or have the conditions changed? Yes No
 Are you claiming any serious problem(s) with the condition of your rental unit? Yes No

If you answered "Yes" to any of the above, please attach a separate sheet listing a description of the reduced service(s) and problem(s). Be sure to include at least the following: 1) a list of the lost housing service(s) or serious problem(s); 2) the date the loss(es) began or the date you began paying for the service(s); and 3) how you calculate the dollar value of lost problem(s) or service(s). Please attach documentary evidence if available.

To have a unit inspected and code violations cited, contact the City of Oakland, Code Compliance Unit, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, CA 94612. Phone: (510) 238-3381

IV. VERIFICATION: The tenant must sign:

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



Tenant's Signature

11/28/16

Date

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

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

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

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

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

Tenant's Signature

Date

VI. IMPORTANT INFORMATION:

Time to File This form must be **received** at the offices of the City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612 within the time limit for filing a petition set out in the Rent Adjustment Ordinance, Oakland Municipal Code, Chapter 8.22. Board Staff cannot grant an extension of time to file your petition by phone. For more information, please call: (510) 238-3721.

File Review

The owner is required to file a Response to this petition within 35 days of notification by the Rent Adjustment Program. You will be mailed a copy of the Landlord's Response form. Copies of **documents attached** to the Response form will not be sent to you. However, you may review these in the Rent Program office by appointment. For an appointment to review a file call (510) 238-3721; please allow six weeks from the date of filing before scheduling a file review.

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

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

Reduced Services -

Carpet is past its useful life and
should be replaced.

A handwritten signature consisting of a stylized 'M' followed by a long, sweeping horizontal line that curves slightly upwards at the end.

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CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM
P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721

for filing stamp.

RECEIVED
DEC 20 2014
OAKLAND RENT ADJUSTMENT

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

CASE NUMBER T 16 - 0683 / Prager v. Lagos

OWNER RESPONSE

Please print legibly.

Your Name PANOS LAGOS	Complete Address (with zip code) LAW OFFICES OF PANOS LAGOS 5032 Woodminster Lane Oakland, CA 94602	Phone: <u>510 530 4078</u> Email: <u>panos@panoslagoslaw.com</u>
Your Representative's Name (if any)	Complete Address (with zip code)	Phone: _____ Fax: _____ Email: _____
Tenant(s) name(s) MARC PRAGER	Complete Address (with zip code) 95 41st Street, Apt. 202 Oakland, CA 94611	

Have you paid for your Oakland Business License? Yes No Number 2766302
(Provide proof of payment.) SEE EXHIBIT A

Have you paid the Rent Adjustment Program Service Fee? (\$30 per unit) Yes No
(Provide proof of payment.)

There are 10 residential units in the subject building. I acquired the building on 10/27 /1997

Is there more than one street address on the parcel? Yes No

(10 parcel numbers with Unit #101 being parcel #12-992-22 through Unit #402, parcel #12-992-31)

I. RENTAL HISTORY

The tenant moved into the rental unit on or about 3/1/2014

The tenant's initial rent including all services provided was \$ 1,825.00 / month.

Have you (or a previous Owner) given the City of Oakland's form entitled **NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")** to all of the petitioning tenants?

Yes No I don't know If yes, on what date was the Notice first given? 02/28/2014 SEE EXHIBIT B

Is the tenant current on the rent? Yes No

If you believe your unit is exempt from Rent Adjustment you may skip to Section IV. EXEMPTION.

If a contested increase was based on Capital Improvements, did you provide an Enhanced Notice to Tenants for Capital Improvements to the petitioning tenant(s)? Yes ____ No ____ . If yes, on what date was the Enhanced Notice given? _____. Did you submit a copy of the Enhanced Notice to the RAP office within 10 days of serving the tenant? Yes ____ No ____ . Not applicable: there was no capital improvements increase. _____

Begin with the most recent rent increase and work backwards. Attach another sheet if needed.

Date Notice Given (mo/day/year)	Date Increase Effective (mo/day/year)	Amount Rent Increased		Did you provide NOTICE TO TENANTS with the notice of rent increase? <input type="checkbox"/> Yes <input type="checkbox"/> No
		From	To	
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No

II. JUSTIFICATION FOR RENT INCREASE

You must prove that each contested rent increase greater than the Annual CPI Adjustment is justified and was correctly served. Use the following table and check the applicable justification(s) box for each increase contested by the tenant(s) petition. For a summary of these justifications, please refer to the "Justifications for Increases Greater than the Annual CPI Rate" section in the attached Owner's Guide to Rent Adjustment.

<u>Date of Increase</u>	Banking (deferred annual increases)	Increased Housing Service Costs	Capital Improvements	Uninsured Repair Costs	Fair Return	Debt Service (if purchased before 4/1/14)
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For each justification checked, you must submit organized documents demonstrating your entitlement to the increase. Please see the "Justifications" section in the attached Owner's Guide for details on the type of documentation required. In the case of Capital Improvement increases, you must include a copy of the "Enhanced Notice to Tenants for Capital Improvements" that was given to tenants. Your supporting documents do not need to be attached here, but are due in the RAP office no later than seven (7) days before the first scheduled Hearing date.

INSTRUCTIONS

If the petition filed by your tenant claims Decreased Housing Services, state your position regarding the tenant's claim(s) of decreased housing services on a separate sheet. Submit any documents, photographs or other tangible evidence that supports your position.

IV. EXEMPTION

If you claim that your property is exempt from Rent Adjustment (Oakland Municipal Code Chapter 8.22), please check one or more of the grounds:

- The unit is a single family residence or condominium exempted by the Costa Hawkins Rental Housing Act (California Civil Code 1954.50, et seq.). If claiming exemption under Costa Hawkins, please answer the following questions on a separate sheet:
 1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
 2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
 3. Was the prior tenant evicted for cause?
 4. Are there any outstanding violations of building housing, fire or safety codes in the unit or building?
 5. Is the unit a single family dwelling or condominium that can be sold separately?
 6. Did the petitioning tenant have roommates when he/she moved in?
 7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?
- The rent for the unit is controlled, regulated or subsidized by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.
- The unit was newly constructed and a certificate of occupancy was issued for it on or after January 1, 1983.
- On the day the petition was filed, the tenant petitioner was a resident of a motel, hotel, or boarding house for less than 30 days.
- The subject unit is in a building that was rehabilitated at a cost of 50% or more of the average basic cost of new construction.
- The unit is an accommodation in a hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory owned and operated by an educational institution.
- The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.

V. IMPORTANT INFORMATION

Time to File. This form **must be received** by the Rent Adjustment Program, P.O. Box 70243, Oakland, CA 94612-0243, within 35 days of the date that a copy of the Tenant Petition was mailed to you. (The date of mailing is shown on the Proof of Service attached to the Tenant Petition and other response documents mailed to you.) A postmark does not suffice. If the RAP office is closed on the last day to file, the time to file is extended to the next day the office is open. If you wish to deliver your completed Owner Response to the Rent Adjustment Program office in person, go to the City of Oakland Housing Assistance Center, 250 Frank H. Ogawa Plaza, 6th Floor, Oakland, where you can date-stamp and drop your Response in the Rent Adjustment drop box. The Housing Assistance Center is open Monday through Friday, except holidays, from 9:00 a.m. to 5:00 p.m. You cannot get an extension of time to file your Response by telephone.

NOTE: If you do not file a timely Response, you will not be able to produce evidence at the Hearing, unless you can show good cause for the late filing.

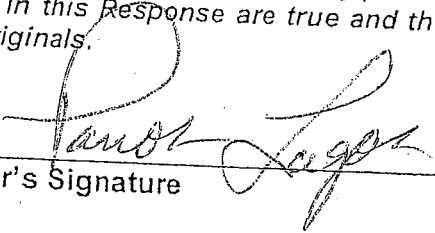
File Review. You should have received a copy of the petition (and claim of decreased services) filed by your tenant with this packet. Other documents provided by the tenant will not be mailed to you. You may review additional documents in the RAP office by appointment. For an appointment to review a file or to request a copy of documents in the file call (510) 238-3721.

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VERIFICATION

Owner must sign here:

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



Owner's Signature

12/22/16
Date

VII. MEDIATION AVAILABLE

Your tenant may have signed the mediation section in the Tenant Petition to request mediation of the disputed issues. Mediation is an entirely voluntary process to assist the parties to reach an agreement on the disputed issues in lieu of a Rent Adjustment hearing.

If the parties reach an agreement during the mediation, a written Agreement will be prepared immediately by the mediator and signed by the parties at that time. If the parties fail to settle the dispute, the case will go to a formal Rent Adjustment Program Hearing, usually the same day. A Rent Adjustment Program staff Hearing Officer serves as mediator unless the parties choose to have the mediation conducted by an outside mediator. If you and the tenant(s) agree to use an outside mediator, please notify the RAP office at (510) 238-3721. 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. (There is no charge for a RAP Hearing Officer to mediate a RAP case.)

Mediation will be scheduled only if both parties request it – after both the Tenant Petition and the Owner 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.)

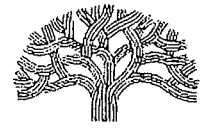
If you want to schedule your case for mediation, sign below.

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

Owner's Signature

Date

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P.O. BOX 70243, OAKLAND, CA 94612-2043

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: T16-0683, Prager v. Lagos
PROPERTY ADDRESS: 95 41st Street, # 202, Oakland, CA
DATE OF HEARING: April 28, 2017; May 22, 2017
DATE OF DECISION: June 13, 2017
APPEARANCES: Marc Prager, Tenant (both dates)
Panos Lagos, Owner (both dates)
James Yamada, Owner (April 28, 2017)
Craig Riesterer, Witness (April 28, 2017)

SUMMARY OF DECISION

The tenant's petition is granted in part. The legal rent for the unit is set forth in the Order below.

CONTENTIONS OF THE PARTIES

The tenant filed a petition on December 2, 2016, contesting a rent increase from \$1,825 to \$2,200 a month, on the following grounds:

- The increase exceed the Consumer Price Index (CPI) Adjustment, is unjustified or is greater than 10%; and,
- No written notice of the Rent Program (*RAP Notice*) was given to him at least six months prior to the effective date of the rent increase.

Additionally, the tenant claimed that his housing services had decreased. The claims of decreased services involve the carpet is his unit being past its useful life.

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The owner filed a timely response to the tenant petition on December 30, 2016 claiming that the unit is exempt from the RAP as new construction.

THE ISSUES

1. Is the unit exempt from the RAP as new construction?
2. When, if ever, was the *RAP Notice* first served on the tenant?
3. Can the tenant raise claims related to decreased services that were not raised in the tenant's initial filing?
4. Have the tenant's housing services decreased?
5. What is the rent and what, if any, restitution is owed between the parties?

EVIDENCE

Building History: The owners testified that they purchased the subject property in 1997.

The owners had not produced any documents to the RAP prior to the Hearing about the subject property. At the Hearing they referred to a document entitled *Application for Report of Residential Building Record*. They testified that they did not think they had a *Certificate of Occupancy*. They testified that based on the documentary record (the *Application for Report of Residential Building Record*), they believed that a single family dwelling was demolished before the current building was built. They did not own the property at the time.

The Hearing was set for a second day. The owners were asked to produce a *Certificate of Occupancy* and the *Application for Report of Residential Building Record* prior to the Hearing. They were also asked to produce any plans that might show the footprint of the prior residential unit and the footprint of the current 10 unit building. Prior to the Hearing, the owners produced only the *Certificate of Occupancy*. This document states that the building completion date was June 20, 1986, and that the building is a ten unit apartment house.¹

At the Hearing held on May 22, 2017, the owner was asked about the *Application for Report of Residential Building Record*, which was provided to the Hearing Officer at the Hearing. This document, dated October 1, 1997, shows that a permit was received in February of 1981 to "demolish (a) single family dwelling."² Then in July of 1983 a permit was issued to construct a 10-unit apartment building.

The owner was also asked about whether he was able to find any plans for the previous building or the current building. He testified that he did not find any records.

¹ Exhibit 3. This document, and all other documents referred to in this Hearing Decision, was admitted into evidence without objection.

² Exhibit 2. The owners were specifically asked at the first Hearing to produce this document but chose not to. This document was admitted into evidence without objection, even though it was not produced 7 days in advance, as it had crucial information about the prior history of this property that was not available on any other document produced by the owners.

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Rental History: The tenant testified that he moved into the rental unit in March of 2014, at an initial rent of \$1,825 a month. He received a rent increase notice on about November 22, 2016, purporting to increase his rent to \$2,200 (from \$1,825) a month. He has paid the old rent of \$1,825 and will continue to do so until he receives a Hearing Decision in this matter. He received the *RAP Notice* with this rent increase notice. He also received the *RAP Notice* when he moved into the building.³

The owners did not dispute the tenant's testimony about these issues.

Decreased Housing Services: The tenant testified that the carpet is old, worn and smells. It is not a tripping hazard. The carpet was in the same condition when he moved in. The tenant produced photographs of the carpet, which show minor staining.⁴

The owner Panos Lagos testified that at the time that he rented the unit to the tenant it was in fine shape. The carpet was not worn and it did not smell. When he got notice of the tenant's complaint, he returned to the unit to see the carpet in February of 2017. The carpet was in fine shape, there is no tripping hazard, it is not worn and does not smell.

Official Notice is taken that on April 20, 2017, (prior to the first Hearing in this case) the tenant produced a letter to the RAP seeking to add additional claims regarding decreased services in this case. The tenant was not permitted to testify about these matters (See below.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Is the unit exempt from the RAP as new construction?

The Oakland Rent Adjustment Ordinance states that dwelling units are not "covered units" under the Ordinance if such units "were newly constructed and received a certificate of occupancy on or after January 1, 1983."⁵ The Ordinance states:

"To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential."⁶

An owner has the burden of proof on all elements of a claim for exemption.

In this case, the owner purchased a 10 unit residential building in 1997. The evidence documents that prior to the 10 unit residential building being built, which was in 1986, a prior residential single family dwelling existed on the property.

³ Exhibit 1.

⁴ Exhibit 4. These documents were produced by the tenant prior to the second Hearing. The tenant was given an opportunity to produce additional evidence, since the owner was being given the opportunity to produce additional evidence.

⁵ O.M.C. § 8.22.030(A)(5)

⁶ O.M.C. § 8.22.030(A)(5)

The owner offered no evidence to establish the size of the prior single family dwelling in order to show that the tenant's unit was outside of that footprint, and therefore new construction.

Furthermore, this building was built before *Costa Hawkins*, California Civil Code § 1954.50 et seq. was enacted. While *Costa Hawkins* does state that newly constructed units are exempt if they have a *Certificate of Occupancy* issued after February 1, 1995, or were already exempt from rent control pursuant to a local exemption for newly constructed units, *Costa Hawkins* is not controlling here since the *Certificate of Occupancy* was issued before February 1, 1995.

In order to qualify for a new construction exemption, the new construction must create new units from space not already being used for residential purposes. Since the owners did not provide any evidence as to the footprint of the prior residential building, there is no way to establish that the tenant's unit is new construction.

Therefore, the owners have not met their burden of proof to establish that the subject building is exempt from the Rent Adjustment Ordinance as new construction.

When, if ever, was the *RAP Notice* first served on the tenant?

The Rent Adjustment Ordinance (Ordinance) requires an owner to serve the *RAP Notice* at the start of a tenancy⁷ and together with any notice of rent increase or change in the terms of a tenancy.⁸ An owner can cure the failure to give notice at the start of the tenancy, but may not raise the rent until 6 months after the first *RAP Notice* is given.⁹

The tenant was served with the *RAP Notice* when he moved into the unit.

Can the tenant raise claims related to decreased services that were not raised in the tenant's initial filing?

In order to bring a claim of decreased housing services, the tenant is required to provide a list or a description of his claims when he files his petition. O.M.C. § 8.22.070 (F). Here the tenant filed a list of decreased housing services with his petition, which raised only an issue related to the carpet.

Approximately a week prior to the initial Hearing, the tenant sent a letter to the RAP office seeking to add additional claims of decreased services to his petition. This document was filed on April 20, 2017. Since this list was not provided with the tenant's initial petition, these issues were not considered at the Hearing. Only those issues that were on the documents the tenant initially filed were considered at the Hearing.

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⁷ O.M.C. § 8.22.060(A)

⁸ O.M.C. § 8.22.070(H)(1)(A)

⁹ O.M.C. § 8.22.060 (C)

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Have the tenant's housing services decreased?

