

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
FULL BOARD SPECIAL MEETING  
March 10, 2022  
5:00 P.M.  
Meeting Will Be Conducted Via Zoom**

**AGENDA**

**PUBLIC PARTICIPATION**

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

**OBSERVE:**

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

• To observe the meeting by video conference, please click on the link below:

When: March 10, 2022 5:00 PM Pacific Time (US and Canada)

Topic: HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD FULL BOARD MEETING- March 10, 2022

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/89396163286>

Or One tap mobile :

US: +16699009128,,89396163286# or +12532158782,,89396163286#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 900 9128 or +1 253 215 8782 or +1 346 248 7799 or +1 646 558 8656 or +1 301 715 8592 or +1 312 626 6799

Webinar ID: 893 9616 3286

International numbers available: <https://us02web.zoom.us/j/89396163286>

**COMMENT:**

There are two ways to submit public comments.

• To comment by Zoom video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Instructions on how to “Raise Your Hand” are available [here](#).

• To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing “\*9” to speak when Public Comment is taken. You will be permitted to speak during your turn, allowed to comment, and after the allotted time, re-muted. Please unmute yourself by pressing “\*6”.

If you have any questions, please email [hearingsunit@oaklandca.gov](mailto:hearingsunit@oaklandca.gov).

## HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD SPECIAL MEETING

1. CALL TO ORDER
2. ROLL CALL
3. RENEWAL: ADOPTION OF AB 361 RESOLUTION (pp. 3-5)
4. OPEN FORUM
5. APPEALS\*
  - a. L19-0253, 37 Moss LLC v. Tenants (pp.6-170)
  - b. L14-0065, 525-655 Hyde Street CNML Properties, LLC (pp. 171-545)
6. INFORMATION AND ANNOUNCEMENTS
7. SCHEDULING AND REPORTS
8. ADJOURNMENT

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*\*Staff appeal summaries will be available on the Rent Adjustment Program's website and the City Clerk's office at least 48 hours prior to the meeting pursuant to O.M.C. 2.20.070.B and 2.20.090*

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

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

Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en Español, Cantonés, Mandarín o de lenguaje de señas (ASL) por favor envíe un correo electrónico a [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) o llame al (510) 238-3721 o 711 por lo menos cinco días hábiles antes de la reunión.

需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 [RAP@oaklandca.gov](mailto:RAP@oaklandca.gov) 或致電 (510) 238-3721 或711 California relay service.

# OAKLAND HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD (HRRRB)

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

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**ADOPT A RESOLUTION DETERMINING THAT CONDUCTING IN-PERSON MEETINGS OF THE HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD (HRRRB) AND ITS COMMITTEES WOULD PRESENT IMMINENT RISKS TO ATTENDEES' HEALTH, AND ELECTING TO CONTINUE CONDUCTING MEETINGS USING TELECONFERENCING IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 54953(e), A PROVISION OF AB-361.**

**WHEREAS**, on March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19, pursuant to Government Code Section 8625, and such declaration has not been lifted or rescinded. *See* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>; and

**WHEREAS**, on March 9, 2020, the City Administrator in their capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, 2020, the City Council passed Resolution No. 88075 C.M.S. ratifying the proclamation of local emergency pursuant to Oakland Municipal Code (O.M.C.) section 8.50.050(C); and

**WHEREAS**, City Council Resolution No. 88075 remains in full force and effect to date; and

**WHEREAS**, the Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. *See* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

**WHEREAS**, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing hard. *See* <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/caring-for-children/families.html>; and

**WHEREAS**, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors. *See* <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>; and

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**WHEREAS**, the CDC, the California Department of Public Health, and the Alameda County Public Health Department all recommend that people experiencing COVID-19 symptoms stay home. See <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>; and

**WHEREAS**, persons without symptoms may be able to spread the COVID-19 virus. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

**WHEREAS**, fully vaccinated persons who become infected with the COVID-19 Delta variant can spread the virus to others. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; and

**WHEREAS**, the City's public-meeting facilities are indoor facilities that do not ensure circulation of fresh / outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart; and

**WHEREAS**, holding in-person meetings would encourage community members to come to City facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or would live with someone who is at high risk; and

**WHEREAS**, in-person meetings would tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to City facilities and participate in local government; and

**WHEREAS**, attendees would use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households; and

**WHEREAS**, on October 14, 2021, December 9, 2021, January 27, 2022, and February 10, 2022, the Housing, Residential Rent and Relocation Board (HRRRB) adopted a resolution determining that conducting in-person meetings would present imminent risks to attendees' health, and electing to continue conducting meetings using teleconferencing in accordance with California Government Code Section 54953(e), a provision of AB-361; now therefore be it:

**RESOLVED:** that the Housing, Residential Rent and Relocation Board (HRRRB) finds and determines that the foregoing recitals are true and correct and hereby adopts and incorporates them into this resolution; and be it

**FURTHER RESOLVED:** that, based on these determinations and consistent with federal, state and local health guidance, the Housing, Residential Rent and Relocation Board (HRRRB) renews its determination that conducting in-person meetings would pose imminent risks to the health of attendees; and be it

**FURTHER RESOLVED:** that the Housing, Residential Rent and Relocation Board (HRRRB) firmly believes that the community's health and safety and the community's right to participate in local government, are both critically important, and is committed to balancing the

two by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e), a provision of AB-361; and be it

**FURTHER RESOLVED:** that the Housing, Residential Rent and Relocation Board (HRRRB) will renew these (or similar) findings at least every thirty (30) days in accordance with California Government Code section 54953(e) until the state of emergency related to COVID-19 has been lifted, or the Housing, Residential Rent and Relocation Board (HRRRB) finds that in-person meetings no longer pose imminent risks to the health of attendees, whichever occurs first.

## CHRONOLOGICAL CASE REPORT

Case No.: L19-0253

Case Name: 37 Moss LLC v. Tenants

Property Address: 37 Moss Avenue, Oakland, CA 94610

Parties:

- 37 Moss LLC (Owner)
- The Lapham Company Inc (Owner Representative)
- Angelica Sandoval (Owner Representative)
- Arlo Hale Smith (Tenant Representative)
- Bertha Gayles (Tenant)
- Chitsuttha Khunanuwachaidet (Tenant)
- Chris Sevem (Tenant)
- Clarissa Vargas (Tenant)
- Fred Carter (Tenant)
- Girma Haregewoin (Tenant)
- James Gayles (Tenant)
- Janice Carter (Tenant)
- Jeffrey Dang (Tenant)
- Kanittha Maneewan (Tenant)
- Mahray Mulugeta (Tenant)
- Mark RizKhallah (Tenant)
- Mekdelawit Beraki (Tenant)
- Paulos Adhinom (Tenant)
- Rahel Berene (Tenant)
- Ryan Trottier (Tenant)
- Waleed Sabrah (Tenant)
- Zigmond Collins (Tenant)

### TENANT APPEAL:

Activity

Date

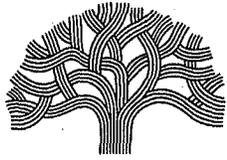
Owner Petition filed

November 4, 2019

**000006**

Owner Exhibit Submission	November 11, 2019
Tenant Response filed (Collins)	December 5, 2019
Tenant Response filed (Trottier)	December 13, 2019
Tenant Response filed (Sabrah)	December 13, 2019
Tenant Response filed (Adhinom)	December 18, 2019
Tenant Response filed (Gayles)	December 19, 2019
Tenant Response filed (Beraki)	December 27, 2019
Tenant Response filed (Haregewoin)	December 27, 2019
Tenant Response filed (Mahray)	December 27, 2019
Owner Exhibit Submission	August 9, 2021
Hearing Date	August 9, 2021
Hearing Decision mailed	September 24, 2021
Tenant Appeal filed	October 14, 2021
Respondent Response to Appeal	November 19, 2021

**000007**



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612-0243  
(510) 238-3721

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

2019 NOV -4 PM 12:46

**PROPERTY OWNER  
PETITION FOR  
APPROVAL OF RENT  
INCREASE**

LM/RC LA-0253

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

Your Name 37 Moss LLC c/o The Lapham Company, INC	Complete Address (with zip code) 4844 Telegraph Ave Oakland CA 94609	Daytime Telephone: <b>510-594-7600</b> E-mail: info@laphamcompany.com
Your Representative's Name (if any) The Lapham Company Inc	Complete Address (with zip code) 4844 Telegraph Ave Oakland CA 94609	Daytime Telephone: <b>510-594-7600</b> E-mail: info@laphamcompany.com
Property Address (If the property has more than one address, list all addresses) <b>37 Moss Ave Oakland CA 94610</b>		

Total number of units on property: 12

Date on which you acquired the building: 12/ 18/ 208

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

Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to the tenants in each unit affected by the petition?	Yes	No
On what date was the RAP Notice first given?	<b>1/8/2019</b>	
Have you paid your Oakland Business License? The property owner must have a current Oakland Business License. If it is not current, an Owner Petition may not be considered in a Rent Adjustment proceeding. (Provide proof of payment.)	Yes	No
Oakland Business License number.	Registered 2019- Please see proof of payment	

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

**REASON(S) FOR PETITION.**

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

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

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

- Banking (Reg. App. 10.5)
- Capital Improvements (Reg. App. 10.2)
- Fair return (Reg. App. 10.6)
- Increased Housing Service Costs (Reg. App. 10.1)
- Uninsured Repair Costs (Reg. App. 10.3)

Have you ever filed a petition for this property?

- Yes
- No

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

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

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
37 Moss Ave Oakland CA 94610	01	James Gayles, Bertha Gayles	(510) 839-6420		Rent: \$\$1,524.00 Park:\$70.00
37 Moss Ave Oakland CA 94610	02	Paulos Adhinom, Rahel Berene	510-229-8904	paulosay2000@yahoo.com	Rent: \$1,289.00 Park: \$70.00
37 Moss Ave Oakland CA 94610	04	Mahray Mulugeta, Girma Haregewoin, Mekdelawit Beraki	510-922-0197	mmharay@gessential.com	Rent: \$1,311.00 Park:\$50.00
37 Moss Ave Oakland CA 94610	05	Chitsuttha Khunanuwachaidet, Jeffrey Dang, Kanittha Maneewan	510-390-6466	jeffreydang@gmail.com	Rent: \$2,029.97
37 Moss Ave Oakland CA 94610	06	Mark RizKhallah, Chris Sevem	909-800-4455	mark.rizkallah@gmail.com	Rent: \$1,507.00 Park: \$70.00
37 Moss Ave Oakland CA 94610	07	Ryan Trottier	(206) 898-6316	ryan.trottier77@gmail.com	Rent: \$1,007.00 Park: \$60.00
37 Moss Ave Oakland CA 94610	08	Clarissa Vargas	(858) 539-6844	cdvargas77@gmail.com	Rent: \$1,451.00 Park: \$70.00
37 Moss Ave Oakland CA 94610	10	Waleed Sabrah		waleedsabrah@yahoo.com	Rent: \$1,474.00

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

Address	Unit #	Tenant Name(s)	Phone	E-mail	Current Rent
37 Moss Ave Oakland CA 94610	11	Zigmond collins	510-547-5644		Rent: \$1,169.00
37 Moss Ave Oakland CA 94610	12	Janice Carter, Fred Carter	(415) 574-9481		Rent: \$1,514.00 Park: \$140.00

37 MOSS AVE, OAKLAND CA CAPITAL IMPROVEMENT PETITION		
UNIT #	TENANT(S) NAME(S)	DATE OF 1ST RAP NOTICE
1	James Gayles, Bertha Gayles	1/8/2019
2	Paulos Adhinom, Rahel Berene	1/8/2019
4	Mahray Mulugeta, Girma Haregewoin, Mekdelawit Beraki	1/8/2019
5	Chitsuttha Khunanuwachaidet, Jeffrey Dang, Kanittha Maneewan	1/8/2019
6	Mark RizKhallah, Chris Sevem	1/8/2019
7	Ryan trottier	1/8/2019
8	Clarissa Vargas	1/8/2019
10	Waleed Sabrah	1/8/2019
11	Zigmond collins	1/8/2019
12	Janice Carter, Fred Carter	1/8/2019

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

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

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

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

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

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

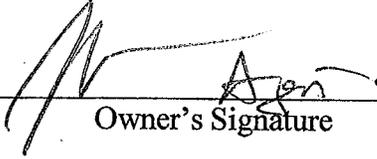
- If your petition contains capital improvements for which permits are first issued on or after February 1, 2017, capital improvements will be amortized according to an amortization schedule (attached at the end of this form).
- If the petition includes only work where permits were issued before February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

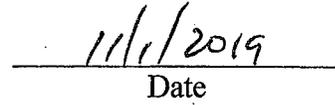
<b>Building-Wide Capital Improvements</b> CATEGORY (attach separate sheet if needed)	TOTAL COSTS	DATE COMPLETED	DATE PAID FOR
Structural Retrofitting	\$129,047.89	6/26/2019	7/23/2019
Interior & Exterior Painting	\$29,200.00	8/19/2019	8/19/2019
Window Replacement	\$35,652.91	7/31/2019	8/8/2019
Please see separate sheet for additional Improvements	-----	-----	-----
<b>SUBTOTAL:</b>	-----	-----	-----

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

**Verification (Each petitioner must sign this section):**

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

  
\_\_\_\_\_  
Owner's Signature

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

**File Review**

Your tenant(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. **You will be sent a copy of the Tenant's Response. Copies of attachments submitted with the Response form are not sent, out, but can be reviewed in person at the Rent Adjustment Program office by calling (510) 238-3721 to schedule a file review.** When the RAP Online Petitioning System is available, you will be able to view the response and attachments by logging in and accessing your case files.

**Mediation Program**

If you are interested in submitting your dispute to mediation, please read the following information carefully. To request mediation, all petitioners must sign the form that follows. Voluntary mediation of rent disputes is available to all parties involved in Rent Adjustment proceedings. Mediation is an entirely voluntary process to assist you in reaching an agreement with your tenant. Mediation will be scheduled only if both you and your tenant(s) agree and after both a petition and a response have been filed with the Rent Adjustment Program. You may elect to use a Rent Adjustment Program staff Hearing Officer acting as mediator or an outside mediator. Staff Hearing Officers are available to conduct mediation free of charge. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services. If you are unable to resolve your dispute after a good faith attempt at mediation, you will be given a priority hearing presided by a Hearing Officer other than your mediator.

**IF YOU WANT TO SUBMIT YOUR CASE TO MEDIATION, PLEASE CHECK THE APPROPRIATE BOX AND SIGN.**

- I agree to have my case mediated by a Rent Adjustment Program staff Hearing Officer (no charge).
- I agree to have my case mediated by an outside mediator (fees to be paid by the parties).

\_\_\_\_\_  
Owner's Signature (for mediation request)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner's Signature (for mediation request)

\_\_\_\_\_  
Date

Amortization Schedule (Rent Board Regulations Appendix A Exhibit 1)  
 For Petitions with Permits Issued on or after February 1, 2017

<u>Improvement</u>	<u>Years</u>	<u>Improvement</u>	<u>Years</u>
<u>Air Conditioners</u>	10	<u>Heating</u>	
<u>Appliances</u>		Central	10
Refrigerator	5	Gas	10
Stove	5	Electric	10
Garbage Disposal	5	Solar	10
Water Heater	5	<u>Insulation</u>	10
Dishwasher	5	<u>Landscaping</u>	
Microwave Oven	5	Planting	10
Washer/Dryer	5	Sprinklers	10
Fans	5	Tree Replacement	10
<u>Cabinets</u>	10	<u>Lighting</u>	
<u>Carpentry</u>	10	Interior	10
<u>Counters</u>	10	Exterior	10
<u>Doors</u>	10	<u>Locks</u>	5
Knobs	5	<u>Mailboxes</u>	10
Screen Doors	5	<u>Meters</u>	10
<u>Earthquake Expenses</u>		<u>Plumbing</u>	
Architectural and Engineering Fees	5	Fixtures	10
Emergency Services		Pipe Replacement	10
Clean Up	5	Re-Pipe Entire Building	20
Fencing and Security	5	Shower Doors	5
Management	5	<u>Painting</u>	

Tenant Assistance	5	Interior	5
<u>Structural Repair and Retrofitting</u>		Exterior	5
Foundation Repair	10	<u>Paving</u>	
Foundation Replacement	20	Asphalt	10
Foundation Bolting	20	Cement	10
Iron or Steel Work	20	Decking	10
Masonry-Chimney Repair	20	<u>Plastering</u>	10
Shear Wall Installation	10	<u>Pumps</u>	
<u>Electrical Wiring</u>	10	Sump	10
<u>Elevator</u>	20	<u>Railing</u>	10
<u>Fencing and Security</u>		<u>Roofing</u>	
Chain	10	Shingle/Asphalt	10
Block	10	Built-Up, Tar and Gravel	10
Wood	10	Tile and Linoleum	10
<u>Fire Alarm System</u>	10	Gutters/Downspots	10
<u>Fire Sprinkler System</u>	20	<u>Security</u>	
<u>Fire Escape</u>	10	Entry Telephone Intercom	10
<u>Flooring/Floor Covering</u>		Gates/Doors	10
Hardwood	10	Fencing	10
Tile and Linoleum	5	Alarms	10
Carpet	5	<u>Sidewalks/Walkways</u>	10
Carpet Pad	5	<u>Stairs</u>	10
Subfloor	10	<u>Stucco</u>	10
<u>Fumigation</u>		<u>Tilework</u>	10
Tenting	5	<u>Wallpaper</u>	5
<u>Furniture</u>	5	<u>Window Coverings</u>	5

Automatic Garage Door Openers

10

Gates

Chain Link

10

Wrought Iron

10

Wood

10

Glass

Windows

5

Doors

5

Mirrors

5

Drapes

5

Shades

5

Screens

5

Awnings

5

Blinds/Miniblinds

5

Shutters

5

Job	Vendor	Vendor Role	Itemized Cost	Finalized Cost	Date Completed	Date Paid
Structural Retrofitting	SFH Construction	General Contractor, Design & Engineering	\$127,047.89	\$129,047.00	6/26/2019	7/23/2019
	Honigman	Legal Counsel for GC contract	\$2,000.00		7/10/2019	5/6/2019
Window Replacement	CR Windows	Replace single pane aluminum with double pane vinyl	\$35,652.91	\$35,652.91	7/31/2019	8/8/2019
Exterior & Interior Painting	Gonzalez Painting	Ivy removal, Seal cracks (if any), Paint Exterior & Interior of Building	\$29,200.00	\$29,200.00	8/19/2019	8/19/2019
Architectural & Engineering Fees	RES Engineers	Inspections of structural work	\$4,384.80	\$4,983.30	5/23/2019	7/1/2019
	Form & Field	Consultant, Design, Project Manager	\$598.50		7/31/2019	9/6/2019
Sewer Lateral	Plumbing Ministry	Contractor	\$2,100.00	\$2,100.00	3/28/2019	3/15/2019
Mailbox Replacement	Reed Brothers	Procure & install	\$2,409.82	\$3,058.41	8/5/2019	8/14/2019
	APT	Remove old boxes and patch wall	\$648.59			8/8/2019
Interior Carpet	BACC		\$3,216.73	\$3,216.73	8/28/2019	9/10/2019
Lighting Installation	Lumens	order for light fixtures	\$3,452.53	\$5,718.01	8/21/2019	8/12/2019
	APT	Installation of the new fixtures	\$2,265.48			9/13/2019
Balcony Decking	Alarcon Bohm	Decking work, ventilation of decks	\$9,964.00	\$9,964.00	6/17/2019	4/24/2019