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent¹⁰ and may be corrected by a rent adjustment.¹¹ However, in order to justify a decrease in rent, a decrease in housing services must be the loss of a service that seriously affects the habitability of a unit or one that was provided at the beginning of the tenancy that is no longer being provided.

In a decreased housing services case tenants must establish that they have given the owner notice of the problems and the opportunity to fix the problems before they are entitled to relief.

In this case the tenant complained of the condition of the carpet. Both the owner and the tenant testified that the carpet is in essentially the same condition as it was when the tenant moved into the unit; therefore, there is not a changed condition. Furthermore, there is no proof that there is any habitability violation with respect to the carpet—there are no holes, no mold and no tripping hazards.

The tenant has established only that there are some stains on the carpet. Stains are not a habitability problem. This claim is denied.

What is the rent and what, if any, restitution is owed between the parties?

The owners did not seek to justify the rent increase other than claiming new construction. Since the owners have not prevailed in their claim of new construction, the rent remains \$1,825 a month. The tenant has not paid the rent increase. Therefore, there are no underpayments or overpayments.

ORDER

1. Petition T16-0683 is granted in part. The rent remains \$1,825.
2. The tenant's claims of decreased services are denied.
3. The unit is not exempt from the RAP as new construction.
4. **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

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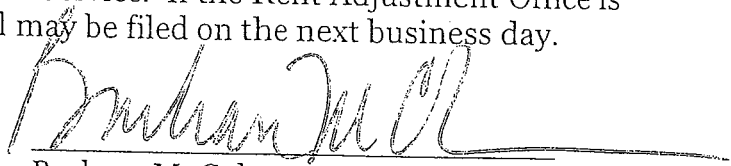
¹⁰ O.M.C. § 8.22.070(F)

¹¹ O.M.C. § 8.22.110(E)

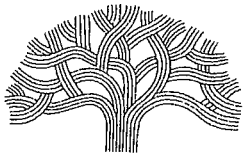
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service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: June 13, 2017



Barbara M. Cohen
Hearing Officer
Rent Adjustment Program



CITY OF OAKLAND

**CITY OF OAKLAND
RENT ADJUSTMENT PROGRAM**

P.O. Box 70243
Oakland, CA 94612-0243
(510) 238-3721

For date stamp

RECEIVED

JUL 03 2017

RENT ADJUSTMENT PROGRAM **APPEAL**
OAKLAND

Appellant's Name Panos Lagos		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
Property Address (Include Unit Number) 95 41st Street, #202 Oakland, CA 94611			
Appellant's Mailing Address (For receipt of notices) 5032 Woodminster Lane Oakland, CA 94602		Case Number T16-0683, Prager v. Lagos	
		Date of Decision appealed June 13, 2017	
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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

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

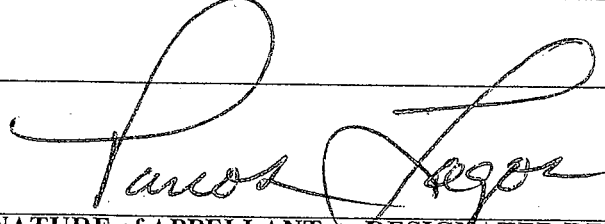
- f) I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim. (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may issue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

Submissions to the Board are limited to 25 pages from each party. Please number attached pages consecutively.
 Number of pages attached: 11

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

I declare under penalty of perjury under the laws of the State of California that on June 30, 2017, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

Name	Tenant: Marc Prager
Address	95 41st Street, #202
City, State Zip	Oakland, CA 94611
Name	
Address	
City, State Zip	

	June 30, 2017
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

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

EXPLANATION

2) a) and e):

Issue: Is the 10-unit apartment building at 95 41st Street in Oakland exempt under the provisions of OMC Chapter 8.22.030 A. (5)?

Short Answer: Yes. The undisputed evidence submitted at the Rent Board Hearing established that this apartment building was entirely newly constructed, and that it received a certificate of occupancy after January 1, 1983. Appellant proved each of the elements required for exemption under the Ordinance. The hearing officer's conclusion that this building is not exempt is therefore contrary to the evidence, contrary to the law, and should be reversed.

Applicable Law:

OMC Chapter 8.22.030 A. (5) (hereinafter "Ordinance") addresses the issue of exemptions and reads:

"Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter, ..."

"Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. ... To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed **or** created from space that was formerly entirely non-residential." (emphasis added)

The Ordinance sets forth that, as long as a dwelling unit was entirely newly constructed **or** created from space that was formerly entirely non-residential, it qualifies as a newly constructed dwelling (and exempt) unit so long as a Certificate of Occupancy is received on or **after** January 1, 1983.

Discussion:

The Hearing Officer acknowledged that the former structure on the property was a single-family residence (*Hearing Decision, Page 3*), that the now-existing 10-unit apartment building replaced it, and that a Certificate of Occupancy for the 10-unit apartment building was issued on June 20, 1986 (*Hearing Decision, Exhibit 3*).

Yet the hearing officer stated, "In order to qualify for a new construction exemption, the new construction must create new units from space not already being used for residential purposes." (*Hearing Decision, Page 4*).^[1] The Hearing Officer appears to have ignored the portion of the

^[1] Even if the Ordinance only contained this language, it's requirement was satisfied with the documents presented at the subject hearing as will be discussed hereafter.

EXPLANATION

Ordinance, quoted above, providing for an exemption for a dwelling unit which is "...entirely newly constructed..." which, as will be discussed hereafter, **was also proven** by appellant.

The evidence before the Hearing Officer included the October 1, 1997 Application for Report of Residential Building Record (3-R Report) (*Hearing Decision, Exhibit 2*) which, on its face, refers to the **new** construction of a four-story, non-owner occupied 10-unit apartment building, and noting it to be **original construction** (1983). This evidence also established that a permit was issued on February 24, 1981 to "Demolish single family dwelling" with an "Original construction permit" issued on July 19, 1983. A Certificate of Occupancy was issued on June 20, 1986 (also in evidence before the Hearing Officer, *Hearing Decision, Exhibit 3*). It is self-evident that if a 10 unit residential apartment building sits where a single family dwelling once sat, entirely new construction took place. Thus, Appellant proved that this apartment building is exempt.

Another one of the errors made by the Hearing Officer, as reflected by her decision, was that she ignored evidence--- namely, the site plan diagram submitted by Appellant.

The "first" hearing of this matter was held on April 28, 2017. Following this hearing and its continuance to May 22, 2017 to give both sides an opportunity to produce additional evidence (see *Hearing Decision, Page 3, Footnote 4*), Appellant, on May 1, 2017 submitted a letter to the Hearing Officer (*Exhibit A hereto*), which **included** the noted (and more legible) Certificate of Occupancy (*Hearing Decision, Exhibit 3*) **as well as** the property's site plan diagram (see, *Exhibit A, Page 5, hereto*). This submission was in response to the Hearing Officer's request for the "footprint" of the previously-existing structure, i.e., a single-family dwelling. This site plan diagram includes the words "**new building proposed**" and confirms the footprint of the previously existing single-family dwelling (outlined in blue) was well within the confines of the larger "footprint" of the then-proposed and presently existing 10-unit building (outlined in pink). Further, the words "2 sty stucco (to be removed)" are written over the footprint of the single-family dwelling, clearly indicating that the old 2-story stucco residence was to be demolished. A true and correct copy of this site plan diagram submitted to the Hearing Officer on May 22, 2017, properly orientated, enlarged, and with its pertinent parts outlined/highlighted as noted above, is attached for the Board's convenience (*Exhibit C hereto*).^[2] This evidence was uncontroverted by the tenant.

The Hearing Officer's statement that "The Owner offered no evidence to establish the size of the prior single family dwelling in order to show that the tenant's unit was outside of that footprint, and therefore new construction" (*Hearing Decision, Page 4*) not only incorrectly reads into the Ordinance language and requirements that are not there, it also indicates the Hearing Officer's

^[2] Page 5 of *Exhibit A hereto* is the same diagram depicted in *Exhibit B hereto* but was "reversed" when copied at the City's Permit Center and initially sent to the Hearing Officer on May 1, 2017. To the extent that it is later found that this particular "legible" diagram (*Exhibit B hereto*) was not made part of the record when it was provided to the Hearing Officer on May 22, 2017, request is herewith made, in the interests of justice, that it be made part of this Appeal process, or, in the alternative, an additional evidentiary hearing be ordered.

EXPLANATION

conflation of the Ordinance's terms. The Ordinance does not reference, or require proof of, the size of the prior single family dwelling. While the second alternative for exemption applies to dwelling units created from "space" that was formerly entirely non-residential, that provision --- which does not require evidence of the size of the prior single family dwelling (or space) --- most importantly has no bearing on whether the property is exempt under the first alternative. These are two entirely separate, independent grounds for exemption. Appellant was only required to prove, which it did, that these 10 new apartments were all "entirely newly constructed". Clearly, the Hearing Officer was confused regarding the relevant terms of the subject Ordinance.

It is true that no documents were produced by Appellant/owners **prior** to the **first** hearing.^[3] Appellant/owners **did**, however, produce, **at the first hearing**, the October 1, 1997 Application for Report of Residential Building Record (3-R Report) (*Hearing Decision, Exhibit 2*). However, it is not true that Appellant/owners produced **only** the Certificate of Occupancy prior to the second hearing. The documents that were provided **prior** to the second hearing, as set forth in Exhibit A hereto, consisted of, 1) a May 1, 2017 transmittal letter, 2) the June 20, 1986 Certificate of Occupancy, and, 3) the property's (reverse copied) site plan diagram already noted for the Board's present convenience as Exhibit C hereto.

2) d):

Appellant submits that the term(s) "footprint", "created" and/or "from space that was formerly entirely non-residential" used separately and/or together in OMC Chapter 8.22.030 A. (5)---at least insofar as these terms appear to be interpreted and applied by the Hearing Officer--- are vague, uncertain, arbitrary, overly broad, ambiguous and incapable of providing or meeting reasonable due process concerns to which United States citizens and California residents are entitled before their property, real or otherwise, is taken from them. By way of example, suppose the footprint of a previously-existing and later demolished two-story residential dwelling showed a bedroom on the first floor in the northeast corner; is a bedroom in the same northeast corner of the first floor of an entirely newly constructed ten or twenty unit apartment building not exempt because it did not create living space that did not previously exist? Such a result is illogical, absurd, impractical, unworkable, and entirely at odds with the purpose of the Ordinance.

As used in the context of building construction, a "building footprint" refers to the perimeter of the building plan. Parking lots, landscapes, and other non-building facilities are not included in such a "building footprint". A "footprint" alone says nothing about how many bedrooms existed, where they were located, and/or how many stories the structure had.

^[3] It is not true that Appellant/owners were specifically asked to "produce" the October 1, 1997 Application for Report of Residential Building Record (3-R Report) (*Hearing Decision, Exhibit 2*) at the first hearing but chose not to. It was "produced" and shown to everyone. It was the only document Appellant/owners had and they had no reason not to produce it if, as admitted by the Hearing Officer, Appellant/owners relied on the document at the hearing (*Hearing Decision, Page 2, First Paragraph*). It was not marked and placed in the evidentiary record until the May 22, 2017 hearing.

EXPLANATION

Therefore, requiring a footprint of the former structure to prove either alternative basis for exemption under the “newly constructed dwelling unit” section of the Ordinance is neither logical nor practical. New construction can, and often does, follow the same footprint as the former structure, yet it is still creating entirely new dwelling units when the newly constructed apartment building replaces a single family dwelling. Thus, to the extent the Hearing Officer interpreted the Ordinance as requiring proof that Mr. Prager’s unit was “new” in the sense that it is not in the same “space” as what was already being used for residential purposes in the former single-family home, is reading into the Ordinance language that does not exist, is creating a burden of proof that is virtually impossible to meet, and is contrary to the intent of the Ordinance.

One of the stated purposes of the Ordinance is, “... encouraging rehabilitation of rental units, encouraging investment in new residential rental property in the city ... ” (see OMC 8.22.010 A., B., C.). However, the Hearing Officer’s erroneous interpretation and application of the subject Ordinance’s language is inconsistent with the purpose of the Ordinance. There would be **no incentive**, for example, to tear down a single family home and to put up a 10 unit apartment building (and thereby create new residential property that could accommodate 20 or more new renters) if the Hearing Officer’s interpretation and application of the Ordinance was correct.

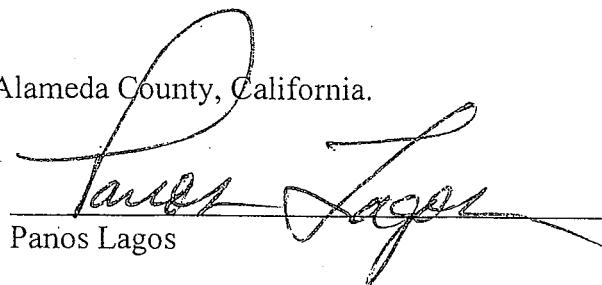
Finally, the Hearing Officer’s Decision is inconsistent with a related provision of the Ordinance which provide for an exemption for “substantially rehabilitated buildings”. If the original owners of this 10-unit apartment had simply “spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project” by turning the single family dwelling into ten apartments, the building would be exempt, regardless of whether any of the new units were “outside” of the footprint of the old structure, or whether any of the new units were created “from ‘space’ [] already being used for residential purposes”. (*Hearing Decision, Page 4*).

Hearing Request: To the extent that Board determines that an evidentiary hearing is necessary, Appellant requests such hearing pursuant to OMC Chapter 8.22.120 B. (4).

Attestation:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. If called as a witness, I could and would testify competently to the matters stated herein.

Executed this 30th day of June, 2017, at Oakland, Alameda County, California.


Panos Lagos

The Law Offices of
Panos Lagos

TEL. (510) 530-4078
FAX (510) 530-4725

5032 WOODMINSTER LANE
OAKLAND, CA 94602

E-MAIL ADDRESS:
PANOS@PANOSLAGOSLAW.COM

May 1, 2017

VIA FAX and MAIL

Barbara M. Cohen, Hearing Officer
City of Oakland
Department of Housing and Community Development
Rent Adjustment Program
P.O. Box 70243
Oakland, CA 94612-2043

Re: File Name: Prager v. Lagos
Property Address: 95 41st Street, #202, Oakland, CA, 94611
Case Number: T16-0683

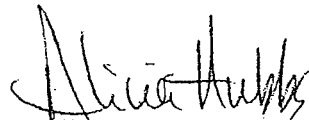
Dear Ms. Cohen:

Enclosed please find a copy of the "First Page", "Second Page" and "Third Page" of the June 20, 1986 Building Certificate of Occupancy, the Third Page being the most legible, as well as a diagram of the subject building.

Your attention is appreciated.