000020

Capital Improvement Calculator  
City of Oakland Rent Adjustment Program

IMPROVEMENTS BENEFITING ALL UNITS BUILDING WIDE											
									Petition Date		11/1/19
									Number of Residential Units		12
IMPROVEMENT OR REPAIR	DATE PERMIT OBTAINED (or date started if permit not required)	DATE COMPLETED	FULL COST	ALLOWABLE PASS THROUGH (70%)	ALLOWABLE PASS THROUGH PER UNIT	Imputed Interest	Amortization Period (years)	Allowable Monthly Amortized Cost For Building (70%)	Allowable Amortized Cost per Unit	Date Validation (2 years ago max)	
Structural Retrofitting	3/14/2019	06/26/19	\$129,047.89	\$90,333.52	\$7,527.79	4.194%	20	\$556.68	\$46.39	OK	
Window Replacement	7/23/2019	07/31/19	\$35,652.91	\$24,957.04	\$2,079.75	3.915%	5	\$458.67	\$38.22	OK	
Exterior & Interior Painting	8/5/2019	08/19/19	\$29,200.00	\$20,440.00	\$1,703.33	3.915%	5	\$375.65	\$31.30	OK	
Architectural & Engineering Fees	5/3/2019	07/31/19	\$4,983.30	\$3,488.31	\$290.69	3.915%	5	\$64.11	\$5.34	OK	
Sewer Lateral	3/25/2019	03/28/19	\$2,100.00	\$1,470.00	\$122.50	4.194%	10	\$15.02	\$1.25	OK	
Mailbox Replacement	7/30/2019	08/05/19	\$3,058.41	\$2,140.89	\$178.41	3.915%	10	\$21.59	\$1.80	OK	
Interior Carpet	8/28/2019	08/28/18	\$3,216.73	\$2,251.71	\$187.64	3.915%	5	\$41.38	\$3.45	OK	
Lighting Installation	8/8/2019	08/21/19	\$5,718.01	\$4,002.61	\$333.55	3.915%	10	\$40.36	\$3.36	OK	
Balcony- Decking Work	6/3/2019	06/12/19	\$9,964.00	\$6,974.80	\$581.23	3.915%	10	\$70.34	\$5.86	OK	
Subtotal (with weighted averages)				\$156,058.88	\$13,004.91	4.079%	14	\$1,220.80	\$101.73		
Place X in cell B19 if property is mixed use.											
Residential square footage											
Other use square footage											
Percent residential use											
<b>Total Cost Per Unit Allocated to Residential Units</b>					<b>\$13,004.91</b>	<b>4.079%</b>	<b>14</b>		<b>\$101.73</b>		





**LAPHAM COMPANY 1P**

MANAGEMENT TRUST ACCOUNT  
4844 Telegraph Avenue  
Oakland, CA 94609  
510-594-7600

0021 0247

First Republic Bank  
Private Banking San Francisco  
San Francisco, CA 94111

201216

11-8166/3210

PAY \*\*\*\*\* EIGHT HUNDRED SIXTEEN AND 00/100 DOLLARS

DATE  
02/28/2019

AMOUNT  
\$816.00\*\*\*\*\*

TO THE  
ORDER OF

City of Oakland-RAP

MEMO: 37 MOSS AVE



*[Handwritten signature]*

ENDORSE CHECK HERE

X FOR DEPOSIT ONLY

0103995270

CITY OF OAKLAND ORDER OF

UNION BANK  
Business Exp. Utility, Rent, Garbage

1220004 BUSINESS TAX  
0103995270

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE  
RESERVED FOR FINANCIAL INSTITUTION USE

Check

816.00

*[Microprint area containing multiple rows of small, repeating text and security icons.]*

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Security Features: Absence of document alteration, Security Screen, Absence of "Security Feature" verbiage on back of check, MicroPrint on Back, Small Type in MP line appears domed when photocopied.

FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

000024



**CITY OF OAKLAND**

Planning & Building Department

BUILDING SERVICES

250 Frank H. Ogawa Plaza 2nd Floor Oakland, CA 94612

Telephone (510) 238-3444

www.oaklandnet.com

Fax (510) 238-7287

**PERMIT RECORD CARD**

**COMMERCIAL & MULTI-UNIT RESIDENTIAL**

California Building, Residential, Electrical, Plumbing, Mechanical, Energy and Green Building Codes

Oakland Building, Planning Sustainability, Fire and Municipal Codes

Address:	37 MOSS AVE, Oakland, CA 94610	Suite:		APN:	010 081803000
Description:	Voluntary seismic retrofit for 3-story 12-unit apartment bldg.			Issued:	03/14/2019
				Building Use:	Apartment > 5 Units
				Occupancy:	R-2 Residential > 2 Units
				Type:	VB - Combustible Constructio
Owner:	37 Moss Llc	Stories:	3	# units:	12
Contractor:	SFT CONSTRUCTION CORP	Sprinkler:			
Permits:	B1901162				
Allocated Inspections	10				

**SPECIAL INSPECTION LIST** (checked items are required)

Reinforced Concrete, Gunite, Grout & Mortar:				Structural Wood					
CONCRETE	GUNITE	GROUT	MORTAR	Aggregate Test	Shear Wall Nailing	Structural Observations			
				Reinforcing Test	Eng. Lumber Insp.	Sample and Test Components			
				Mix Designs	Structural Steel/Welding				
				Reinforcing Place	Sample and Test (list specific numbers below)				
				Batch Plant Insp.	Shop Material Identification				
				Cast Samples	Welding Inspection		SHOP	FIELD	
				Compression Tests	Ultrasonic Inspection				
				Anchors	High-Strength Bolting				
				Test Panels	A325	A490	N	X	F
				Precast/Pre-stressed Concrete:				Metal Deck Welding Inspection	
PILES	POST-TENSION	PRE-TENSION	CLADDING	Aggregate Test	Reinforcing Steel Welding Insp	Placement Insp			
				Reinforcement Test	Metal Stud Welding Inspection	Sample & Test			
				Placement Insp.	Concrete Inset Welding Inspection				
				Tendon Test	Structural Masonry				
PIERS	POST-TENSION	PRE-TENSION	CLADDING	Mix Designs	Special Inspection Stresses Used				
				Reinforcement Place	Preliminary Acceptance (masonry units, wall prisms)				
				Insert Placement	Subsequent Tests (mortar, grout, field wall prisms)				
				Concrete Batching	Placement Inspection of Units				
				Concrete Placement	Fireproofing				
Installation Insp.	Placement Inspection	Thickness Test							
Cast Samples	Density Tests	Inspection Batching							
Compression Test	Mastic & Intumescent Coatings								
Green Building Cert.	C&D Tracking								
HERS Verification	Site Drainage								
PSL (sewer lateral Cert)	Grading			Seismic Force Resistive System		Special Case			

Additional Instructions/Inspections Required:

INSPECTOR NOTES

date  
sign BUILDING

5/7/19 Plan revise to include 3x6x6 dowels  
approved by Special Inspector KCP

5/10/19 ALEX SANTOS ENGINEER OF RECORD  
INSPECTED REBAR, POWER, STEEL FRAMING  
WILL PROVIDE STAMPED/SIGNED DETAIL FOR  
FOUNDATION POWER MODIFICATION DS.