Very truly yours,

LAW OFFICES OF PANOS LAGOS


Alicia Hubbs, Assistant

/ah
Enclosures

cc: Marc Prager (via email and regular mail)

EXHIBIT A,
Page 1 of 5

000059

CITY OF OAKLAND
BUILDING CERTIFICATE OF OCCUPANCY

No. HC _____ 1981

THIS IS TO CERTIFY that the GROUP 31 TYPE 1-1A _____ STORY building

at _____ which is owned

by _____

ONE OF THREE PAGES

in FIRE ZONE _____ USE ZONE _____ OHC Variance No. _____ Dated _____

Building Permit No. 21662 Building Completion Date 7-27-81 has been inspected

and the following occupancy thereof is hereby authorized:

Occupancies:

Number
Habitable
Rooms

Cellar _____

Basement 2 Car Garage, Storage or Mechanical Room _____

1st Story 2 - 1 Bedr. Units, Dining Room, Living Room, Kitchen, Bath _____

2nd Story 2 Bedrooms, Bath, 1 Car Garage _____

3rd Story 2 - 1 Bedr. Units, Dining Room, Living Room, Kitchen, Bath _____

4th Story 2 Bedrooms, Bath _____

Story _____

Add Story
as necessary _____

Prior Cert. of Occup. _____ Date _____ TOTAL _____

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

Re-Insp. Dates _____ License (Yes or No) _____

BY: Mayor of Oakland
Richard R. Fontana

[Signature]
Chief Building Inspector

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

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

CITY OF OAKLAND BUILDING CERTIFICATE OF OCCUPANCY

No. 14174 551 73 1944

THIS IS TO CERTIFY that the GROUP SI TYPE 1-102 111 Five STORY building

at 35 17th Street which is owned

by Harold Gortish

150 Pacific Coast Avenue SPRING 1943
Oakland, Cal. 94612

in FIRE ZONE _____ USE ZONE _____ OHC Variance No. _____ Dated _____

Building Permit No. _____ Building Completion Date _____ has been inspected

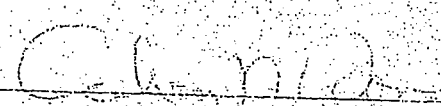
and the following occupancy thereof is hereby authorized:

Occupancies:	Number Habitable Rooms
Cello: _____	_____
Basement _____	_____
2 nd Story <u>1</u> <u>2</u> <u>Rooms</u> <u>Living</u> <u>1</u> <u>Bedroom</u> <u>Dining</u> <u>Room</u> <u>Kitchen</u> <u>Combo</u>	_____
2 nd Story <u>1</u> <u>Bedroom</u> <u>Bath</u>	_____
3 rd Story <u>2</u> <u>1</u> <u>Room</u> <u>Living</u> <u>Dining</u> <u>Room</u> <u>Dining</u> <u>Room</u> <u>Kitchen</u> <u>Combo</u>	_____
1 st Story <u>1</u> <u>Bedroom</u> <u>Bath</u>	_____
Story _____ (CONTINUED ON NEXT PAGE)	_____
Add Story _____ as necessary _____	_____

Prior Cert. of Occup. _____ Date _____ TOTAL _____

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

Re-Inspl. Dates _____ License (Yes or No) _____


 For _____ Chief Building Inspector

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

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

CITY OF OAKLAND BUILDING CERTIFICATE OF OCCUPANCY

No. 20125 50 152 Ten Unit Apartment House Date 2/11/19 06

THIS IS TO CERTIFY that the GROUP 21 TYPE 7-11R (A) FOUR STORY building

of 95 - 41st Street which is owned

by Harold Torcan
166 Santa Clara Avenue TELEPHONE PAGE
 Oakland, Ca 94610

in FIRE ZONE _____ USE ZONE _____ OHC Variance No. _____ Dated _____

Building Permit No. _____ Building Completion Date _____ has been inspected


and the following occupancy thereof is hereby authorized:

Occupancies:	Number Habitable Rooms
Cellar _____	_____
Basement _____	_____
1 st Story <u>1 - 3 Room Units: Living Room, Dining Room, Kitchen, Combo.</u>	_____
2 nd Story <u>1 Bedroom, Bath</u>	_____
3 rd Story <u>1 - 4 Room Units: Living Room, Dining Room, Kitchen, Combo.</u>	_____
4 th Story <u>2 Bedrooms, Bath</u>	_____
5 th Story <u>1 - 2 Room Units: Living Room, Dining Room, Kitchen, Combo.</u>	_____
Add Story _____	_____
As necessary <u>1 Bedroom, Bath</u>	_____

Prior Cert. of Occup. _____ Date _____ TOTAL _____

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

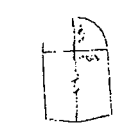
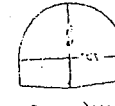
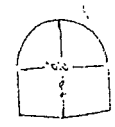
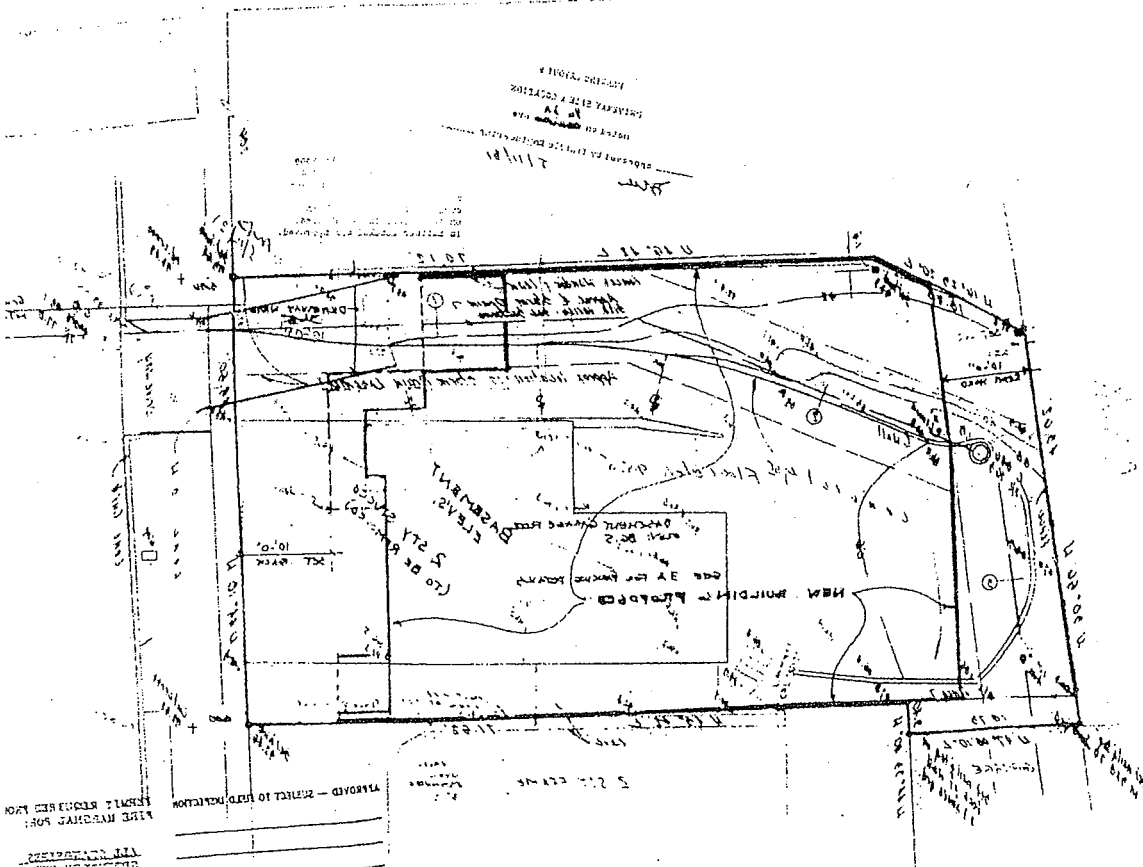
Re-Inspl. Dates _____ License (Yes or No) Yes


 For Chief Building Inspector

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

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

EXHIBIT A,
 Page 4 of 5 **000062**



SEE DRAWING FOR
ALL RECORDS

FOR THE RECORDS OF THE
CITY OF PHOENIX
APPROVED FOR THE RECORDS OF THE
CITY OF PHOENIX
APPROVED FOR THE RECORDS OF THE
CITY OF PHOENIX

THE CITY OF PHOENIX HAS REVIEWED THE
PLANS AND SPECIFICATIONS FOR THE
PROPOSED CONSTRUCTION OF THE
NEW BUILDING AND HAS FOUND THEM TO
BE IN ACCORDANCE WITH THE
REQUIREMENTS OF THE CITY OF
PHOENIX. THE CITY ENGINEER HAS
APPROVED THESE PLANS AND
SPECIFICATIONS FOR THE RECORDS OF
THE CITY OF PHOENIX.

All plans & sections must be filed with the City Engineer's Office.

APPROVED FOR THE RECORDS OF THE
CITY OF PHOENIX
APPROVED FOR THE RECORDS OF THE
CITY OF PHOENIX

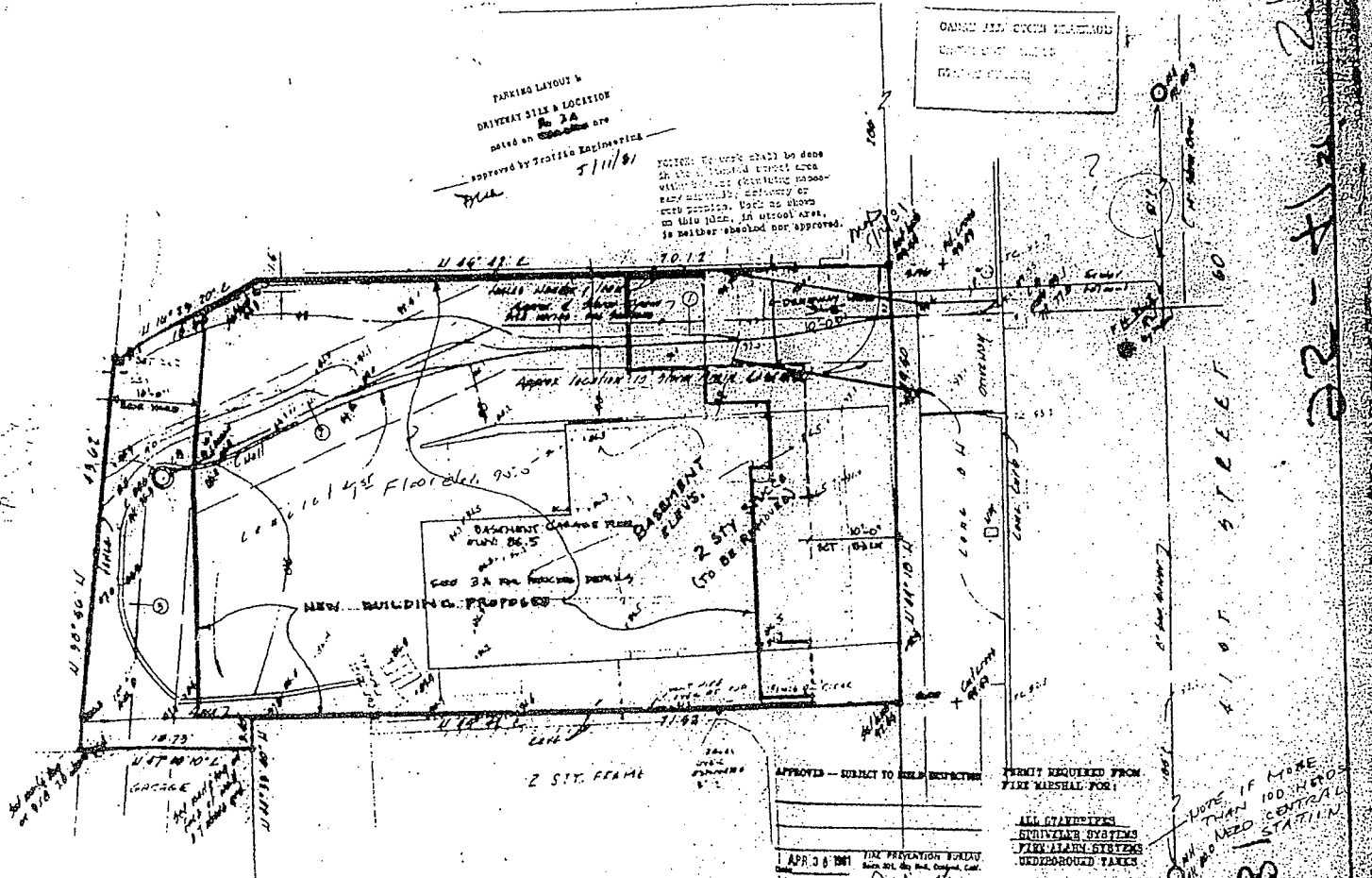


PARKING LAYOUT & DRIVEWAY SITES & LOCATION

dated on 5/11/61
approved by Traffic Engineering

GRADE AND CURB ELEVATIONS
UNIMPAVED AREAS
PAVED AREAS

NOTICE: No work shall be done in the proposed street area until the proposed plan has been approved by the City Engineer. Work as shown on this plan, in street area, is neither checked nor approved.



Garage
14' 0" x 10' 0"
14' 0" x 10' 0"
14' 0" x 10' 0"
14' 0" x 10' 0"

Survey material added 4-9-61 by Oates & Cooley

SURVEYOR'S CERTIFICATE
THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY SUPERVISION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYERS ACT AT THE REQUEST OF THE CITY OF OAKLAND, CALIFORNIA. I HEREBY CERTIFY THAT ALL REQUIREMENTS OF APPLICABLE STATE, FEDERAL AND LOCAL ORDINANCES HAVE BEEN COMPLIED WITH. I HEREBY STATE THAT THE PARCELS SHOWN HEREON UPON THIS

APPROVED - SUBJECT TO FIELD INSPECTION

APR 30 1961
J. J. JONES
CITY ENGINEER

PERMIT REQUIRED FROM FIRE MARSHAL FOR:

- ALL UTILITIES
- SURVEYING SYSTEMS
- FIRE ALARM SYSTEMS
- UNDERGROUND TANKS

NOTE IF MORE THAN 100 WOODS NEED CENTRAL STATION

PROPERTY OF HOLLEY MARLBOROUGH INC.
10000 NEW BUILDING PROPOSED SITE 10000 NEW BUILDING PROPOSED

22-1121-21

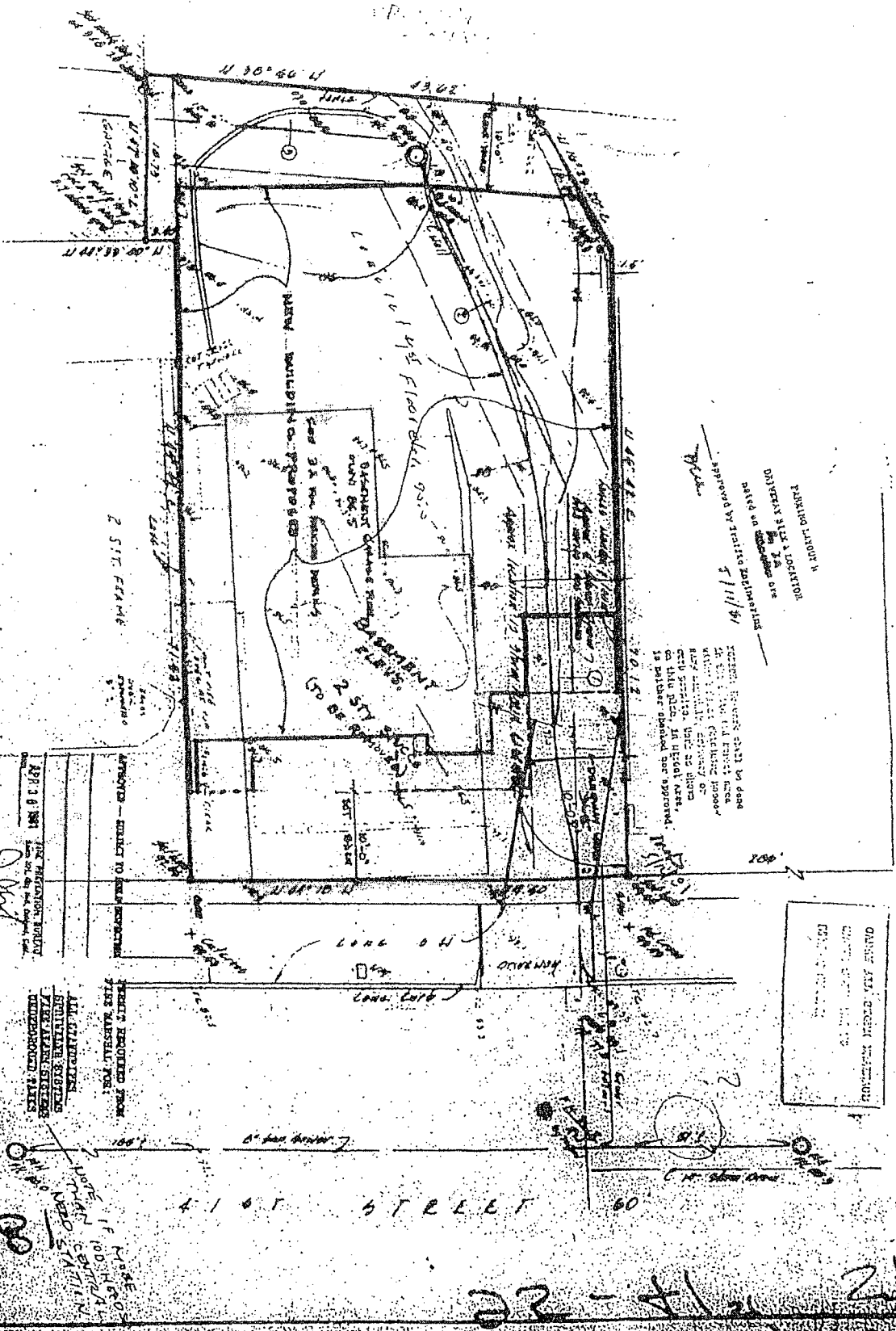
City of Oakland

PIDMOUTH AVENUE

PARKING LOT FOR
DRIVERS RITE LOCATION
See 2nd page for
dated on 5/11/61
Approved by Traffic Engineering
W. J. [Signature]

SECTION 22-41-22-60
This plan is subject to the approval of the
City Engineer and the City Council.
If approved, the applicant shall be
responsible for the construction of
the parking lot and the drainage
system thereon. The applicant
shall also be responsible for the
maintenance of the parking lot
and the drainage system.