5/14/19 Grade beam ok to pour guidelines 1-6/B per RFI/SK 5/13/19

SI for Welding + Bolting o beams above to cone. ✓

5/22/19 OK TO PLACE LIGHT GAUGE STEEL  
FRAME AND LATH. SI REPORTS PROVIDED  
OK, JPD

date  
sign ZONING

1	FOUNDATION Major Inspection	2	FIRST FLOOR Major Inspection	3	FRAME Major Inspection	4	FINAL Major Inspection	5	SITE
ELECTRICAL		ELECTRICAL		ELECTRICAL		ELECTRICAL		PRE-CONSTRUCTION	
E	CONSTRUCTION POWER	E	UNDERFLOOR	E	SUBPANEL/ FEEDER	E	SMOKE & CO ALARMS	S	PRE-CON MEETING
E	UFER	E	CABLE PROTECTION	E	WALLS	E	EQUIPMENT/ DEVICES	S	OBSTRUCT/ ENCROACH
E	UNDERGROUND/ CONDUIT/ CABLE	E	EXTERIOR WIRING	E	BOX MAKE-UP	E	UTILITY RELEASE/ TRANSFORMER	S	SURVEY/ ELEVATION
E	SINGLE SERVICE			E	SUSPENDED CEILING	E	ENERGY/ CAL GREEN	S	GRADING
E	SERVICE RACEWAY			E	ROUGH	E	FINAL ELECTRICAL	S	CREEK PROTECTION
PLUMBING		PLUMBING		PLUMBING		PLUMBING		S	TREE PROTECTION
P	UNDERGROUND	P	UNDERFLOOR	P	DWV PIPING	P	ROOF DRAINS	S	VEGETATION CLEARING
P	BACKWATER VALVE	P	DRAINS (FIRE/ CONDENS/ MISC)	P	GAS PIPING	P	GAS TEST	S	DUST & EROSION CONTROL
P	INTERCEPTOR (SO)	P	FLOOR RECEPTORS	P	WATER PIPING/ SERVICE	P	UTILITY RELEASE	S	C6 & RAINWATER RUNOFF
P	INTERCEPTOR (GREASE)			P	TUB / SHOWER PAN	P	ENERGY CODE/ CAL GREEN	S	EXCAVATION SHORING
				P	BACKFLOW DEVICES	P	CHLORINATION/ SI REPORTS	S	TRAFFIC CONTROL & PARKING
				P	ROUGH	P	FINAL PLUMBING	S	BLIGHT/ NOISE/ TOILET
MECHANICAL		MECHANICAL		MECHANICAL		MECHANICAL		S	INFRASTRUCTURE
M	UNDERGROUND	M	UNDERFLOOR DUCTS	M	SUSPEND CEILING/ VAV/ COILS	M	REGISTERS/ GRILLS	PZ	SEWER/ BACKWATER
M	RADIANT/ COILS	M	RADIANT/ COILS	M	DAMPER (FIRE, CEILING, SMOKE)	M	EQUIPMENT	PZ	DRAINAGE STORM DRAIN
				M	MU AIR/ OUTDOOR AIR	M	ROOF ACCESS/ GUARDS	PZ	HARDSCAPE
				M	DUCT (TYPE I HOOD)	M	ENERGY COMPLY FORMS	PZ	FIRE ACCESS
				M	DETECTORS (DUCT, CO)	M	CAL GREEN	PZ	C3 FACILITY
				M	EXHAUST DUCTS	M	SI REPORTS (EQ, BALANCE)	PZ	FINAL INFRASTRUCTURE
				M	ROUGH	M	FINAL MECHANICAL	6	GRADING
BUILDING		BUILDING		BUILDING		BUILDING		GR	SUBGRADE
B	SURVEY / STAKING	B	GARAGE PAD ELEVATION	B	ROOF FRAMING & NAILING	B	DECK / RETAIN WALL	GR	PAD ELEVATION
B	SETBACKS	B	FIRST FLOOR ELEVATION	B	ZONING ROUGH	B	ZONING CONDITIONS	GR	SP INSPECT REPORT
RB	SP INSPECT REPORT	B	SP INSPECT REPORT	B	SP INSPECT REPORT	B	SP INSPECT REPORT	GR	FINAL GRADING
B	PIERS	B	ACCESSIBILITY	B	FIRE RATED ASSEMBLY	B	SIGNAGE	7	FIRE MARSHALL
B	FOOTING / GRADE BEAM			B	SHAFT CONSTRUCTION	B	ACCESSIBILITY	FM	FIRE SPRINKLER
B	EMBELEMENTS			B	SHEAR WALL BRACING	B	ENERGY/ HERS (FORMS, REPORT)	FM	OK TO CONCEAL
				B	SUSPENDED CEILING	B	GPR COMPLIANCE	FM	FIRE ALARM
B	SLAB FLOOR / VAPOR BARRIER	B	FLOOR FRAMING	B	FLOOR & WALL FRAMING	B	SMOKE & CO ALARMS	FM	STAND PIPE/ DRAIN
B	WP PROTECTION & DRAINAGE	B	INSULATION	B	INSULATION	B	RECYCLING CDSR	FM	EMERGENCY LIGHTING
B	MASONRY WALLS			B	LATH/ EXTERIOR COVERING			FM	FIRE/ SMOKE DAMPER
				B	WP MEMBRANE			FM	FINAL FIRE (510) 238-3851
				B	EGRESS / SAFETY GLAZING			8	PLANNING
				B	OK TO COVER	B	OK TO OCCUPY	ZC	ROUGH
				B	TUB / SHOWER WALL			ZC	LANDSCAPE/ HARDSCAPE
				B	GYPSUM WALLBOARD			ZC	SITE IMPROVEMENTS
				B	FIRE SAFING	B	FINAL BLDG	ZC	FINAL ZONING
1	FOUNDATION APPVD	2	FIRST FLOOR APPVD	3	FRAME APPVD	4	FINAL CRAFTS	9	PROJECT FINAL

\* OK TO STUCCO OVER IN OFFICE FLOOR FRAME

00002702

Permits for which no inspection has been approved within 180 days shall expire by limitation. No refund more than 180 days after expiration or final.



# CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA • 2ND FLOOR • OAKLAND, CA 94612

Planning and Building Department  
www.oaklandnet.com

PH: 510-238-3891  
FAX: 510-238-2263  
TDD: 510-238-3254

37 MOSS AVE

37 MOSS AVE

Permit No: B1903305 Non-Residential Building - Alteration Filed Date: 7/23/2019  
 Job Site: 37 MOSS AVE Schedule Inspection by calling: 510-238-3444  
 Parcel No: 010 081803000  
 District:  
 Project Description: To remove and replace (44) windows and (11) patio doors (same size and location) at existing mutli-unit apartment building.  
 Related Permits: DRX191453

	Name	Applicant	Address	Phone	License #
Owner:	37 MOSS LLC		77 VAN NESS AVE 101 SAN FRANCISCO, CA		
Contractor:	GRAND GUTTERS		2140 PERALTA BOULEVARD STE 104		883310
Contractor-Employee:	JESUS OLIVEROS	X	2140 peralta ave suite 104 fremont, CA	510-693-1054	

**PERMIT DETAILS:** Non-Residential/Building/Alteration

**General Information**

Green Code Checklist: Sets Of Plans: 0 Report - Soil/Geotech:  
 Structural Calculations: 0 Energy Calculations (T24): 1

**Proposed Building Information**

Building Use: Number Of Stories:  
 Occupancy Group: Number Of Units:  
 Construction Type: No. of Additional Bedrooms:  
 Fire Sprinklers:  
 Total Floor Area (sq ft): 0  
 Additional Floor Area (sq ft):

**Work Information**

Job Value: \$28,300.00

**TOTAL FEES TO BE PAID: \$1,267.99**

Application Fee	\$70.00	California Building Standards Commission (CBSC)	\$0.90	City - California Building Standards Commission (CBSC)	\$0.10
City - Strong Motion Instrumentation Program (SMIP)	\$0.40	General Plan Surcharge	\$121.69	Plan Check - Routed	\$904.38
Recrd Mangmnt & Tech Enhancement Fee	\$162.99	Strong Motion Instrumentation Program (SMIP)	\$7.53		

Plans Checked By \_\_\_\_\_ Date \_\_\_\_\_ Permit Issued By CH Date 7/23/19  
 Finalized By RXB Date 9-10-19

**000028**



**BUILDING SERVICES**  
 250 FRANK H. OGAWA PLAZA • SUITE 2340  
 OAKLAND, CALIFORNIA 94612-2031  
 (510) 238-3891 FAX: (510) 238-2263

2016  
 CF1R-ALT-01-E  
 FENESTRATION  
 01/09/2017

**CERTIFICATE OF COMPLIANCE - LOW RISE RESIDENTIAL - THREE STORIES OR LESS**

**FENESTRATION ALTERATIONS - PRESCRIPTIVE METHOD**

**GENERAL INFORMATION**

Site Address: 37 MOSRUE OAKLAND CA Permit#

Climate Zone 3

Use of Building:

Project Scope - Check all that apply:

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Replace Windows | <input type="checkbox"/> Add Windows   | <input type="checkbox"/> Remove Windows   |
| <input type="checkbox"/> Replace Skylights          | <input type="checkbox"/> Add Skylights | <input type="checkbox"/> Remove Skylights |
| <input checked="" type="checkbox"/> Replace Doors   | <input type="checkbox"/> Add Doors     | <input type="checkbox"/> Remove Doors     |

**PROPOSED AREAS AND EFFICIENCIES**

Fenestration Type	Area Replaced	Area Removed	Area Added	Net Added	Maximum U-Factor Allowed	Proposed U-Factor
Window/Door Retrofit	<input type="checkbox"/> Up to 75 SF	NA	NA	NA	.40	.40
	<input checked="" type="checkbox"/> More than 75 SF	NA	NA	NA	.32	.28
Windows Non-Retrofit	NA				.32	
Doors Non-Retrofit	NA				.32	
More than 16 SF of skylights added or more than 3 SF of tubular skylights added	NA				.32	
Add up to 16 SF of skylights or replace skylights		NA		NA	.55 & SHGC NO GREATER THAN .30	
Add tubular skylights with dual-pane diffusers	NA	NA	<input type="checkbox"/> Up to 3 SF	NA	No Requirement	NA

**RESPONSIBLE PERSON'S DECLARATION STATEMENT**

I certify the following under penalty of laws of the State of California:

- The information provided on this Certificate of Compliance is true and correct.
- I am eligible under Division 3 of the California Business and Professions Code to accept responsibility for the information on this document.
- That the energy features and performance specifications, materials, components, and manufactured devices for the building design or system design identified on this Certificate of Compliance conform to the requirements of Title 24, Part 1 and Part 6 of the CCR.
- The building design features or system design features identified on this Certificate of Compliance are consistent with the information provided on other applicable compliance documents, worksheets, calculations, plans and specifications submitted to the enforcement agency for approval with this building permit application.
- I will ensure that a copy of this Certificate of Compliance shall be made available with the building permit(s) issued for the building, and made available to the enforcement agency for all inspections. I understand that a copy of this Certificate of Compliance is required to be included with the documentation the permittee provides to the building owner at the completion of the project.

Designer/Permittee Name (print):	Designer/Permittee Signature:
Company: <u>Grand Gutters</u>	License: <u>883310</u>
Address: <u>2140 Peralta Blvd #104</u>	Phone Number: <u>510 693 1054</u>
City/State/Zip: <u>Fremont CA 94558</u>	Date: <u>07 22 19</u>

1. NO ENERGY EFFICIENCY LABELS ARE TO BE REMOVED UNTIL THE BUILDING INSPECTOR HAS VERIFIED THAT THE FENESTRATION IS IN COMPLIANCE WITH THIS FORM.