OWNER AND ENGINEER
CITY OF PITTSBURGH
[Signature]



PERMIT REQUIRED FROM
THE VARIOUS
AIRCRAFT
SOUNDING SYSTEMS
AND AIRPORTS
REQUIREMENTS

APPROVED - SUBJECT TO PERMITS
APR 18 1961 THE REGISTRATION BOARD
[Signature]

APPROVED BY THE ENGINEER
[Signature]

OWNER: [Name]
[Address]
[City, State, Zip]

ENGINEER: [Name]
[Address]
[City, State, Zip]

This plan is subject to the approval of the
City Engineer and the City Council.
If approved, the applicant shall be
responsible for the construction of
the parking lot and the drainage
system thereon. The applicant
shall also be responsible for the
maintenance of the parking lot
and the drainage system.

City of Oakland

CHRONOLOGICAL CASE REPORT

Case No.: L16-0011

Case Name: Tyler v. Tenants

Property Address: 1302/1304 107th Ave., Oakland, CA
(2 units)

Parties: Paul Tyler (Owner)
Paula Gustafson (Attorney for Owner)
Monica Molina (Tenant)
Juana Juarez (Tenant)

OWNER APPEAL

<u>Activity</u>	<u>Date</u>
Owner Petition filed	February 17, 2016
Tenant Responses filed	April 4, 2016 (tenant Molina) April 4, 2016 (tenant Juarez)
Hearing Decision issued	August 2, 2016
Owner Appeal filed	August 24, 2016
Owner's Supplemental Documents filed	July 17, 2018

000066

414-0011 15K

<p>CITY OF OAKLAND RENT ADJUSTMENT PROGRAM 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721</p>	<p>For date stamp.</p> <p style="text-align: right;">RENT ADJUSTMENT PROGRAM 2016 FEB 17 PM 2:13</p> <p style="text-align: center;"><u>LANDLORD PETITION</u> <u>FOR CERTIFICATE OF EXEMPTION</u> (OMC §8.22.030.B)</p>
--	--

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

Section 1. Basic Information

Your Name PAUL TYLER		Complete Address (with zip code) 11401 GOLF LINKS RD OAKLAND CA 94605		Telephone 510 569-0438 Home Day: 510-590-8747 Cell	
Your Representative's Name		Complete Address (with zip code)		Telephone Day:	
Property Address 1302/1304 107TH AVE OAKLAND CA 94603				Total number of units in bldg or parcel. 2	
Type of units (circle one)	Single Family Residence (SFR)	Condominium	Apartment or Room X		
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		Yes		No	

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

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

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

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

Single-Family or Condominium (Costa-Hawkins): Applies to Single Family Residences and condominiums only. If claiming exemption under the Costa-Hawkins Rental Housing Act (Civ. C. §1954.50, et seq.), please answer the following questions on a separate sheet:

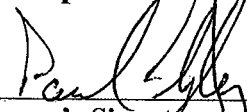
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire, or safety codes in the unit or building?
5. Is the unit a single family dwelling or condominium that can be sold separately?
6. Did the petitioning tenant have roommates when he/she moved in?
7. If the unit is a condominium, did you purchase it? If so: 1) from whom? 2) Did you purchase the entire building?
8. When did the tenant move into the unit?

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

<input type="checkbox"/>	New Construction
<input checked="" type="checkbox"/>	Substantial Rehabilitation
<input type="checkbox"/>	Single Family Residence or Condominium (Costa-Hawkins)

Section 4. Verification Each petitioner must sign this section.

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



Owner's Signature

2/17/2016

Date

Owner's Signature

Date

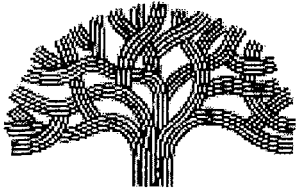
Important Information

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

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

MONICA MOLINA
1302 107TH AVE
OAKLAND CA 94603

JUANA JUAREZ
1304 107TH AVE
OAKLAND CA 94603



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721ti

for Date Stamp Only
2016 APR -4 PM 2:20
2016 APR -4 PM 2:19

CASE NUMBER L16-0011

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name MONICA MOLINA ARGONEDO	Complete Address (with Zip Code) 1302 107 AV OAKLAND, CA 94603	Telephone (510) 485-86-02
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: The unit I rent is: a house an apartment a condo

Rental History:

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

Are you current on your rent? Yes No Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

Exemption Contested

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants 03-19-2016

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

\$100

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

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

Verification

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

Monica Molina

Tenant's Signature

04-04-2016

Date

Tenant's Signature

Date

Important Information

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

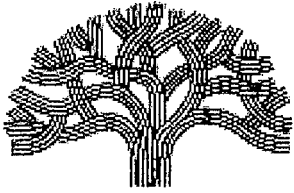
You cannot get an extension of time to file your Response by telephone.

File Review

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

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

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



**CITY OF OAKLAND
RENT ADJUSTMENT
PROGRAM**

for Date Stamp Only
RENT ADJUSTMENT PROGRAM
2016 APR -4 PM 2:19

P.O. Box 70243
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612
(510) 238-3721ti

CASE NUMBER L16-0011

TENANT RESPONSE TO
CLAIM OF PERMANENT EXEMPTION

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

Your Name JUANA JUAREZ PANTOJA	Complete Address (with Zip Code) 1304 107th AVE OAKLAND, CA, 94603	Telephone 510-355-20-60
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: The unit I rent is: a house an apartment a condo

Rental History:

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

Are you current on your rent? Yes No Lawfully Withholding Rent

If you are lawfully withholding rent, attach a written explanation of the circumstances.

Exemption Contested

For the detailed text of the exemptions, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. You can get additional information and copies of the Ordinance and Regulations from the Rent Program office in person or by phoning (510) 238-3721.

The property owner has the burden of proving the right to exemption for the unit. Explain below why your landlord's claim that your unit is exempt is incorrect.

Please list the date you first received the Notice to Tenants 03-19-16

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

\$ 100.00

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

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

Verification

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

JUANA JUANES P.
Tenant's Signature

04-04-16
Date

Tenant's Signature

Date

Important Information

This form must be received at the Rent Adjustment Offices by the date and time limits prescribed by Oakland Municipal Code, Chapter 8.22. The offices are located at City of Oakland, Rent Adjustment Program, Dalziel Building, 250 Frank H. Ogawa Plaza Suite 5313, Oakland, CA 94612. The mailing address is PO Box 70243, Oakland, CA 94612-0243. For more information, please call: 510-238-

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

File Review

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

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

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



P.O. BOX 70243, OAKLAND, CA 94612-2043

CITY OF OAKLAND

Department of Housing and Community Development
Rent Adjustment Program

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

HEARING DECISION

CASE NUMBER: L16-0011, Tyler v. Tenants
PROPERTY ADDRESS: 1302 / 1304 - 107th Ave, Oakland, CA
DATE OF HEARING: July 14, 2016
DATE OF DECISION: August 2, 2016
APPEARANCES: Paul Tyler (Owner)
Paula Gustafson (Attorney for Owner)
Monica Molina (Tenant)
Juana Juarez (Tenant)
Susan Jones (Witness for Tenants)
Laura Shoaps (Attorney for Tenants)
Noemi Gonzalez (Interpreter)

SUMMARY OF DECISION

The owner's petition is denied.

CONTENTIONS OF THE PARTIES

The owner filed a petition for a Certificate of Exemption on a 2-unit residential building on the ground that it is a "substantially rehabilitated" building, pursuant to Oakland Municipal Code (O.M.C.) Section 8.22 and Rent Adjustment Program Regulations. The tenants in both units filed responses to the owner's petition.

THE ISSUE

Are the subject rental units exempt from the Rent Adjustment Ordinance on the ground that they have been "substantially rehabilitated"?

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EVIDENCE

Square Footage: The owner presented a certified copy of a document from the Alameda County Assessor's Office entitled "Property Characteristics" regarding the subject address.¹ This document states that the building area is 2,336 square feet. At the Hearing, the owner testified that the subject building is wood frame construction.

Out-of-Pocket Costs: The owner submitted into evidence the following documents, all of which reflect expenses in the year 2009:

Home Depot: Receipts for construction materials totaling \$53,556.²

Waste Mgt. (dump fees): Receipts totaling \$2,288.³

Building Permits: Receipts totaling \$3,002.⁴

Rexel Electric: Receipts totaling \$533.⁵

San Leandro Electric: Receipts totaling \$2,013.⁶

City Electric Supply: Receipts totaling \$39.⁷

P G & E (Electricity Costs): Bills totaling \$65.⁸

Phil Santos (plumbing): At the Hearing, the owner testified that Mr. Santos is an experienced plumber, who had been recommended by a friend. He was satisfied with Mr. Santos' work, and submitted a copy of his check to Mr. Santos in the amount of \$5,000.⁹

Y H Sheet Metal: A receipt in the amount of \$96.¹⁰

¹ Exhibit No. 1. This document, and all others to which reference is made in this Decision, were admitted into evidence without objection, unless otherwise noted.

² Exhibit Nos. 1A, 2-6, 8, 10, 12, 15, 16, 18-21, 24, 25, 37-41, 44-9, 51-3, 57, 58, 62-5, 68, 69, 71, 74, 76-82, 85, 92-4, 96, 97, 100-7, 114, 115, 117, 118, 120, 121, 124-6, 130-5, 142-9, 151-66, 177-92, 195-206, 209-19, 223-6, 228-33, 236, 238, 239, 241, 244, 246-88, 291-306, 313-16, 318-21, 323-34, 337-42, 344, 348, 349, 351, 353, 355-9, 362-72, 374-9, 381-91, 393-402, 406, 407, 420, 42306, 429, 432-47, 449, 456-68, 470-94, 496-502, 504-7, 510-12, 515, 518-20, 522-7, 529, 531-3, 535-40, 542-9, 551, 552, 554-8, 561, 565-8, 570-3, 576-80, 585-94, 596, 597, 600-9, 611-26, 629-32, 635-8, 641-3, 646-51, 654-6, 661, 662, 665-7, 673, 676-81, 687-90, 692-8, 700 702-4, & 706-26.

³ Exhibit Nos. 7, 9, 17, 23, 70, 73, 75, 83, 84, 116, 150, 227, 289, 373, 380, 392, 405, 436, 448, 469, 495, 516, 517, 521, 550, 584, 595, 599, 610, 627, 628, 682-6, 691, & 699.

⁴ Exhibit Nos. 26, 31, 33, 168-176, 408-19, & 450-55.

⁵ Exhibit Nos. 42, 633-4, & 635-6.

⁶ Exhibit Nos. 54-6, 66-7, 346, 553, 644-5, 652, 659-60, & 668.

⁷ Exhibit Nos. 234-5, 237, & 245.

⁸ Exhibit Nos. 86, 88, 90, 108, 110, 112, 136, 138, 307, & 311.

⁹ Exhibit No. 95.

¹⁰ Exhibit Nos. 207-8.

RSG Roofing Supply: Invoices that total \$577.¹¹

Globe Plumbing Supply: Receipts totaling \$279.¹²

Economy Lumber: A receipt in the amount of \$41.¹³

Aman Environmental: Receipts totaling \$20.¹⁴

Lewis Rents: A receipt in the amount of \$61.¹⁵

Oakland Drywall Supply: A receipt in the amount of \$202.¹⁶

Western Appliance (dishwashers): Receipts totaling \$1,426.¹⁷

Mario Rodriguez (brickwork): The owner testified that Mr. Rodriguez is a skilled mason, who assisted with brickwork. The owner submitted a copy of a check to Mr. Rodriguez in the amount of \$1,000.¹⁸

WHCI Plumbing Supply: Receipts totaling \$2,545.¹⁹

Alameda Electrical: A receipt for \$171.²⁰

United Rentals: A receipt for \$428.²¹

Larm's Supply: A receipt for \$43.²²

State Shingle Co: A receipt for \$78.²³

Dutton Ace Hardware: A receipt for \$23.²⁴

These costs total \$73, 486.

¹¹ Exhibit Nos. 220-2.

¹² Exhibit Nos. 317 & 564.

¹³ Exhibit No. 360.

¹⁴ Exhibit Nos. 403-4.

¹⁵ Exhibit No. 508.

¹⁶ Exhibit No. 530.

¹⁷ Exhibit Nos. 534 & 569.

¹⁸ Exhibit No. 645A.

¹⁹ Exhibit Nos. 581-3.

²⁰ Exhibit Nos. 663-4.

²¹ Exhibit Nos. 669-71.

²² Exhibit No. 672.

²³ Exhibit No. 701.

²⁴ Exhibit No. 705.

The Owner's Labor: At the Hearing, the owner testified that he has worked in the construction field since 1978, and has been a journeyman electrician for many years. He purchased the subject building in 2009, at which time he worked regularly as a union electrician at a wage of \$44.50 per hour. The owner did nearly all work on the building himself; he worked 7 days a week for months. The owner also testified that he hired workers to perform demolition on the building. However, since he paid these men in cash, he did not submit any type of documentation for these expenses. The owner submitted a record of the hours that he spent doing construction on the building.

The owner contends that his labor should be valued at his union pay rate for skilled work and at the lower rate of a union laborer of approximately \$26 dollars per hour for unskilled work such as demolition. He believes that the total value of his labor exceeds \$195,000.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicable Law: O.M.C. 8.22.030(A)(6) states that dwelling units located in "substantially rehabilitated buildings" are not "covered units" under the Rent Ordinance.

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.
- b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.²⁵

Therefore, in order to make the necessary mathematical computation, an owner must present sufficient evidence of the square footage of the building, as well as the cost of the rehabilitation project.

Square Footage: The Assessor's Office document is found to be reliable evidence; the subject building contains 2,336 square feet.

The Owner's Labor: The owner's testimony is found to be credible. There is no doubt that he is a skilled construction worker, who earns a high hourly salary as a journeyman electrician, and that he worked many hours on the building. However, this does not mean that he is entitled to claim the value of his work at the hourly rate that he is paid as an electrician.

Different people who do their own construction work could arguably contend that their labor is worth a wide range of hourly pay. For example, a casual laborer might believe that his work is worth \$12 per hour. At the other end of the spectrum, a former construction worker who then passed the Bar Exam and began work as an attorney might value his time at \$300 per hour. As a policy matter, there needs to be a standard approach to such a situation.

²⁵ O.M.C. Section 8.22.030(B)(2)

Further, in order to be granted an exemption based upon substantial rehabilitation, an owner must spend one-half of the cost of new construction. There is no Ordinance or Regulation that allows an owner to claim his or her own work and get credit as if the owner had “spent” a certain amount of money.

The only potentially comparable reference is contained in the Regulations concerning Capital Improvement Costs: “Undocumented labor costs provided by the landlord cannot exceed 25% of the cost of materials.”²⁶ Although the owner in this case did provide documentation of the hours that he spent – none of which is independently verified – applying the cited Regulation is the only possible way in which an owner’s labor can be uniformly evaluated.

The owner’s out-of-pocket costs are \$73,486; twenty-five per cent of this amount is \$18,371.50. The total is \$91,857.50.

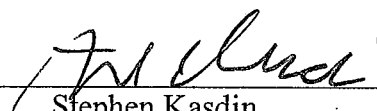
The Calculation: The Attached Table “A” issued by the Building Services agency states that the cost of new construction for a wood frame apartment building (Type V) in the year 2009 was \$127 per square foot. This amount multiplied by 2,336 square feet equals \$296,672. Fifty per cent of \$296,672 is \$148,336. Therefore, if the owner spent at least \$148,336 on the construction project, the building is exempt from the Rent Adjustment Ordinance.

Discussion: The owner “spent” \$73,486 on the project. Even if one gives the owner credit for his labor using the Capital Improvement standard, the total is \$91,857.50, which is far less than the required amount for the building to be declared “substantially rehabilitated.” Therefore, the owner’s petition is denied.