2. A COMPLETED CF2R-ENV-01-E FORM SHALL BE SUBMITTED BY THE CONTRACTOR TO THE BUILDING OWNER AT THE COMPLETION OF THE PROJECT.

**000029**



**Regional Private Sewer  
Lateral Program**

# Compliance Certificate for Private Sewer Lateral

Parcel Address: **37 MOSS AVE, OAKLAND**

Parcel Number: **010 -0818-030-00**

Expiration Date: **03/25/2026**

Certificate Number: **62081**

Issue Date: **03/25/2019**

Type: **Compliance: passed as is**

## Special Instructions:

Retain this PSL certificate for your records for any future parcel sale, re-model greater than \$100,000, or change of water meter size.

This certificate was issued solely on the basis of the performance of the tested sewer lateral in a verification test performed in the presence of EBMUD personnel. The verification test is designed for the sole purpose of determining whether the tested portion of a sewer lateral is free from leaks at the time the test is performed. By issuing this certificate, EBMUD warrants only that the tested portion of the sewer lateral passed a verification test on the date indicated. EBMUD makes no warranty, representation, or guarantee as to the sewer laterals existing or future condition or its compliance with the legal standards of any other jurisdiction, including building or construction standards without limitation. EBMUD expressly disclaims any and all warranties, both express and implied, as to the sewer laterals condition or compliance with legal standards and shall bear no liability in connection therewith.

**000030**

**SFT CONSTRUCTION CORP**

LIC NO. 1009086

Retrofit Smart



SFT CONSTRUCTION

**PROPOSAL**

**RE: 37 Moss Ave Oakland, CA 94610**

*Signed Contract*

SFT CONSTRUCTION CORP	Owner: 37 Moss LLC
322 6 <sup>th</sup> St Suite 4, San Francisco, CA 94103	Address: c/o Lapham Company (property manager) 4844 Telegraph Ave, Oakland, CA
Email: fred@sft-construction.com	Email: sam@summitwestrealestate.com
Office: (415) 707-1046 ext.901	Phone: 415-810-9210

*Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint is filed within four years of the date of the alleged violation. Any questions concerning contractor may be referred to the Registrar, Contractors' State License P.O. Box 26000, Sacramento, CA 95826.*

The above owner/agent obligates SFT Construction to provide engineering services, construction, labor and materials, necessary to structurally retrofit the mentioned property per approved plans with reference to **vertical and lateral loading requirements for 2016 California Building Code**

**A. INCLUSIONS**

Item No.	Description of Inclusions
1	As-built, structural calculation, and seismic retrofitting for the first floor/garage level. Obtaining approval for City of Oakland for seismic retrofitting <ul style="list-style-type: none"> <li>• 3 Steel Moment frames</li> <li>• 3 Concrete Foundation</li> </ul>
2	Construction services (labor & material) per approved plans. <u>Please refer to article E. Scope of Construction</u>
3	Obtain Certificate of Final Completion (CFC) from City of Oakland

**B. EXCLUSIONS**

Item No.	Description of Exclusions	Notes
1	Permit or city fees	Approximately \$3,000.00
2	Special Inspection fee & Structural Observation	Approximately \$4,500.00
3	Removal of hazardous material and asbestos	To be determined by testing
4	Rerouting any mechanical, plumbing, and electrical	To be determined
5	Utility fees	To be determined

322 6<sup>th</sup> Street Suite 4, San Francisco, CA 94103 | www.sft-construction.com

**000031**

# SFT CONSTRUCTION CORP

LIC NO. 1009086

Retrofit Smart



SFT CONSTRUCTION

**C. JOB INFORMATION:** The name of the project owner/agent and the direct contractor are as follows: 37 Moss LLC, Sam Wiggin

Owner/Agent Initial: SW

- Direct Contractor: SFT Construction Corp, License 1009086
- Bond Company: Western Surety Company, Policy Number: 71833344
- Worker's Compensation: Accredited Surety Casualty Company, Inc Policy Number: 1ATCA16000612-0

**D. TERMS AND CONDITIONS:** Contractor License Board's laws and California Civil Code are expressly incorporated in this proposal.

**E. SCOPE OF CONSTRUCTION**

ITEM NO.	WORK DESCRIPTION	SPECIAL INSPECTION	CITY INSPECTION	PRICE
1	Engineering and professional services			8,000.00
2	Mobilization of the job site and temporary toilet			1,000.00
3	Demolition (remove sheetrock from ceiling) and hauling			4,500.00
4	Measurements to fabricate steel moment frame			500
5	Saw cutting existing concrete for new foundations			2,000.00
6	Excavation for new foundation			12,000.00
7	Wood Framing Modification/ Upgrade & shoring for the strengthening the diaphragm		X	3,500.00
8	Steel moment frame installation Phase 1 ( shop welding)	X		25,000.00
9	Installing structural plywood, nailing for the diaphragm and walls	X	X	6,000.00
10	Set up rebar in foundation	X	X	10,000.00
11	Steel moment frame installation Phase 2 ( site welding)	X		25,000.00
12	Concrete pour	X		11,000.00
13	Collector installation and ceiling details			9,000.00
14	Return sheetrock to original state &		X	3,500.00
15	Patching and taping affected			4,000.00
16	Final Inspection	Final Letter	CFC	
17			Subtotal	125,000.00

# SFT CONSTRUCTION CORP

LIC NO. 1009086

*Retrofit Smart*



SFT CONSTRUCTION

<b>Total Contact Amount</b>	<b>\$125,000.00</b> <b>One Hundred Twenty Five Thousand Dollars</b>
-----------------------------	--

## F. GENERAL REQUIREMENT

1. All work should be coordinated with the owner and property manager
2. All work will be in compliance with all Oakland Construction Laws and Landlord/tenant rules and regulations
3. Contractor guarantees work to pass Independent Inspection and City Inspection
4. Contractor to provide property manager and owner notification of start date per the requirement of the Oakland Rent Board
5. Terms, fees and conditions are valid for 30 days from the date of this proposal.
6. Contractor to name owner as an additional on Liability Insurance Policy as follows:
  - i. Commercial General Liability:
    1. Each Occurrence: \$1,000,000
    2. Damage to Rented Premises (EA Occurrence): \$50,000
    3. Med Exp (any one person): \$5,000
    4. Personal & ADV Injury: \$1,000,000
    5. General Aggregate: \$2,000,000
    6. Products-COMP/OP AGG: \$2,000,000
  - ii. Automobile Liability: \$1,000,000
  - iii. Excess Liability:
    1. Each Occurrence: \$5,000,000
    2. Aggregate: \$5,000,000
7. Contractor to provide proof of Workers Compensation, Insurance, Contractor License, and Oakland Business License
  - i. Workers Compensation:
    1. Each Accident: \$1,000,000
    2. Disease- Each Employee: \$1,000,000
    3. Disease- Policy Limit: \$1,000,000
8. Final Payment of contract to be made after issuance of Certificate of Final Completion by Department of Building and Inspection



# SFT CONSTRUCTION CORP

LIC NO. 1009086

Retrofit Smart



SFT CONSTRUCTION

**G. PAYMENT SCHEDULE:** Owner will pay Contractor the sum of 125,000.00 ( One Hundred Twenty Five Thousand Dollars) as follows:

Description	Amount	Total
Upon signing the contract	\$1,000.00	\$1,000.00
Upon completion of engineering and obtiaing the permit	\$7,000.00	\$8,000.00
Upon 40% Construction progress	\$50,000.00	\$58,000.00
Upon 80% Construction progress	\$52,000.00	\$110,000.00
Upon 100% completion and obtaining Certificate of Final Completion (CFC)	\$15,000.00	\$125,000.00

SW

NOTE: Pursuant to a prior conversation between the parties, Owner and SFT Construction Corp have agreed that Owner desires an AIA or other similar contract, which will detail the milestones upon which progress payments above will be deemed earned and payable

- H. CONSTRUCTION DELAY:** Owner and SFT Construction recognize that time is of the essence here and the Owner will suffer financial loss if the parking is not available within 60 days from construction start date. If the Contractor fails to perform the mentioned above work, the Owner and Contractor agree that a penalty, for delay in construction completion shall pay the Owner \$100.00 for each and every calendar day after 60 days from construction start date.
- I. SCHEDULE OF WORK:** The approximate project start date is February 2019, and the approximate construction completion date is April 2019.
- J. ACCEPTANCE:** : I have read the proposal set forth in the terms above and accept the proposal with the understanding that it includes those terms.

Direct Contractor (Signature)

Farzad Torabian, President  
Date: 12/19/2018

12/21/2018

Owner (Signature) and Date

Sam Wiggin, Managing Principal

(Printed name and title)





SFT CONSTRUCTION

322 6th Street Unit #4, San Francisco, CA 94103  
Office: 415-707-1046 [www.sft-construction.com](http://www.sft-construction.com)  
License Number: 1009086

### *37 Moss Ave. Payment Schedule*

Date: 3/29/2019

Description	Amount	Total	Status
On Signing the Contract	\$1,000.00	\$1,000.00	Paid
Permit Fee Reimbursement (2016-0727-3470)	\$2,047.89	\$3,047.89	Unpaid
On completion of engineering and obtaining the permit	\$7,000.00	\$10,047.89	
On 40% of Construction Completion	\$50,000.00	\$60,047.89	
On 80% of Construction Completion	\$52,000.00	\$112,047.89	
On 100% of Completion and obtaining the CFC	\$15,000.00	\$127,047.89	

**Current Balance Due: \$2,047.89**

**000035**

SUMMIT WEST REAL ESTATE LLC

1003

11-8166/3270  
95

1/3/18  
DATE

PAY TO THE  
ORDER OF

S.F.T Construction

\$ 1,000 -

One thousand and 00/100

DOLLARS



Photo  
Safe  
Deposit  
Details on back

FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
Ph 888-408-0228 Customer Care

FOR

Deposit for retsolic - 37 Moss

[Signature]



000036

PAY TO THE ORDER OF

WELLS FARGO  
121042882

FOR DEPOSIT ONLY

STI CONSTRUCTION COMPANY DEPOSIT  
515421856

• [Faint illegible text]



SFT Construction Corp  
322 6th St Unit 4  
San Francisco, CA 94103 US  
4157071046  
info@sft-construction.com  
www.sft-construction.com



**BILL TO**  
37 Moss LLC  
4844 Telegraph Ave  
Oakland, ca

Invoice 37.P1

DATE 03/29/2019 - TERMS Due on receipt

DUE DATE 03/29/2019

ACTIVITY	QTY	COST	AMOUNT
<b>Services</b>			
37 Moss- Permit City Fees (B1901162)			2,047.89

37 Moss- Permit Fees (B1901162)  
37.P1

TOTAL DUE \$2,047.89

000038

37 MOSS LLC

1003

11-8166/3210  
95

4/4/2019

DATE

PAY TO THE ORDER OF SFT Construction Corp.