ORDER

1. Petition L16-0011 is denied.
2. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: August 2, 2016



Stephen Kasdin
Hearing Officer
Rent Adjustment Program

²⁶ Regulations Appendix, Section 10.2.3(5)

City of Oakland
Building Services
Construction Valuation¹
For Building Permits⁴
Effective Aug. 1, 2009

Community Economic Development Agency
 Dalziel Administration Building
 250 Frank Ogawa Plaza - 2nd Floor
 Oakland, CA 94612
 510-238-3891

Occ.	Description ³	Construction Type	Level Ground ²		Hillside Construction		Marshall & Swift 3Q '09 Section pg (Class/type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.92	\$269.79	\$140.29	Section 12 pg 25 (C/e)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.65	Section 12 pg 25 (C/g)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDS/g)
	Finished Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/a)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDS/g)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (6" wall)
	Foundation Upgrade (l.f.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R/24x72.)
	Patio/Porch Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
	Ground Level Decks	V	\$30.49	\$15.85	\$39.64	\$20.61	Section 66 pg 2 (100sf/avg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100sf/+1 story)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (C/a600)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/a4car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12" reinf./h)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/g)
		III	\$156.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (Dmill/g)
		V	\$127.00	\$66.04	\$165.10	\$85.85	Section 11 pg 18 (D/g)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$321.19	\$167.02	Section 16 pg 9 (B/g)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/a)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/g)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/g)
		III	\$174.20	\$90.58	\$226.46	\$117.76	Section 13 pg 14 (C/g)
		V	\$166.80	\$86.74	\$216.84	\$112.76	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$98.18	Section 13 pg 17 (C/a)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/a)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/a)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.69	\$168.84	Section 15 pg 22 (A/g)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (B/g)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (C/g)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (B/a)
		III	\$120.77	\$62.80	\$157.00	\$81.64	Section 15 pg 17 (C/a)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/a)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-B/g)
		III	\$181.96	\$94.62	\$236.55	\$123.00	Section 18 pg 14 (C/g)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527C/e)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/e)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/e)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/a)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/a)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/a)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/g)
		III	\$117.10	\$60.89	\$152.23	\$79.16	Section 13 pg 26 (C/g)
		V	\$113.19	\$58.86	\$147.15	\$76.52	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$145.51	\$75.66	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 26 (A/g)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/g)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (Cmill/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

¹ Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Secc. 99 pg 6 July 2009 Marshall & Swift)

² Hillside construction = slope >20%; multiply by additional 1.3 multiplier

³ Remodel Function of New Construction is a 0.52 multiplier.

⁴ Separate structures or occupancies valued separately.

⁵ Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.

TABLE "A"

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PROOF OF SERVICE

Case Number L16-0011

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

Tenants

Juana Juarez
1304 107th Ave
Oakland, CA 94603

Monica Molina
1302 107th Ave
Oakland, CA 94603

Owner

Paul Tyler
11401 Golf Links Rd
Oakland, CA 94605

Tenant Representative

Laura Shoaps; Centro Legal
3400 E 12th St
Oakland, CA 94601

Owner Representative

Paula Gustafson
428 Alice St. 439
Oakland, CA 94607

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 04, 2016 in Oakland, CA.


Deborah Griffin

000080

2016 AUG 24 PM 12:12

City of Oakland Residential Rent Adjustment Program 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		APPEAL	
Appellant's Name Paul Tyler		Landlord <input checked="" type="checkbox"/> Tenant <input type="checkbox"/>	
Property Address (Include Unit Number) 1302-1304 107th Avenue, Oakland, CA 94603			
Appellant's Mailing Address (For receipt of notices) 11401 Golf Links Road, Oakland, CA 94605		Case Number L16-0011	
		Date of Decision appealed 08/02/2016; pos 08/04/2016; postmark 08/05/2016	
Name of Representative (if any) Paula Gustafson, SBN 114267		Representative's Mailing Address (For notices) Paula Gustafson Attorney at Law 428 Alice Street, No. 439 Oakland, CA 94607	

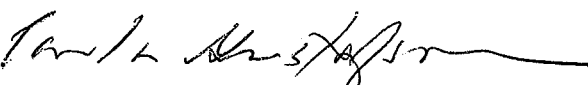
I appeal the decision issued in the case and on the date written above on the following grounds:
 (Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)

1. **The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board.** You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2. **The decision is inconsistent with decisions issued by other hearing officers.** You must identify the prior inconsistent decision and explain how the decision is inconsistent.
3. **The decision raises a new policy issue that has not been decided by the Board.** You must provide a detailed statement of the issue and why the issue should be decided in your favor.
4. **The decision is not supported by substantial evidence.** You must explain why the decision is not supported by substantial evidence found in the case record. The entire case record is available to the Board, but sections of audio recordings must be pre-designated to Rent Adjustment Staff.
5. **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** You must explain how you were denied a sufficient opportunity 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.
6. **The decision denies me a fair return on my investment.** You must specifically state why you have been denied a fair return and attach the calculations supporting your claim.

7. Other. You must attach a detailed explanation of your grounds for appeal. Submissions to the Board are limited to 25 pages from each party. Number of pages attached 10. Please number attached pages consecutively.

8. You must serve a copy of your appeal on the opposing party(ies) or your appeal may be dismissed. I declare under penalty of perjury under the laws of the State of California that on August 24, 2006, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<u>Name</u>	Laura Shoaps, Housing Staff Attorney, Centro Legal de la Raza
<u>Address</u>	3400 East 12th Street Attorney for tenants
<u>City, State Zip</u>	Oakland, CA 94601
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

	08/24/2016
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

IMPORTANT INFORMATION:

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

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Anything to be considered by the Board must be received by the Rent Adjustment Program by 3:00 p.m. on the 8th day before the appeal hearing.
- The Board will not consider new claims. All claims, except as to jurisdiction, must have been made in the petition, response, or at the hearing.
- The Board will not consider new evidence at the appeal hearing without specific approval.
- You must sign and date this form or your appeal will not be processed.

This is an owner-appeal from the August 2, 2016, hearing decision in Case Number L16-0011 denying owner's petition for a certificate of exemption based on substantial rehabilitation.

The owner, Paul Tyler, a journeyman electrician and a former construction laborer, performed the rehabilitation of the uninhabitable two-unit structure located at 1302-1304 107th Avenue over the course of nineteen months—from April 2009 through December 2010. Mr. Tyler often worked 12-hour days rehabilitating the structure as demonstrated by the evidence at hearing. The structure was built in 1912.

At issue is—

1. Whether the decision is inconsistent with decisions issued by other hearing officer (see footnotes 2 and 3 below);
2. Whether the decision raises a new policy issue that has not been decided by the Board (see footnotes 2 and 3 below) and the decision statement "As a policy matter, there needs to be a standard approach to such a situation [where the rehabilitation is owner-performed and the labor is uncompensated and documented]";
3. Whether the decision is not supported by substantial evidence (see footnote 1 below);
4. Whether the decision denies Mr. Tyler (and other similarly situated owner-rehabilitators) a fair return on his (their) investment/s; and
5. Whether the decision violates Mr. Tyler's (and other similarly situated owner-rehabilitators') property rights under federal and state equal protection and due process clauses, and whether the decision constitutes arbitrary discrimination in violation of the Unruh Act.

The decision states and finds that "[i]n order to be granted an exemption based upon substantial rehabilitation, an owner must spend one-half of the cost of new construction. There is no Ordinance or Regulation that allows an owner to claim his or her own work and get credit as if the owner had 'spent' a certain amount of money." [Underscore in decision.]

The decision further states and finds that, "[a]s a policy matter, there needs to be a standard approach to such a situation" and that "[t]he only potentially comparable reference is contained in the Regulations concerning Capital Improvement Costs: 'Undocumented labor costs provided by the landlord cannot exceed 25% of the cost of materials.' Although the owner in this case did provide documentation of the hours that he spent – none of which is independently verified – applying the cited Regulation is the only possible way in which an owner's labor can be uniformly evaluated."¹

¹ Mr. Tyler asserts that the documentation of the hours he spent was independently verified and such documentation was received into evidence. Such documentation consisted of over 725 historic materials and service receipts showing dates and times; such receipts functioned as a time clock and tracked the daily progress of the rehabilitation. Also received into evidence were historic photographs showing the uninhabitable condition

Assuming the decision statements to be true^{2 3} then the proposed adoption of the “only possible way” 25% approach⁴ “in which an owner’s labor can be uniformly evaluated” operates to deny Mr. Tyler’s (and other similarly situated owner-rehabilitators) property rights under the Fourteenth Amendment to the United States Constitution and article I, section 7, of the California Constitution (due process, equal protection clauses). Such approach also denies to Mr. Tyler (and other similarly situated owner-rehabilitators) a fair return on investment as the outcome in such petitions will almost certainly result in denials.

Further, assuming the decision statements to be true then the proposed adoption of the “only possible way” 25% approach violates Mr. Tyler’s (and other similarly situated owner-rehabilitators’) rights under the Unruh Act (Civil Code section 51). The Act provides at (b),

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are

of the property and the rehabilitation progress of the property. Percipient witness realtor Jones testified as to her knowledge of the property condition and the course of rehabilitation.

² At hearing, Mr. Tyler provided a substantial rehabilitation decision which decision appeared to reach a different result than that of the present decision’s strict construction of the Ordinance. In that decision an owner asserted that a prior owner had rehabilitated the property, and a building inspector’s testimony as to rehabilitation appeared to be sufficient. Here, Mr. Tyler testified that he attempted to subpoena the building inspector who followed the progress of the rehabilitation but was unable to locate him as he was no longer in the employ of the City and the City could not or would not provide an address for the inspector to Mr. Tyler.

³ RAP Manager recently stated that she believes that decisions do exist that allow an owner to claim his or her own work and get credit as if the owner had “spent” a certain amount of money. At hearing, Mr. Tyler argued that RAP should follow the rule of neighboring city San Francisco Residential Rent Stabilization and Arbitration Board—Capital Improvement Uncompensated Labor Rates also applied in substantial rehabilitation cases. San Francisco looks to the craft classification for a construction laborer established by the California Department of Industrial Relations for the relevant time period to determine uncompensated labor rates. See attached Amended Declaration Exhibit 727A-F, and Board sheet. Note: Mr. Tyler never argued that “his labor should be valued ... at the lower rate of a *union* laborer of approximate \$26 dollars per hour for unskilled work such as demolition.” See Exhibit 727A-E, attached. The rate urged was adopted from the Department of Industrial Relations. At hearing, tenants attorney argued that Mr. Tyler could and should have hired day laborers at the then existing minimum wage of \$8.00 per hour. As a policy matter this board should reject such approach. The demolition of walls and other construction work is fraught with short term and long term dangers, including the inhalation of dust and other hazardous materials.

⁴ The San Francisco Residential Rent Stabilization and Arbitration Board – General Information Regarding Landlord Petition for Exemption Based On Substantial Rehabilitation provides, in pertinent part, “Claims for Uncompensated Labor [R & R Sec. 8.12(14)] – If the landlord or any other person performed work without being compensated, the landlord may include the costs of the uncompensated labor in the petition. Claims for uncompensated labor must be accompanied by a detailed log of dates, hours worked and description of the work performed. Unless the person performing the work is a licensed contractor (e.g. general, electrical, plumbing), the cost must be calculated at the standard labor rates posted by the Rent Board (‘Capital improvement Uncompensated Labor Rates’). Use the rate in effect at the time the work commenced. Persons seeking compensation at higher rates must submit a copy of the worker’s contractor’s license, proof of the licensed contractor’s current active status, and evidence of prevailing labor rates for that trade or type of work.” In this case, the hearing officer received into evidence Mr. Tyler’s log, his license, proof of current active status, and evidence of the prevailing labor rates for the trade for electrical rehabilitation.

entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

Under the Act, the specified kinds of discrimination—sex, color, race, religion, ancestry and national origin—serve only as illustrative, rather than restrictive, indicia of the bases of discrimination condemned; and both the history and language of the Act disclose a clear design to interdict all arbitrary discrimination by a business establishment. *In re Cox* (1970) 3 Cal.3d 205.

Mr. Tyler asserts that he and other similarly situated owner-rehabilitators are arbitrarily discriminated against should this board and the Residential Adjustment Program, a business establishment within the meaning of the Act, treat owner-performed rehabilitation labor as either gratis or assign an arbitrary value of 25% of the costs of materials even where labor is documented as was the case for Mr. Tyler. A rational and fair way to assign a value to owner-performed rehabilitation labor costs where labor is documented is explained in footnote 4, supra.

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4 Oakland, CA 94607
5 Tel/Fax: (510) 835-1520

6 Attorney for Petitioner Paul Tyler

7
8 CITY OF OAKLAND, DEPARTMENT OF HOUSING AND COMMUNITY
9 DEVELOPMENT, RENT ADJUSTMENT PROGRAM

10 PAUL TYLER,

11 Petitioner,

12 vs.

13 TENANTS,

14 Respondents.

Case No. L16-0011

**AMENDED DECLARATION OF PAUL
TYLER IN SUPPORT OF PETITION FOR
CERTIFICATE OF EXEMPTION**

Petition Filed: 02/17/2016

Hearing Date: 07/14/2016

Time: 10:00 a.m.

Place: 250 Frank H. Ogawa Plaza
Suite 5313, Oakland, CA

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19
20 I, Paul Tyler, declare:

21 1. I make this amended declaration in support of my February 17, 2016, Petition for
22 Certificate of Exemption. I am personally familiar with the facts stated below and, if called as a
23 witness, could and would testify competently thereto.

24 2. On April 1, 2009, I purchased the vacant two-unit two-story building located at 1302-
25 1304 107th Avenue from Deutsche Bank National Trust Company for \$125,000. The building
26 had been foreclosed upon.

27 3. The building was built in 1912, and each unit contains 1,168 square feet for a total of
28 2,336 square feet. (See certified copy of Property Characteristics at Tab 2.)

Paul Tyler Amended Decl.

Case No. L16-0011

[4]

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727 A

1 4. The building is Type V, wood frame construction, on level ground.

2 5. Initially, I believed that the rehabilitation would take six to eight months based on the
3 limited foreclosure reports and investigation available pre-purchase. After purchase I learned that
4 the walls and the roof contained significantly more rot and water damage than I had anticipated.
5 The six to eight month rehabilitation timeline morphed into a twenty-month rehabilitation
6 requiring many 12-hour days. The rehabilitation included:

- 7 A. the replacement of sewer and drain pipes;
- 8 B. the placement of a new main water service-one inch copper pipe running from
9 East Bay MUD sidewalk water meter to building;
- 10 C. the replacement of rusted galvanized hot and cold water pipes with copper
11 pipes;
- 12 D. the replacement of the entire electrical system with a new service drop from
13 PG&E;
- 14 E. the demolition of exterior walls and the placement of new tar paper to prevent
15 moisture from entering the building;
- 16 F. the placement of R13 insulation in the interior and exterior walls;
- 17 G. the placement of two layers of sheetrock on the exterior walls for sound
18 reduction;
- 19 H. the placement of sheetrock on the interior walls, and tape and texture on the
20 exterior and interior walls;
- 21 I. the installation of RC channel in the downstairs unit ceiling for sound reduction;
- 22 J. the installation of R30 insulation in the upstairs and downstairs unit ceilings;
- 23 K. the replacement of the original gas water heaters with energy efficient tankless
24 water heaters;
- 25 L. the installation of new gas wall heaters;
- 26 M. the reframing of the heater shaft with steel studs and sheet metal liners for fire
27 protection from the first floor to the attic exiting the roof;
- 28

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1 N. the installation of an attic fan for cooling;

2 O. the painting of the interior and exterior walls;

3 P. the reframing and reroofing of the roof;

4 Q. the removal of significant amounts of garbage and debris both within and
5 outside the building necessitating dozens of trips to a waste transfer facility to
6 dispose of the garbage and debris;

7 R. the purchase and installation of new kitchen appliances¹—

8 1. two garbage disposals with respective cord kits - $2 \times \$99.96 + 2 \times \$11.99 =$
9 $\$223.90 + 9.75\% \text{ tax} = \underline{\$245.74}$; install both disposals on November 22, 2010, 8
10 hours labor (4 hours each-upstairs, downstairs) $8 \text{ hours} \times \$26.89 \text{ per hour} =$
11 $\underline{\$215.12 \text{ uncompensated labor}}$ (see paragraph 13 below).

12 2. two vent hoods = $\$39.99$ (May 24, 2010) + $\$39.19$ (July 31, 2010)² = $\$79.18 +$
13 $9.75\% \text{ tax} = \underline{\$86.90}$; install upstairs on May 24, 2010 (2 hours labor); install
14 downstairs on July 31, 2010 (2 hours labor) $4 \text{ hours} \times \$26.89 \text{ per hour} = \underline{\$107.56}$
15 $\underline{\text{uncompensated labor}}$ (see paragraph 13 below).