\$ 2,047.89

Two thousand <sup>only</sup> forty - seven and 89/100

DOLLARS



Photo Safe Deposit  
Details on back



FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
Ph 888-408-0288 Customer Care

FOR 37 Moss Seismic Permits (37.PI)  
81901162

*[Handwritten Signature]*

MP



000039

ENDORSE HERE

X

CHECK HERE IF MOBILE OR REMOTE DEPOSIT

AT

AT [REDACTED] INSTITUTION NAME

010

- Do not cash if:
- Any of the features listed above are missing or appear altered
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SFT CONSTRUCTION

322 6<sup>th</sup> St Unit 4, San Francisco, CA 94103  
Office: 415-707-1046, [www.sft-construction.com](http://www.sft-construction.com)  
License Number: 1009086

### 37 Moss Ave (Oakland) Payment Schedule

Date: 4/24/19

Description	Amount	Total	Status
On Signing the Contract	\$1,000.00	\$1,000.00	Paid, thanks!
Building Permit Fee	\$2,047.89	\$3,047.89	Paid, thanks!
On Completion of Engineering and Obtaining the Permit	\$7,000.00	\$10,047.89	Unpaid
On Completion of 40% of Construction	\$50,000.00	\$60,047.89	Unpaid
On Completion of 80% of Construction	\$52,000.00	\$112,047.89	
On Completion of 100% of Construction and Obtaining the Certificate of Final Completion (CFC)	\$15,000.00	\$127,047.89	

**Current Balance Due: \$57,000.00**

000041

SFT Construction Corp  
322 6th St Unit 4  
San Francisco, CA 94103 US  
4157071046  
info@sft-construction.com  
www.sft-construction.com



**BILL TO**  
37 Moss LLC  
4844 Telegraph Ave  
Oakland, ca

Invoice 37.2

DATE 04/24/2019 TERMS Due on receipt

DUE DATE 04/24/2019

ACTIVITY	QTY	COST	AMOUNT
<b>Services</b>			7,000.00
Upon Completion of Engineering and Obtaining the Permit			

37 Moss Ave

TOTAL DUE \$7,000.00

000042

37 MOSS LLC

1008

11-8168/3210  
95

5/6/19 DATE

PAY TO THE ORDER OF SFT Construction Corp.

\$ 7,000.00

Seven thousand and 00/100

DOLLARS



Photo Safe Deposit  
Outside our bank



FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
Ph 888-408-0288 Customer Care

FOR SFT Const. / 37 Moss Seismic Inv. 37.2

*[Handwritten Signature]*



ENDORSE HERE

X

PAY TO THE ORDER OF

WELLS FARGO  
121042882

FOR DEPOSIT ONLY

CHECK **STEE CONSTRUCTION CORP** DEPOSIT  
AT 2857024356

WELLS FARGO BANK, N.A. MEMBER FDIC

- Security features are not visible when the check is scanned
- Microprint is visible around the perimeter of the check
- Watermark is visible when the check is held up to the light
- The Security Thread is visible when the check is held up to the light
- The Security Thread is visible when the check is held up to the light
- The Security Thread is visible when the check is held up to the light
- The Security Thread is visible when the check is held up to the light

- Any of the features listed above are missing or appear altered
- The Security Thread is missing or appears altered
- The Security Thread is missing or appears altered
- The Security Thread is missing or appears altered



SFT Construction Corp  
322 6th St Unit 4  
San Francisco, CA 94103 US  
4157071046  
info@sft-construction.com  
www.sft-construction.com



**BILL TO**  
37 Moss LLC  
4844 Telegraph Ave  
Oakland, ca

Invoice 37.3

DATE 04/24/2019 TERMS Due on receipt

DUE DATE 04/24/2019

ACTIVITY	QTY	COST	AMOUNT
<b>Services</b>			50,000.00
Construction Services Upon 40% Construction Completion			
Mobilization of the job site and temporary toilet			
Demolition (remove sheetrock from ceiling) and hauling			
Measurements to fabricate steel moment frames			
Saw cutting existing concrete for new foundations			
Excavation for new foundation			
Wood Framing Modification/ Upgrade & shoring for the strengthening of the diaphragm			

37 Moss Ave  
40% Progress Payment

TOTAL DUE \$50,000.00

000045

37 MOSS LLC

1009

11-8166/3210  
95

5/6/17 DATE

PAY TO THE ORDER OF SFT Construction Corp.

\$ 50,000.00

Fifty thousand and 00/100 DOLLARS



**FIRST REPUBLIC BANK**

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
Ph 888-408-0288 Customer Care

FOR SFT Const./37 Moss Seismic Inv. 37.3

*[Signature]*





# SFT Construction

622 6th Street Unit 4  
San Francisco, CA 94103  
(415) 707-1046



SFT CONSTRUCTION

## Payment Schedule

37 Moss Ave.  
c/o Lapham Company (property manager)  
4844 Telegraph Ave.  
Oakland, CA 94609

## Date

6/3/2019

Description	Amount	Total	Status
On Signing the Contract	\$1,000.00	\$1,000.00	Paid
Building Permit Fee	\$2,047.89	\$3,047.89	Paid
On Completion of Engineering and Obtaining the Permit	\$7,000.00	\$10,047.89	Paid
On Completion of 40% of Construction	\$50,000.00	\$60,047.89	Paid
On Completion of 80% of Construction	\$52,000.00	\$112,047.89	Unpaid
On Completion of 100% of Construction and Obtaining the Certificate of Final Completion (CFC)	\$15,000.00	\$127,047.89	

**Current Balance Due**

**\$52,000.00**

**000048**

# SFT Construction

601 S Figueroa St Suite 4050  
Los Angeles, CA 90017  
(310) 923-6473  
deli@sft-construction.com



SFT CONSTRUCTION

## Invoice

6/3/2019

### Bill To

37 Moss LLC  
c/o Lapham Company (property manager)  
4844 Telegraph Ave.  
Oakland, CA 94609

### For

37 Moss LLC

Item Description	Amount
Steel moment frame installation Phase 1 ( shop welding); Installing structural plywood, nailing for the diaphragm and walls; Set up rebar in foundation- On Completion of 80% of Construction	\$52,000.00

Total Cost

\$52,000.00

Thank you for your business!

000049

SFT Construction Corp  
322 6th St Unit 4  
San Francisco, CA 94103 US  
4157071046  
info@sft-construction.com  
www.sft-construction.com



**BILL TO**  
37 Moss LLC  
4844 Telegraph Ave  
Oakland, ca

Invoice 37.4

DATE 06/07/2019 TERMS Due on receipt

DUE DATE 06/07/2019

ACTIVITY	QTY	COST	AMOUNT
<b>Services</b> 80% Completion Welding and steel works final phase Rebar placement Passing rebar inspection Concrete pour Collector Installation	1	52,000.00	52,000.00

80% Completion - 37 Moss

TOTAL DUE \$52,000.00

000050

37 MOSS LLC

1010

11-8155/3210  
95

6/12/19  
DATE

PAY TO THE  
ORDER OF

SFT Construction Inc.

\$ 52,000.00

Fifty-two thousand and 00/100

DOLLARS



Photo  
Safe  
Deposit®  
Details on back



FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
Ph 833-408-0288 Customer Care

FOR

37 Moss seismic retrofit Inv. 37.4

*[Handwritten Signature]*



000051



SFT Construction Corp  
322 6th St Unit 4  
San Francisco, CA 94103 US  
4157071046  
info@sft-construction.com  
www.sft-construction.com



**BILL TO**  
37 Moss LLC  
4844 Telegraph Ave  
Oakland, ca

Invoice 37.5

DATE 07/11/2019 - TERMS Due on receipt

DUE DATE 07/11/2019

ACTIVITY	QTY	COST	AMOUNT
<b>Services</b>	1	15,000.00	15,000.00
Final Payment			
Completion of seismic retrofitting and obtaining sign off			

37 Moss  
100% Completion

TOTAL DUE \$15,000.00

000053

37 MOSS LLC

1014

11-8166/3210  
95

7/23/19

DATE

PAY TO THE  
ORDER OF

SFT Construction Corp

\$ 15,000.00

Fifteen thousand and 00/100

DOLLARS



Photo  
Safe  
Deposit  
Details on back

FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
Ph 888-408-0288 Customer Care

FOR 37 Moss Seismic - Inv. 37.5 CFC

*[Handwritten Signature]*



000054

PAY TO THE ORDER OF

WELLS FARGO

121042882

FOR DEPOSIT ONLY

SFT CONSTRUCTION CORP  
2857024356

7940317699

# HONIGMAN

(248) 566-8300  
Fax: (248) 566-8315  
www.honigman.com  
I.D. NO. 38-1407377

266581  
440161

Summit West Real Estate LLC  
ATTN: Samuel E. Wiggin  
527 Birch Street  
San Francisco, CA 94102

Falls under  
fees?  
BFT constrad  
contract  
prep  
\$2000  
w/ i, check ✓

March 1, 2019  
INVOICE NUMBER: 1482938

RE: Matter # 440161 - 37 Moss LLC

For professional services rendered through January 31, 2019:

Total Fees	\$3,081.25
Total Disbursements	0.00
35.09% Discount On Fees	-1,081.25
<b>Total Current</b>	<b><u>\$2,000.00</u></b>
Total Unpaid Prior Balances	13,769.80
<b>Total Due</b>	<b><u>\$15,769.80</u></b>

266581 - 440161  
AWB 1482938 03/01/19

INVOICE PAYABLE ON RECEIPT IN US DOLLARS  
39400 Woodward Avenue · Suite 101 · Bloomfield Hills, MI 48304-5151

Detroit · Ann Arbor · Bloomfield Hills · Chicago · Grand Rapids · Kalamazoo · Lansing

000056

# HONIGMAN

(248) 566-8300  
Fax: (248) 566-8315  
www.honigman.com  
I.D. NO. 38-1407377

## TIME DETAIL

Date	Name	Hours	Amount	Description
12/26/18	A. Bass	1.75	778.75	Attention to post-closing items.
01/08/19	A. Bass	0.75	348.75	Attention to construction contract with SFT.
01/08/19	I. Cosgrove	0.25	83.75	Drafted construction contract with SFT Construction for seismic retrofitting work.
01/09/19	A. Bass	1.00	465.00	Attention to construction contract with SFT Construction.
01/09/19	I. Cosgrove	0.75	251.25	Reviewed proposal from SFT Construction for seismic retrofitting work.
01/10/19	I. Cosgrove	3.25	1,088.75	Drafted AIA A104 with SFT Construction for seismic retrofitting work at 37 Moss Avenue, Oakland, CA.
01/10/19	K. Hammers (L.A.)	0.25	65.00	File California statements of information for 37 Moss LLC and 37 Moss Manager LLC.
<b>Total Hours and Fees</b>		<b>8.00</b>		<b><u>\$3,081.25</u></b>

## ATTORNEY TIME SUMMARY

Name	Hours	Rate	Amount
Bass, Aaron E. - 2018	1.75	445.00	778.75
Bass, Aaron E.	1.75	465.00	813.75
Cosgrove, Ian J.	4.25	335.00	1,423.75
Hammers, Katherine L.	0.25	260.00	65.00
<b>Total Hours and Fees</b>	<b>8.00</b>		<b><u>\$3,081.25</u></b>

## OUTSTANDING RECEIVABLES

266581 - 440161

AWB 1482938 03/01/19

2

**INVOICE PAYABLE ON RECEIPT IN US DOLLARS**  
39400 Woodward Avenue · Suite 101 · Bloomfield Hills, MI 48304-5151

*Detroit · Ann Arbor · Bloomfield Hills · Chicago · Grand Rapids · Kalamazoo · Lansing*

**000057**

# HONIGMAN

(248) 566-8300  
Fax: (248) 566-8315  
www.honigman.com  
I.D. NO. 38-1407377

Date	Invoice #	Billed Amount	Credit Amount	Total A/R
12/27/18	1470519	13,769.80	0.00	13,769.80
<b>Total Outstanding Receivables</b>				<b><u>\$13,769.80</u></b>

**INVOICE PAYABLE ON RECEIPT IN US DOLLARS**  
39400 Woodward Avenue · Suite 101 · Bloomfield Hills, MI 48304-5151

*Detroit · Ann Arbor · Bloomfield Hills · Chicago · Grand Rapids · Kalamazoo · Lansing*

**000058**

---

# HONIGMAN

(248) 566-8300  
Fax: (248) 566-8315  
www.honigman.com  
I.D. NO. 38-1407377

---

266581  
440161

Summit West Real Estate LLC  
ATTN: Samuel E. Wiggin  
527 Birch Street  
San Francisco, CA 94102

March 1, 2019  
INVOICE NUMBER: 1482938

## CURRENT INVOICE

<u>Matter ID</u>	<u>Matter Name</u>	<u>Matter Amount</u>
440161	37 Moss LLC	2,000.00

**CURRENT INVOICE TOTAL** \$2,000.00

## PRIOR OUTSTANDING INVOICES

<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Invoice Amount</u>	<u>Credit Amount</u>	<u>Outstanding Balance</u>
1470519	12/27/18	13,769.80	0.00	13,769.80

**SUBTOTAL PRIOR INVOICES** \$13,769.80

**TOTAL DUE** \$15,769.80

---

INVOICE PAYABLE ON RECEIPT IN US DOLLARS  
39400 Woodward Avenue · Suite 101 · Bloomfield Hills, MI 48304-5151

*Detroit · Ann Arbor · Bloomfield Hills · Chicago · Grand Rapids · Kalamazoo · Lansing*

**000059**

# HONIGMAN

(248) 566-8300  
Fax: (248) 566-8315  
www.honigman.com  
I.D. NO. 38-1407377

**Make Checks Payable To:**

Please include Remittance Advice

Honigman LLP  
2290 First National Building  
660 Woodward Avenue  
Detroit, Michigan 48226-3506

**ACH Payments or****Domestic Wires (U.S. Only)**

Please include Invoice #

Citibank, N.A.  
North Aurora, IL  
ABA # 27-1070801  
Beneficiary's Name: Honigman  
Credit Account # 0800-8565-74

**International Wires**

Please include Invoice #

Citibank, N.A.  
New York, NY  
Swift Code: CITI US33  
ABA# 02-1000089  
Beneficiary's Name: Honigman  
Special Instructions:  
ABA # 27-1070801  
Credit Account # 0800-8565-74

If you have any questions regarding this statement, please contact the attorney responsible for this matter. Thank you.

**INVOICE PAYABLE ON RECEIPT IN US DOLLARS**  
39400 Woodward Avenue · Suite 101 · Bloomfield Hills, MI 48304-5151

*Detroit · Ann Arbor · Bloomfield Hills · Chicago · Grand Rapids · Kalamazoo · Lansing*

**000060**

37 MOSS LLC

1006

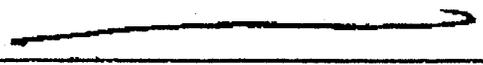
11-8166/3210  
95

5/6/19  
DATE

PAY TO THE  
ORDER OF Honigman LLP

\$ 2,000.00

Two thousand and 00/100



DOLLARS



Photo  
Safe  
Deposit  
Details on back



FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
Ph 888-408-0288 Customer Care

Inv: # 1482938

FOR SFT AIA Contract - Seismic Retrofit

*[Handwritten Signature]*

MP



000061

Call For Full Details @

CITIBANK, N.A.  
271070801

FOR DEPOSIT ONLY

HONIGMAN, MILLER, SCHWARTZ &  
COHN LLP  
0800856574

021000089 RCD 20190510900036740000100033

000062

**CR Windows & Doors**  
 22125 Mission Blvd  
 Hayward, CA 94541 US  
 crwindowsjesus@gmail.com

# Invoice

**BILL TO**

██████████  
 37 Moss Ave  
 Oakland, CA 94610

**SHIP TO**

██████████  
 37 Moss Ave  
 Oakland, CA 94610

**INVOICE #** 1937  
**DATE** 06/13/2019  
**DUE DATE** 06/13/2019  
**TERMS** Net 30

ACTIVITY	QTY	RATE	AMOUNT
9 Rich XO-Sliding Windows 58"X71" Retro-fit, Title 24			
21 Rich XO -Sliding Windows 71"X48" Retro-Fit, Title 24-Cut down wall and stucco to meet emergency			
14 Rich XO-Sliding Window 60"X36" Retro-Fit, Title 24			
11 Rich Patio Doors 94"X80" Retro-Fit, Title 24			

PAID

<b>Services</b>		
Total Contract Amount: \$34,300.00		34,300.00
<b>Services</b>		
Deposit to commence job: \$6,000.00		-6,000.00
Due upon completion: \$28,300.00		
<b>Services</b>		

Supply, labor material and equipment to install windows/doors the above address: to haul away old windows/doors and construction debris. This price includes windows/d and the above specifications. Excludes permits, inspections, and painting.

<b>PAYMENT</b>	28,300.00
<b>BALANCE DUE</b>	<b>\$0.00</b>

\*All material is guaranteed to be as specified. All work to be completed in a workman like manner according to standard practices. Any alteration or deviation from above specifications involving extra cost will be executed only upon written orders, and will become extra charge over and above the estimate.

\*You are hereby authorized to furnish all materials and labor required to complete the work mentioned in this contract, for which you agree to pay the price mentioned in the contract and according to the terms thereof. I acknowledge that before entering this contract.

\*In the event there is wood damage to do wood rot or termite, upon discovery there will be additional charges to repair these damages prior to continuing with the installation.