16 3. two dishwashers ($2 \times \$713.32 + [\text{connection/valve } \$13.98 + \$6.99 + \$15.98 =$
17 $\$36.95 + 9.75\% \text{ tax} = \$40.55]$ + for a total cost of $\$1,426.64 + \$40.55 =$
18 $\underline{\$1,467.19}$; install upstairs on July 22, 2010 (4 hours labor); install downstairs on
19 August 12, 2010 (4 hours labor); $8 \text{ hours} \times \$26.89 \text{ per hour} = \underline{\$215.12}$
20 $\underline{\text{uncompensated labor}}$ (see paragraph 13 below).

21 S. the installation of new kitchen stainless steel sinks, new countertops, and oak
22 cabinetry for each unit;

23 T. the installation of new bathroom vanities, toilets, fiberglass shower/tub
24 combinations and sliding glass doors for each unit;

25
26
27 ¹ My July 7, 2016, declaration stated that I installed new kitchen appliances—stove and refrigerator. I installed a
28 stove and a refrigerator in each unit at a later date, that is, past the rehabilitation period stated in this petition. The
installation and costs of the stoves and refrigerators are not included here.

² The respective vent hood amounts are correct--\$39.99 and \$39.19.

1 U. the replacement of a dilapidated rotted fence with new four-by-four posts and
2 redwood fencing material-see footnote 4;

3 V. the resurfacing of the rear yard with pavers/deck for tenant use-see footnote 4.

4 6. I am a certified general electrician—journeyman. Attached as Exhibit A is a true copy
5 of my State of California—Department of Industrial Relations card, showing license number
6 102042, with valid dates January 21, 2012 to January 21, 2018.

7 7. By way of my background—in 1990 I became eligible to work, and did work, as a
8 construction electrician in the inside wirement division of the International Brotherhood of
9 Electrical Workers (“IBEW”).

10 8. Prior to 1990 I worked as a journeyman neon electrician in the neon sign division of the
11 IBEW. As a neon electrician I worked on electrical wiring for neon signs, welded pipes, installed
12 concrete footings for large signs, dealt with wind loads, and operated boom trucks with 100 foot
13 lifts. I worked on the Grand Lake Theater sign, the Mexicali Rose sign, the California Hotel sign,
14 the San Francisco Union Oil Tower sign, many General Motors signs, and many gas station signs
15 throughout the bay area, among other signs.

16 9. In 2009 and 2010 my regular hourly rate was \$44.50 as established by the IBEW
17 collective bargaining agreement. This rate did not include my established health and welfare
18 benefits, pension, vacation time, nor overtime, nor swing shift time. Attached as Exhibit B are
19 representative statements of earnings for 2009 and 2010 showing the \$44.50 regular hourly rate.

20 10. In 2009 and 2010 I worked reduced hours out of the IBEW union hall. In 2009 I
21 worked 457.5 hours and in 2010 I worked 582 hours on IBEW short calls. I worked these reduced
22 hours in order to be able to rehabilitate the 1302-1304 107th Avenue building.

23 11. In an effort to control material costs, and to prevent theft of uninstalled materials I
24 purchased materials on an as needed basis at the nearby Home Depot. Over the rehabilitation I
25 made 443 trips—to Home Depot mainly, and also to a few other specialty vendors.

26 12. I performed most of the rehabilitation. Attached as Exhibit C is a true reconstruction
27 of my time spent on the rehabilitation. The reconstruction also shows the costs spent on materials
28

1 (total-\$55,660.88) and on permits (total-\$2,472.63)³ and on waste management fees (total-
2 \$2,238.92) and on the costs spent on several laborers. On July 30, 2009, I paid \$5,000.00 to Phil
3 Santos for plumbing work (Tab 5, Vol. One, Page 95) and on September 27, 2010, I paid \$1,000
4 to Mario Rodriguez for resurfacing the yard with pavers⁴ (Tab 5, continued to Vol. Two, Page
5 645A).

6 13. As detailed in the reconstruction I worked 6,652 hours without compensation on
7 rehabilitating the building for a total cost of \$195,523.43. The electrical and non-electrical hours
8 and rates of uncompensated labor are calculated as follows:

9 1,015 hours-electrical labor x IBEW hourly rate of \$44.50 = \$45,167.50.

10 5,637 hours-non-electrical labor. Assuming a craft classification of a laborer at the rate
11 established by the California Department of Industrial Relations for April 1, 2009 through August
12 21, 2009-\$25.89 and August 22, 2009 through December 31, 2010-\$26.89 = \$150,355.93. This
13 sum of \$150,355.93 is calculated as follows: 1,223 hours-April 1, 2009-August 21, 2009 non-
14 electrical labor at \$25.89=\$31,663.47. 4,414 hours-August 22, 2009-December 31, 2010 non-
15 electrical labor at \$26.89=\$118,692.46. [\$31,663.47+\$118,692.46=\$150,355.93.]

16 Total electrical uncompensated labor costs-\$45,167.50+total non-electrical
17 uncompensated labor costs-\$150,355.93 = \$195,523.43.

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22 ³ Permit documents are attached at Tab 5 pages 26-36, pages 167-176, pages 408-422, pages 450-455, and pages 559-
23 560, Tab 5. All permits were finalized except for the solar permit (\$241.18), which cost I have not presented here.

24 ⁴ Overall, I spent \$4,276.29 on the outdoor materials for the fence, the pavers, and the deck, and the fence and
25 concrete waste management fees. This sum of \$4,276.29 is calculated as follows: fence materials \$1,194.18 +
26 pavers/deck resurface materials \$2,960.09 + fence and concrete waste management fees \$102.02 (five trips - March
27 8, 2010-\$32.87; March 9, 2010-\$32.93; March 10, 2010-\$36.22; April 9, 2010 (two trips by laborer)). With respect to
28 outdoor labor I did not install the pavers for the resurfacing, although I did build the fence and a ground level deck
that borders the pavers on one side. I spent 118 hours between building the fence and the three waste management
trips, and I spent 20 hours building the deck. Overall, I spent 138 hours on outdoor labor, all after August 22, 2009.
Assuming a rate of \$26.89 per hour x 138 hours I spent \$3,710.82 on outdoor labor. Total outdoor materials and
outdoor labor = \$7,987.11. The outdoor materials are included in the sum of \$55,660.88. The outdoor labor is
included in the sum of non-electric total uncompensated labor of \$118,692.46 for the period August 22, 2009-
December 31, 2010.

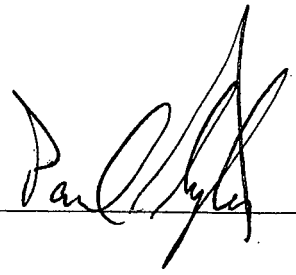
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 14, 2016



Paul Tyler

[9]

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F



ALLOWABLE RENT INCREASES

Table with 2 columns: Effective Period, Amount of Increase. Lists rent increase percentages for various time periods from 1982 to 2016.

* Only one of these two increases may be imposed.

CAPITAL IMPROVEMENT UNCOMPENSATED LABOR RATES

USE RATE IN EFFECT AT TIME WORK COMMENCED

Table with 2 columns: Period, Rate. Shows labor rates for various periods from 8/22/08 to 6/29/15.

SECURITY DEPOSIT INTEREST

Table with 2 columns: Effective Period, Amount of Interest. Lists interest rates for security deposits for various time periods from 1983 to 2016.

RENT BOARD FEES THAT CAN BE BANKED

Table with 3 columns: Tax Year, Tenant's Amount*, Landlord's Amount**. Shows bankable fees for various tax years from 1999 to 2016.

* A landlord may recover this amount from tenant(s) in occupancy on Nov. 1, except that residential hotel tenants owe only one-half this amount.

**A landlord owes one-half this amount for residential hotel units.

CAPITAL IMPROVEMENT INTEREST RATES - MARCH 1, 2016 THROUGH FEBRUARY 28, 2017

USE THE RATE IN EFFECT AT THE TIME THE PETITION IS FILED.

Table with 2 columns: Rate, Factor. Lists interest rates and factors for different amortization periods (7, 10, 15, 20 years).

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[10]

2018 JUL 17 PM 3:39

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2 Attorney at Law
3 428 Alice Street, No. 439
4 Oakland, CA 94607
5 Tel/Fax: (510) 835-1520

6 Attorney for Petitioner Paul Tyler

7
8 CITY OF OAKLAND, DEPARTMENT OF HOUSING AND COMMUNITY
9 DEVELOPMENT, RENT ADJUSTMENT PROGRAM

10 PAUL TYLER,

11 Petitioner/Appellant,

12 vs.

13 TENANTS,

14 Respondents/
15
16
17

Case No. L16-0011

**PETITIONER/APPELLANT'S
SUPPLEMENTAL DOCUMENTS /
REQUEST FOR REMAND**

Petition Filed: 02/17/2016

Appeal Hearing Date/Time: 07/26/2018;
7:00 p.m.

Place: Hearing Room 1, City Hall, One Frank
H. Ogawa Plaza, Oakland, CA

18
19 Petitioner/appellant Paul Tyler respectfully submits the attached supplemental documents
20 for his appeal dated August 24, 2016. These documents consist of 10 historic photographs taken
21 by Mr. Tyler, and which documents Hearing Officer Stephen Kasdin admitted into evidence on
22 July 14, 2016, at hearing. The documents were marked Exhibits 732, 733, 730, 728, and 729.


23 These photographs along with the more than 725 historic material and service receipts
24 displaying daily dates and times¹ provide *substantial evidence independent* of Mr. Tyler's own
25 sworn testimony and the log that he prepared in anticipation of the hearing of the work he
26 personally performed from April 1, 2009 through December 31, 2010 on the duplex property. The
27 receipts corroborate Mr. Tyler's sworn testimony that he worked daily on the duplex. The

28 ¹ These receipts function as a time clock and show the daily progress of the rehabilitation of the duplex property.

1 photographs show a property that was uninhabitable at purchase with even a bathtub falling
2 through the ceiling and show a property that was substantially rehabilitated, if not totally
3 rehabilitated.

4 Mr. Tyler respectfully requests that this Board remand the case to Hearing Officer Kaskin
5 for a decision 1. that places a value Mr. Tyler's time consistent with the evidence and 2. that is
6 consistent with the rational and fair formula proposed by Mr. Tyler, and also adopted by the San
7 Francisco Rent Stabilization and Arbitration Board which has answered the question on how to
8 value *uncompensated* labor.²

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11 Date: July 17, 2018

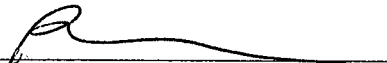


12 Paula Gustafson
13 Attorney for Petitioner/Appellant Paul Tyler

14
15 I declare under penalty of perjury under the laws of the State of California that on July 17,
16 2018, I placed a copy of this document, and all attached pages, in the United States mail or
17 deposited it with a commercial carrier, using a service at least as expeditious as first class mail,
18 with all postage or charges fully prepaid, addressed to each opposing party as follows.

19
20 Laura Shoaps, Housing Staff Attorney (Attorney for tenants)
21 Centro Legal de la Raza
22 3400 East 12th Street
23 Oakland, CA 94601

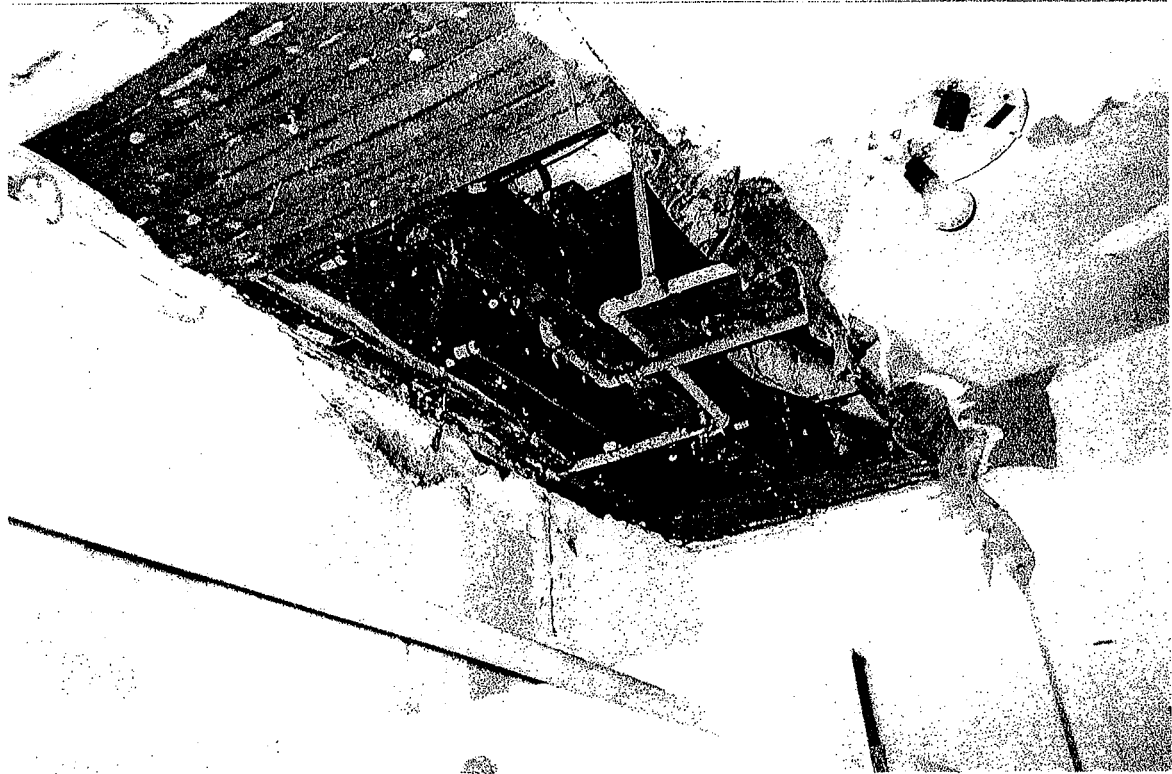
24 Date: July 17, 2018



25 Paula Gustafson

26
27 ² Uncompensated labor rate as that of a craft classification of a laborer for non-electric work as established by the
28 California Department of Industrial Relations for the period April 1, 2009 through August 21, 2009--\$25.89 per hour,
and for the period August 22, 2009 through December 31, 2010--\$26.89 per hour. Uncompensated labor rate of
\$44.50 per hour for electric work per Tyler journeyman electrician status—his historic rate (does not include
overtime or other benefits).

Photograph 1 depicts the March 2009 pre-purchase condition of the lower unit bathroom. Note, water damage from the upper unit bathtub/shower caused significant damage to the lower unit ceiling and walls.



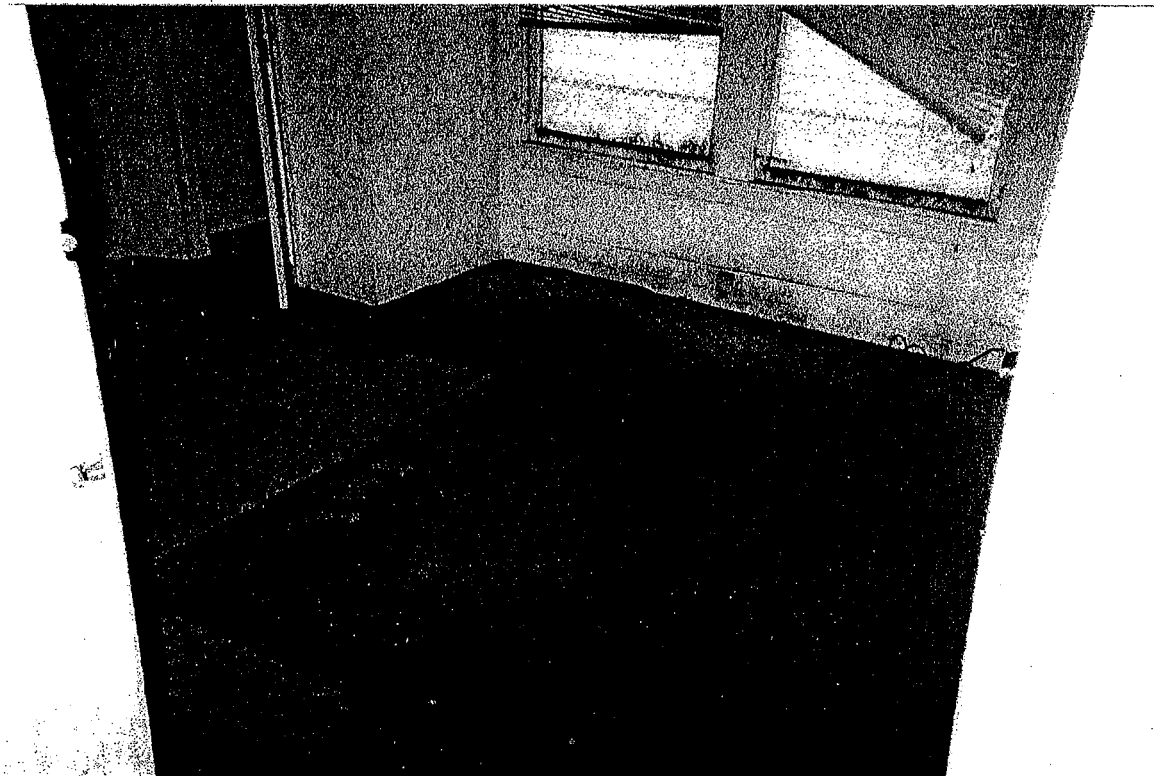
Photograph 2 depicts the March 2009 pre-purchase condition of the lower unit bathroom bathtub/shower and floor.



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TYLER EXH 732

Photograph 3 depicts the March 2009 pre-purchase condition of the lower unit dining room.



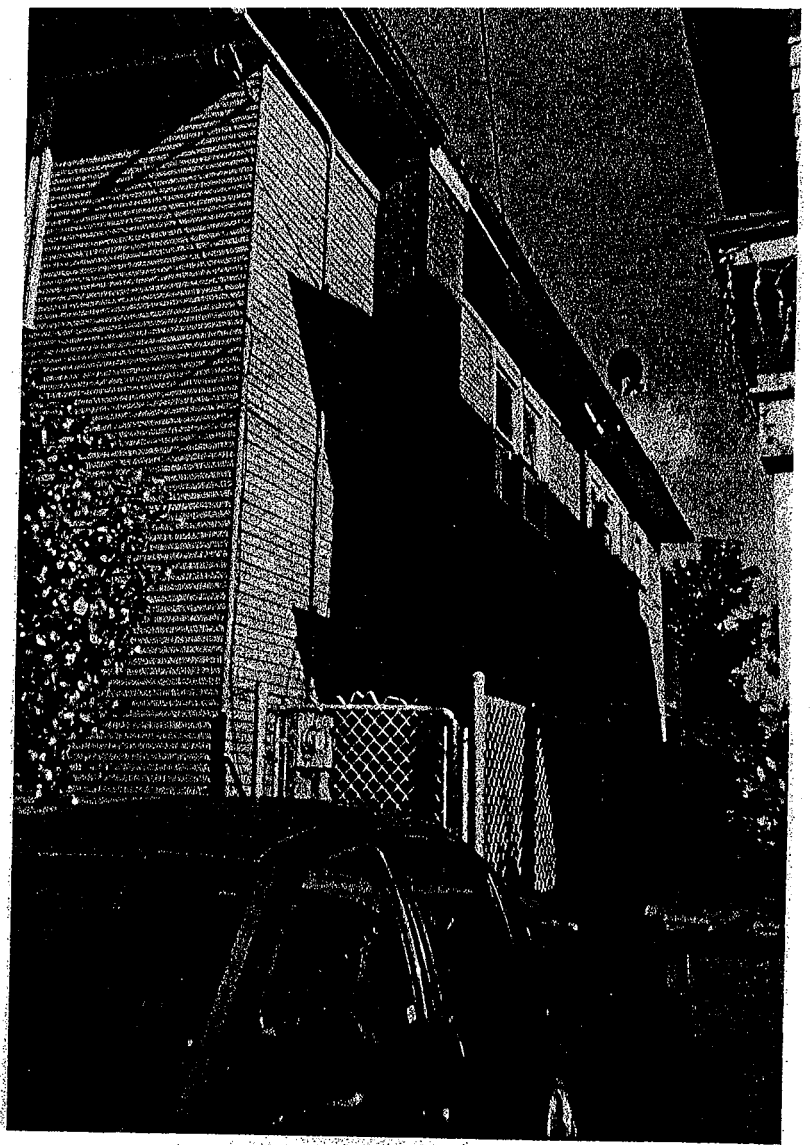
Photograph 4 depicts the March 2009 pre-purchase condition of the roof soffit. Note, rot damage from leaking roof along soffit.



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TYLER
EX H
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Photograph 7 depicts the March 2009 pre-purchase condition of the 20' tall chimney containing two flues. Note the unreinforced brick chimney was damaged and broken off at the roof line. Mr. Tyler felt it was unsafe to maintain the chimney in its pre-purchase condition so he demolished the chimney and related inoperable fire-places.



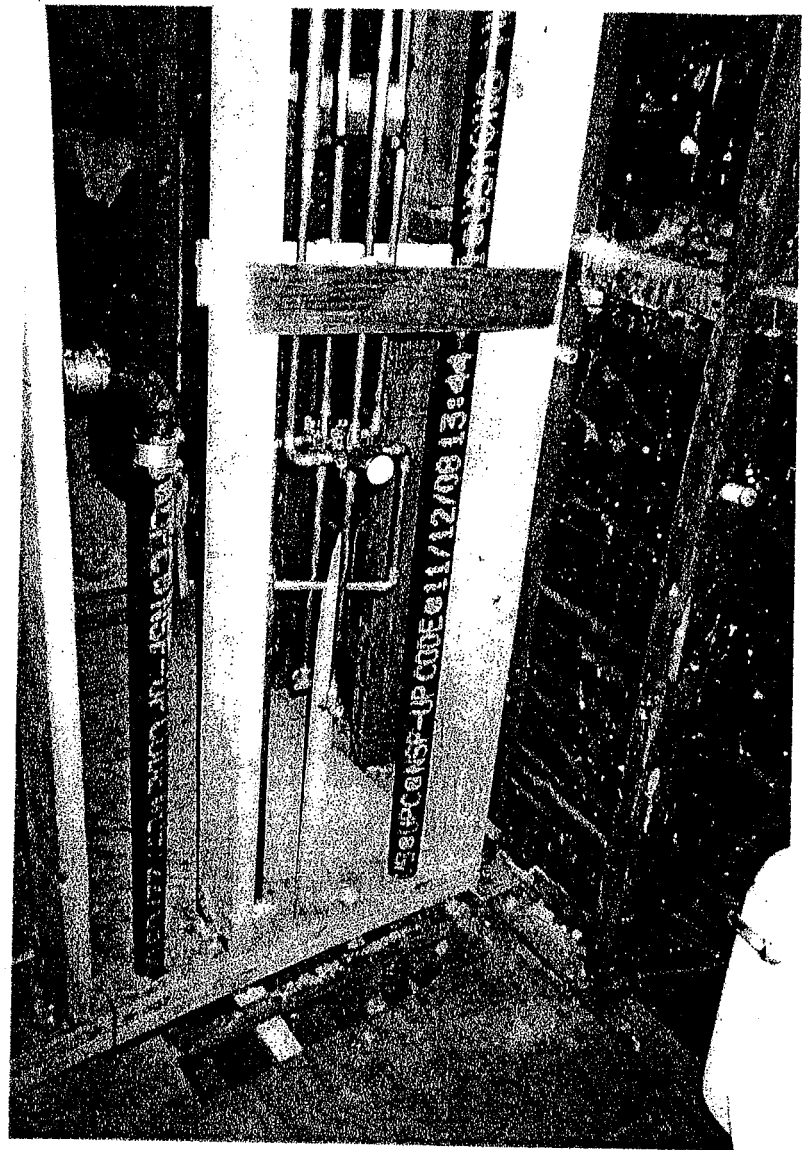
Photograph 8 depicts aerial view of chimney showing broken chimney at roof line.



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TYLER
EXH
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Photograph 19 depicts new vent and drain pipes and new copper hot and cold water supply to bathroom showers for downstairs unit. Mr. Tyler created two bathrooms in each unit from the existing single large bathroom in each unit. See photograph 20 below.



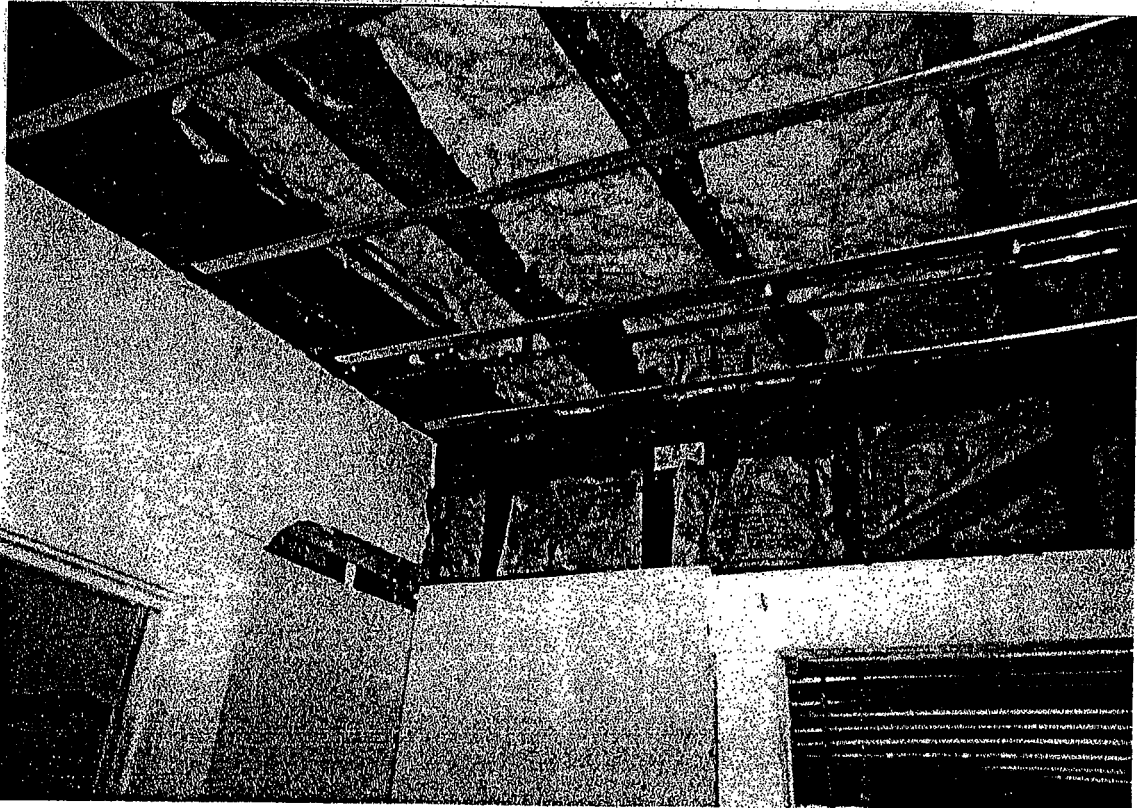
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TYLER
EXH
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Photograph 23 depicts lower unit fully insulated wall. Mr. Tyler insulated the walls throughout both units. Photograph 23 also depicts new electric light switch receptacles and boxes for cable television or coax cable.



Photograph 24 depicts insulated ceiling in lower unit kitchen. Mr. Tyler insulated the ceilings throughout both units. Note the installation of RC channels rated for sound reducing noise from upper unit.



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TYLER
EXH
729

CITY OF OAKLAND

REPORT

DATE: July 26, 2018
TO: Residential Rent and Relocation Board
FROM: Michele Byrd, Director, Housing and Community Development
SUBJECT: Substantial Rehabilitation Exemption

Pursuant to the extension of City Council's moratorium on substantial rehabilitation exemptions from the Rent Adjustment Ordinance, which terminates on October 21, 2018, staff has prepared a set of recommendations for amending the Substantial Rehabilitation Exemption in the Rent Adjustment Ordinance (Section 8.22.030.B.2). These recommendations are listed below, followed by background and analysis.

Staff is requesting that the Board review and comment on these recommendations. Staff plans to bring recommendations to the Community and Economic Development Committee at their September 11, 2018 meeting and to the City Council at their September 18, 2018 meeting. Upon Committee and Council review, staff is looking for direction to return with an ordinance amending this section. If no direction is provided, and the moratorium is not further extended, the substantial rehabilitation exemption will remain as is. The Rent Board could decide to issue regulations to clarify the process and some of the requirements for obtaining the exemption.

RECOMMENDATION

The following are the recommended revisions to the ordinance:

- (1) Require the substantial rehabilitation exemption be limited to buildings consisting of rental units over 50 or more years of age, which are vacant and essentially uninhabitable and that require substantial renovation to conform to contemporary standards of decent, safe, and sanitary housing;
- (2) Require that property owners provide proof that no preemptive, no fault evictions or displacement took place within twelve (12) months prior to beginning the project;
- (3) Prohibit cosmetic improvements alone from qualifying as substantial rehabilitation;
- (4) Require improvements be substantial and equal to at least 75% of the costs of newly constructed residential buildings pursuant to the City of Oakland Bureau of Building Construction Valuation for Building Permits;
- (5) Exclude rehabilitation costs that are compensated by insurance proceeds;
- (6) Deem substantial rehabilitation exemptions granted to a building temporary, expiring after 20 years.

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BACKGROUND / LEGISLATIVE HISTORY

In September 2016, the City Council adopted amendments to the Rent Ordinance that require any property owner issued a Certificate of Occupancy on or before September 20, 2016 to apply for a substantial rehabilitation exemption by June 30, 2017 or the exemption will be deemed vacated.

On September 28, 2017, the Rules Committee delayed scheduling a discussion of amendments to the substantial rehabilitation regulations and requested that the Residential Rent and Relocation Board ("Rent Board") consider the matter and present recommendations.

On October 12, 2017, the Rent Board voted on the following options:

- To impose an immediate moratorium pending further study of potential impacts. The moratorium would be no less than 90 days and no more than one year. (Vote: 4 Aye, 1 Nay, 1 Abstained)
- To eliminate substantial rehabilitation as an exemption. (Vote: 3 Aye, 3 Nay)
- To apply substantial rehabilitation exemption to empty or abandoned buildings only. In any occupied units, the tenants would be protected from the exemption. (Vote: 2 Aye, 4 Nay)

The results of the Rent Board vote were taken to the Rules Committee on October 19, 2017. Subsequently, on November 28, 2017, City Council adopted Ordinance No. 13465 C.M.S. to impose a six-month moratorium on petitions for exemptions based on substantial rehabilitation filed on or after October 20, 2017.

On April 17, 2018 the City Council adopted Ordinance No. 13481 C.M.S. to extend the moratorium by an additional 180 days, until October 21, 2018.

Staff was directed to report back to the City Council with options and recommendations for modifying or eliminating the substantial rehabilitation exemption.

ANALYSIS

The purpose of the current substantial rehabilitation exemption is to encourage private investment in deteriorated residential units in Oakland. Before an exemption is granted the current regulations require:

- An owner must spend a minimum of fifty (50) percent of the average basic cost for new construction and perform substantial work in each of the units in the building;
- The average basic cost of construction is determined using tables issued by the chief building inspector applicable for the time when the project was completed;
- Owners seeking a substantial rehabilitation exemption must first obtain a Certificate of Occupancy (CO);

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- Any property owner issued COs on or before the adoption of new ordinance effective September 20, 2016, must have applied for an exemption not later than June 30, 2017, or such exemption would have been deemed to be vacated.

In the past six years and four months (2011 to date), there have been 267 exemptions granted. Of the exemptions granted, 44 were for substantial rehabilitation, affecting 223 units. The annual rate of exemptions range from a low of one property with three units in 2011, to the highest rates in 2014 with nine properties comprising 58 units, 2016 with ten properties comprising 54 units, and a total of twelve exemptions comprising 37 units for the first half of 2017 alone. (**Attachment A**) A surge in petitions for substantial rehabilitation between September 2016 and June 2017 appear to be the result of property owners meeting the deadline established in the September 2016 ordinance.

Other Rent Stabilization Jurisdictions

There are nine (9) major cities in California with Rent Stabilization Ordinances: Oakland, Berkeley, San Jose, San Francisco, Santa Monica, Los Angeles, Hayward, West Hollywood, and Richmond. Until 1989, Los Angeles had a "Substantial Renovation" program (a type of "Substantial Rehabilitation") that exempted units from rent control when owners made renovation investments more than designated amounts. The program was rescinded because a survey of the program concluded that it resulted in displacement of tenants unable to afford the higher rents that owners charged after the units were removed from the rent control program and because it was a method of gentrification.¹ Like most other cities, Los Angeles adopted capital improvement policies which are divided into two components: renovation and capital improvements, allowing different rent increase pass-throughs under each category.

Currently, Oakland and San Francisco are the only California jurisdictions that allow a substantial rehabilitation exemption. However, requirements in San Francisco are more restrictive. These are San Francisco's requirements which all need to be met in order to qualify for an exemption based on substantial rehabilitation (**Attachment B**):

- The building is at least 50 years old;
- The building contained essentially uninhabitable residential units;
- "Substantial rehabilitation" of the building was required to conform to contemporary standards for decent, safe and sanitary housing; and
- The cost of the improvements (excluding insurance proceeds, land costs and architectural/engineering fees) was at least 75% of the cost of newly constructed residential buildings of the same number of units and type of construction.

By case law, the San Francisco exemption has been clarified to mean: "the intention [of the exemption and regulations is] to encourage landlords not merely to bring their buildings up to code (to create better housing), but to create new residential units where, essentially, there were none before (to create additional housing). Like the "new construction" exemption, this section cannot be applied to residential units where tenants are already in occupancy without contravening the Ordinance's explicit mandate to protect tenants from excessive rent increases." Da Vinci Group v. San Francisco (1992) 5 Cal.App.4th 27, 31

¹ Kenneth Barr report October 26, 1995: Issues and Options for the Rent Increase Standards Under Berkeley's Rent Stabilization Ordinance.

San Francisco's regulations are much more restrictive and, over the past six years, no exemptions were granted for substantial rehabilitation.²

Summary

Rent Adjustment data shows that over the past six years, approximately 44 exemptions for substantially rehabilitated buildings were granted, totaling 223 units. This represents one-third of one percent (0.3%) of the approximately 77,600 units covered under the Rent Ordinance over a six-year period. While these units remain subject to the Just Cause for Eviction Ordinance, since they are no longer subject to controls on the rent, the increases that ensue following the granting of an exemption may become unaffordable to the current tenants and other Oakland residents who may find it difficult to remain in the City due to lack of affordable rents. While there is no collected data on the correlation between displacement and these substantial rehabilitation exemptions, rents for units that are not subject to rent control continue to soar and tenants continue to be displaced in Oakland.

Of the nine major cities in California with rent stabilization ordinances, San Francisco and Oakland are the only cities that allow for a substantial rehabilitation exemption, with San Francisco's setting forth stricter requirements on what qualifies as "substantial rehabilitation." All of the other cities utilize one form or another of capital improvement pass-throughs to encourage investment in rental properties that bring buildings up to code and current sanitary housing standards. While it is important to encourage rehabilitation of deteriorating buildings in Oakland, the substantial rehabilitation exemption should be reviewed and modifications considered due to the potential impact the exemption may have on the ongoing problems of rising rents, tenant displacement, and loss of covered units under the Rent Ordinance.

² Per Robert Collins, Executive Director San Francisco Rent Board: most exemptions were granted in the 1980s before the Rent Board changed the regulations.

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Attachment A

Substantial Rehabilitation Exemptions Granted (2011-2017)

Case No.	Address	Number of Units
L11-0002	1061, 1061a & 1063 59th Street	3
L12-0009	5436-5442 Bryant Ave.	4
L12-0052	2337 Adeline St.	2
L12-0061	2415 San Pablo St.	5
L12-0062	765 MacArthur Boulevard	10
L12-0063	640 East 15th St.	9
L13-0001	2505 San Pablo Ave.	14
L13-0025	1471 Excelsior Ave.	2
L13-0049	764 59th St.	3
T13-0196	1010 Walker Ave.	5
L14-0007	5560 and 5562 Fremont St.	2
L14-0015	681 24th St.	4
L14-0016	4133, 4135, 4137, 4139 Martin Luther King	4
L14-0025	412 Monte Vista Ave.	14
L14-0032	771 Kingston Ave., No. 205	1
L14-0043	33 Deering Ct.	4
L14-0061	675 - 56th St.	2
L14-0069	1824 Lakeshore Ave.	25
T14-0197	350 24th St. and 352 24th St.	2
L15-0008	654, 656, and 658 Alcatraz Ave.	3
L15-0013	5414 - 5416 Boyd Ave.	2
L15-0034	1244 2nd Avenue	12
L16-0003	1601-1605 Clay Street	20
L16-0013	643 E. 18th St.	4
L16-0017	374 41st Street	4
L16-0026	306 Lenox Avenue	3
L16-0040	369 Orange Street	4
L16-0052	2325 Ransom Ave.	3
L16-0054	1426/1428 Glenfield Ave.	6
L16-0055	4507/4509 Martin Luther King Jr. Way	2
L16-0057	366 51st St.	4
L16-0086	373 Fairmount Ave.	4
L17-0011	1035-1037 Adeline St.	2
L17-0014	4525-4531 Edgewood Ave.	4
L17-0025	886-888 45th Street	5
I17-0026	800,862,864,866 Walker Ave.	4

Case No.	Address	Number of Units
I17-0053	9941 C St., A/B	2
I17-0055	812 15th St.	2
I17-0056	809 15th St. A/B	2
I17-0057	814 14th St., A/B	2
L17-0069	9674 Elmview Dr.	1
T17-0021	1921 E. 26th St.	3
T17-0079	9601 B St.	4
I17-0023	55 Marlow Dr.	6
		223

Substantial Rehab Exemptions Per Year

	Properties	Units
2011	1	3
2012	5	30
2013	4	24
2014	9	58
2015	3	17
2016	10	54
2017	12	37
	44	223

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GENERAL INFORMATION REGARDING LANDLORD PETITION FOR EXEMPTION BASED ON SUBSTANTIAL REHABILITATION

Landlords may file a petition to exempt a building from the Rent Ordinance if the building has been substantially rehabilitated. There are stringent requirements to qualify for a substantial rehabilitation exemption, as set forth below. Major remodeling done for the purpose of upgrading older units rarely qualifies as "substantial rehabilitation."

"Substantial rehabilitation" means the renovation, alteration or remodeling of a building containing *essentially uninhabitable* residential rental units of 50 or more years of age that require substantial renovation in order to conform to contemporary standards for decent, safe and sanitary housing. [Rules and Regulations Section 1.18]

"Essentially uninhabitable" means defects that are so severe that the building as a whole (1) is unsafe for occupancy and poses an imminent danger to the health, safety and welfare of its occupants and/or the general public, and/or (2) has been found by a court, the Department of Building Inspection, the Department of Public Health or similar agency to pose an imminent danger to the health, safety and welfare of the occupants, neighboring properties and/or the general public.

In order to qualify for exemption based on substantial rehabilitation, the landlord must, at a minimum, prove ALL of the following elements with credible documentary evidence:

- (a) That the building is at least 50 years old;
- (b) That the building contained essentially uninhabitable residential units;
- (c) That "substantial rehabilitation" of the building was required to conform to contemporary standards for decent, safe and sanitary housing; and
- (d) That the cost of the improvements (excluding insurance proceeds, land costs and architectural/engineering fees) was at least 75% of the cost of newly constructed residential buildings of the same number of units and type of construction.

In general, a petition for exemption based on substantial rehabilitation can be filed at any time after the work has been completed, as long as the work was completed after June 13, 1979. However, a landlord who recovers possession of a rental unit under Ordinance Section 37.9(a)(12) in order to carry out substantial rehabilitation work must file the petition for exemption within the earlier of two years following recovery of possession of the rental unit or one year following completion of the work. A landlord who fails to file a petition within such time and thereafter obtain a determination of exempt status from the Rent Board, shall be rebuttably presumed to have wrongfully recovered possession of the tenant's rental unit in violation of the Ordinance. [Rules and Regulations Section 1.18]

Tenants may raise objections to the Substantial Rehabilitation Petition based upon any of the following: that the work was not done; that the work was necessitated by the current landlord's deferred maintenance resulting in a code violation; that the costs are unreasonable; and/or that the work was not principally directed to code compliance. [Rules and Regulations Section 8.17]

INSTRUCTIONS FOR FILING A PETITION FOR EXEMPTION BASED ON SUBSTANTIAL REHABILITATION

1. The petition form must be completely filled out and signed by the landlord or the landlord's authorized agent.
2. In addition to the original petition, the landlord must submit a copy of the completed petition, with attachments, for each tenant and tenant representative listed in the petition, plus one extra copy for the Rent Board staff.
3. For each tenant and tenant representative named in the petition, the landlord must provide 2 business size envelopes and 1 large flat envelope (at least 9" x 12"), pre-addressed to each person, with NO return address but with the following postage affixed: one of the business size envelopes will be used to mail the Notice of Hearing and must have first class postage for one (1) ounce and, one must have first class postage for two (2) ounces for mailing the Decision. The large envelope must have sufficient first class postage for mailing the petition and supporting evidence. *If a postage meter is used instead of stamps, please do NOT include a date on the meter marking.*

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4. For each landlord and landlord representative who should receive a copy of the Notice of Hearing and the Decision, the landlord must provide 2 business size envelopes, pre-addressed to each recipient, with NO return address but with the following postage affixed: one of the envelopes will be used to mail the Notice of Hearing and must have first class postage for one (1) ounce; and, one must have first class postage for two (2) ounces for mailing the Decision. *If a postage meter is used instead of stamps, please do NOT include a date on the meter marking.*
5. The landlord must pay the cost of an independent estimator hired by the Rent Board. The Estimator Fee Schedule is available on the Rent Board's website and is based upon the full cost of the work. The fee must be paid at the time the petition is filed. Make the check payable to the San Francisco Rent Board.

ADDITIONAL SPECIFIC REQUIREMENTS

ALL of the documents enumerated below must be attached to the petition. Be sure to submit sufficient copies for the Rent Board to mail to the tenant(s) along with a copy of the petition. The materials should be assembled in the following order, with each section clearly marked and separated by tabs or dividers.

6. Written Explanation of Basis for Petition – The landlord must include a written summary explaining the basis for the petition, and why the building qualifies for exemption from the Rent Ordinance based on substantial rehabilitation. Specifically, the written summary should address each of the following requirements: that the building is at least 50 years old; that prior to commencement of the work, the building contained *essentially uninhabitable* residential units; that "substantial rehabilitation" of the building was required to conform the building to contemporary standards for decent, safe and sanitary housing; and, that the cost of the improvements (excluding insurance proceeds, land costs and architectural/engineering fees) was at least 75% of the cost of newly constructed residential buildings of the same number of units and type of construction as calculated in accordance with the applicable DBI Cost Schedule.
7. Tenant History [R & R Sec. 8.12(1)] – The landlord must submit a list of all current tenants and the amount of their current rents. In addition, if any tenants were served a notice to terminate tenancy based on the substantial rehabilitation work, the landlord must include a list of all such tenants, their last known address, the amount of rent at the time they left voluntarily or were evicted, and which tenants were evicted pursuant to the notice.
8. Detailed Description of Work Performed and Itemization of Costs [R & R Sec. 8.12(2)] – To satisfy this requirement, the landlord must include a detailed description of the nature and location of the work performed and an itemization of all costs, plus documentary evidence such as: written construction contracts, bids, change orders and/or invoices that specify the scope and cost of the work; building permit applications; 3R Reports; and, reduced copies of blueprints or plans that show the lot size, grading, elevation and existing and new building configuration, including the square footage of habitable and non-habitable areas. The building description must be sufficiently detailed to enable the Administrative Law Judge to estimate the cost of a comparable newly constructed building with reference to the Cost Schedule published by the Department of Building Inspection (DBI). (*See additional information below regarding the DBI Cost Schedule.*)
9. Evidence that Building is At Least 50 Years Old [R & R Sec. 8.12(3)] – This requirement may be satisfied by attaching a 3R report and/or records from the DBI that show when the building was constructed.
10. Evidence that Building is Essentially Uninhabitable [R & R Sec. 8.12(4)&(5)] – The landlord is required to submit with the petition either a determination of condemnation, a determination by the DBI that the premises were ineligible for a permit of occupancy, or other evidence that the building was "essentially uninhabitable." "Essentially uninhabitable" means defects that are so severe that the building as a whole (1) is unsafe for occupancy and poses an imminent danger to the health, safety and welfare of its occupants and/or the general public, and/or (2) has been found by a court, the Department of Building Inspection (DBI), Department of Public Health or similar agency to pose an imminent danger to the health, safety and welfare of the occupants, neighboring properties and/or the general public. If there is no order of condemnation or similar determination, the landlord may attempt to satisfy this requirement by submitting Notices of Violation, citations, professional inspection reports and similar evidence of code violations, with photographs of the pre-existing conditions, if possible.

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11. Current Abstract of Title [R & R Sec. 8.12(6)] – This requirement may be met by submitting a Title Report
12. Pre-Improvement Inspection Report by DBI [R & R Sec. 8.12(7)] – The petition must include a complete inspection report issued by the DBI prior to commencement of the substantial rehabilitation work. Landlords who anticipate doing substantial rehabilitation improvements should contact the DBI and request an inspection well before beginning the work.
13. Proof of Purchase Price [R & R Sec. 8.12(8)] – This evidence may include such items as the purchase agreement and/or a final escrow statement that shows the purchase price.
14. Final Notice of Completion [R & R Sec. 8.12(9)] – The petition must include a copy of the DBI's Final Notice of Completion issued after completion of the substantial rehabilitation work.
15. Eviction Notices [R & R Sec. 8.12(10)] – If any tenants were evicted because of the substantial rehabilitation work, copies of the eviction notices must be attached to the petition.
16. Proof of Cost and Payment [R & R Sec. 8.12(11)] – The petition must include proof that each of the claimed costs was paid. For each itemized cost, attach the proof of cost such as a bill or invoice first, followed immediately by the proof of payment such as a cancelled check, cash register receipt (for cash payments) or credit card statement. The documents should be clearly marked and separated according to each itemized cost. For each item, organize the documents in chronological order (earliest document first). Where a single check proves payment for more than one itemized cost, a separate copy of the check should be attached to each bill or invoice for which the payment was made. Likewise, if a single bill or invoice covers more than one item, a separate copy of the invoice should be provided for each item. If the landlord has received insurance proceeds for any portion of the costs, evidence of the insurance payments must also be supplied.
17. Current Assessment [R & R Sec. 8.12(13)] – A complete copy of the current property tax bill must be attached.
18. Claims for Uncompensated Labor [R & R Sec. 8.12(14)] – If the landlord or any other person performed work without being compensated, the landlord may include the costs of the uncompensated labor in the petition. Claims for uncompensated labor must be accompanied by a detailed log of dates, hours worked and description of the work performed. Unless the person performing the work is a licensed contractor (e.g. general, electrical, plumbing), the cost must be calculated at the standard labor rates posted by the Rent Board ("Capital Improvement Uncompensated Labor Rates"). Use the rate in effect at the time the work commenced. Persons seeking compensation at higher rates must submit a copy of the worker's contractor's license, proof of the licensed contractor's current active status, and evidence of prevailing labor rates for that trade or type of work.
19. Estimating the Cost of Newly Constructed Buildings [R & R Sec. 1.18] – Improvements will not be deemed "substantial rehabilitation" unless the cost of the work for which the landlord has not been compensated by insurance proceeds equals or exceeds 75% of the cost of a newly constructed residential building of the same number of units and type of construction, excluding land costs and architectural/engineering fees. The determination of the cost of newly constructed residential buildings is based upon construction cost data reported by Marshall and Swift, Valuation Engineers, as adapted for San Francisco and posted by the Department of Building Inspection for purposes of determining permit fees. The DBI Cost Schedule in effect on the date the Building Inspector gives final approval of the completed improvements shall apply. The applicable DBI Cost Schedule must be attached to the petition. *(If the landlord is unable to obtain a copy of the applicable DBI Cost Schedule, please contact the Rent Board's Senior Administrative Law Judge for assistance.)*

The landlord must provide a written explanation of how the landlord calculated 75% of the cost of a similar newly constructed building and complete the worksheet on Page 4 of the Petition. The method for calculating the cost of a newly constructed building is complicated, and requires the landlord to provide detailed information about the building and building site. For example, a description of such items as the degree of hillside grade, the amount of excavation and paving, the type of construction, the occupancy classification, the square footage of habitable and non-habitable areas, the type and amount of fire-rated walls, and numerous other specific features must be provided with the petition. **In order to properly calculate the cost, landlords are strongly encouraged to consult the DBI and/or retain a professional construction estimator who is familiar with the DBI's methodology.**