**000063**

37 MOSS LLC

1011

11-8166/3218

95

6/17/19

DATE

PAY TO THE ORDER OF

CR Windows + Doors

\$ 6,000.00

Six thousand and 00/100

DOLLARS



Photo Safe Deposit Cash on hand



FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
FS 888-418-0288 Customer Care

FOR Deposit - window replacement 37 MOSS

*[Handwritten signature]*



12 24 65

- It must meet industry standards and include:
- 1. A MICR line at the bottom of the check
- 2. A MICR line at the top of the check
- 3. A MICR line at the bottom of the check
- 4. A MICR line at the top of the check
- 5. A MICR line at the bottom of the check
- 6. A MICR line at the top of the check
- 7. A MICR line at the bottom of the check
- 8. A MICR line at the top of the check
- 9. A MICR line at the bottom of the check
- 10. A MICR line at the top of the check

CHECK HERE IF MOBILE OR REMOTE DEPOSIT

AMOUNT OF DEPOSIT

*Walter Corp*

37 MOSS LLC

1016

11-8164-3210

95

8/8/19

DATE

PAY TO THE ORDER OF

CR Windows & Doors

\$ 28,300.00

Twenty-eight thousand three hundred and 00/100 — DOLLARS



Phone  
Bank  
Deposit  
Cards only



FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
Ph 888-408-0288 Customer Care

*[Handwritten signature]*

FOR 37 Moss Inv. 1937

[Redacted MICR line]

000066



37 MOSS LLC

1015

11-8166-3210  
99

7/25/19

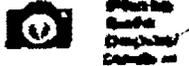
DATE

PAY TO THE  
ORDER OF

Sam Wiggins

\$ 1,352.91

One thousand three hundred fifty-two and 9/100 - DOLLARS



FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
7x 800-408-0188 Customer Care

FOR Oakland DB1 Permit fee - window replacement

*[Handwritten signature]*

1: [Redacted MICR line]

000068



City of Oakland  
Accela  
City of Oakland  
Oakland, CA 94612

#275810

Jul 23 2019 01:02 pm Trans#292909

TRANSACTION RECORD

Card Number : \*\*\*\*\*1203  
Expiry Date : \*\*/\*\*  
Card Entry : KEYED  
Account : VISA  
Trans Type : PURCHASE  
Amount : \$1352.91

Auth # : 07742I  
Sequence # : 480100020  
Reference # : 80100020  
Trace # : W352  
Merchant ID : 000018410191  
Terminal # : 00101  
Date : 19/07/23  
Time : 13:02:57

APPROVED

\*\*\* CUSTOMER COPY \*\*\*

000070

Planning and Building Department  
250 Frank H. Ogawa Plaza  
510-238-4774

=====  
844 Accela Permit

Permit Number: DRX191453 1x 0.00 0.00

Fee

Design Review Exemption 1x 74.00 74.00

Fee

Recrd Mangmnt & Tech Enhancement Fee 1x 10.92 10.92

844 Accela Permit

Permit Number: B1903305 1x 0.00 0.00

Fee

Plan Check - Routed 1x 904.38 904.38

Fee

Application Fee 1x 70.00 70.00

Fee

Recrd Mangmnt & Tech Enhancement Fee 1x 162.99 162.99

Fee

California Building Standards Commision 1x 0.90 0.90

Fee

City - California Building Standards Com 1x 0.10 0.10

Fee

Strong Motion Instrumentation Program (S 1x 7.53 7.53

Fee

City - Strong Motion Instrumentation Pro 1x 0.40 0.40

Fee

General Plan Surcharge 1x 121.69 121.69

Payer Name: SAM WIGGIN

=====  
SubTotal: 1,352.91  
Total: 1,352.91  
=====

=====  
Visa Card 1,352.91  
Number : \*\*\*\*\*1203  
Date : 09/19  
=====

7/23/2019 12:58  
#1028526 /77/24

000071

**GONZALEZ PAINTING**  
448 LONDON STREET  
SAN FRANCISCO CA 94112  
CA US  
(415) 946-9494  
PaintingSF@gmail.com

## Estimate

### ADDRESS

Sam Wiggin  
JOB: 37 MOSS, OAKLAND

ESTIMATE # 1860

DATE 10/17/2018

ACTIVITY	AMOUNT
Proposal for exterior paint at 37 Moss, Oakland. Complete exterior with option to remove ivy and prep. and paint. Pressure wash the walls. Mask all windows during painting. Wet scrape and sand loose and peeling paint. Protect all surfaces not to be coated. Remove failed and defective caulking. Open up and clean out cracks. Ensure a clean, dry and sound substrate before applying coatings. Install new sealants around the perimeter of window openings where missing. Sealants to be repaired at joints between dissimilar surfaces. Use only acrylic urethane caulking. Patch cracks and blend in with elastomeric patch. Spot prime any bare walls. Paint walls with two coats of 100% Acrylic paint.	17,500.00
<b>Services</b> Labor and materials	4,800.00
<b>Services</b> Option 1: Remove all ivy on front side of building, and dispose. Scrape all ivy feet off and full prime, patch walls for smooth finish, two coats finish paint. including scaffolding	4,900.00
<b>Services</b> Paint interior common areas, interior stair well. Cover floors and any unpainted surfaces. Holes and cracks will be filled and sanded. Spot prime doors and trim where needed and any repair work. All finishes will be applied free of drips, sags, and unevenness. All walls and ceiling to be rolled by hand for a even finish. One wall color, one trim color, and one door color is included. Two finish coats on all surfaces to be painted. Labor and materials	2,000.00
<b>Services</b> Extra color scheme	

000072

License No 948218

TOTAL

**\$29,200.00**

Accepted By

Accepted Date

A handwritten signature in black ink, appearing to be 'J. A.', written over the 'Accepted By' label.

8/14/19

**000073**

1018

11-8155/3210

95

37 MOSS LLC

8/19/19

DATE

PAY TO THE  
ORDER OF

Gonzalez Painting

\$ 29,200.00

Twenty - nine thousand two hundred and 00/100

DOLLARS



Photo  
Safe  
Deposit  
Order

FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
PH 888-408-0288 Customer Care

FOR 37 Moss, sealing, protecting, painting

1: [REDACTED MICR LINE]

000074



# **RES ENGINEERS, INC.**

1250 Missouri Street Ste. 207, San Francisco, CA 94107 415.822.4625 Fax 415.822.8925

April 17, 2019

**Sam Wiggin, Managing Principal**  
37 Moss LLC  
4844 Telegraph Ave.  
Oakland, CA 94609

**Subject:        Testing and Inspection Services**  
**37 Moss Avenue, Oakland, CA 94610**

**Dear Mr. Wiggin:**

*As per the request of SFT Construction, we are pleased to submit this proposal for providing testing and inspection services for the subject project. The scope of our work, based on information provided shall be as follows:*

1.        *Structural Concrete Placement Inspection and Testing.*
2.        *Reinforcing Steel Inspection.*
3.        *Epoxy Anchor / Bolt Inspection.*
4.        *Structural Steel and Welding Inspection, Including Ultrasonic Testing (if required).*
5.        *Wood Structural Seismic Systems Inspection, Including Shear Wall and Diaphragm, Nailing, Tiedown System, Framing and Hardware.*

## **COST ESTIMATE**

*The estimated costs for the above services are computed on a time and materials basis in accordance with our Schedule of Fees. For this SFT project, RES is offering over a 15% discount on the standard hourly fees of \$120/hour. Fees relevant to this project are as follows:*

1.    *Field inspection \*, concrete and rebar inspection and testing, epoxy anchor/bolt inspection, structural steel and welding inspection, including ultrasonic testing, shear wall, nailing, framing and hardware, regular hours, 7:00 a.m. to 5:00 p.m. - @ \$100.00/hour.*
2.    *Concrete cylinders, set of 5 @ \$44.00/cylinder  
Cylinder pick-up charges @ \$23.00/cylinder*
3.    *Testing Equipment Charge @ \$27.00/hour (if required)*
4.    *Letter of Completion, if required - flat fee of \$300.00*
5.    *Project Management @ 5%*

**000076**

Testing and Inspection Services  
37 Moss Avenue, Oakland, CA 94610  
April 17, 2019

Page 2

If you approve of our proposal and would like us to proceed, please sign and return the enclosed copy with a down payment in the amount of \$800.00 for RES Engineers, Inc.'s minimum project charge. Please note our Standard Terms and Conditions enclosed. We require 48-hours advance notice to schedule inspection. We appreciate the opportunity to submit this proposal and look forward to working with you.

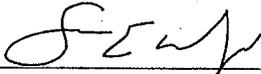
Sincerely,  
RES ENGINEERS, INC.



Ross Esfandiari, M.S., P.E.  
President

**ACCEPTANCE**

I have read the proposal set forth in the terms above and accept the proposal with the understanding that it includes those terms.



(Signature)

Authorized Signatory

(Title)

4/30/2019

(Date)

Relationship to Property Owner: Owner

Permit Number (San Francisco Projects use Application Number) \_\_\_\_\_

415-810-9210

(Phone)

(Fax)

sam@summitwestrealestate.com

(e-mail)

000077

**STANDARD TERMS AND CONDITIONS**

1. Client acknowledges services are rendered at the unit rates quoted herein. Total inspection hours are as necessitated by the Contractor's schedule and California Building Code (CBC) or other relevant code authority requirements, and are not the responsibility of RES. Client agrees that it shall be the responsibility of the Contractor and/or Client to provide timely notification to RES to perform its services as contracted.
2. If Client or Contractor request services outside of scope listed in this Agreement, Client will compensate RES at the rates listed in RES' current published Fee Schedule.
3. Client acknowledges RES billing minimums as outlined herein. Services scheduled pursuant to receipt of this Agreement confirm acceptance of the terms of said Agreement.
4. Services provided pursuant to this Agreement are intended solely for the use and benefit of Client. No other person or entity shall be entitled to rely on the services, opinions, recommendations, plans, or specifications provided pursuant to this Agreement without the express written consent of RES.
5. The final report will be issued within six days once a request for the affidavit is made by a project representative. As a condition precedent to RES issuing the final inspection report for this Project, RES must have a signed Service Agreement on file and all fees incurred by Client must be paid in full and all special inspection and testing must be completed.
6. Client agrees to require Contractor to provide on-site First Aid services as required by CAL-OSHA.
7. Client agrees to pay invoice within 30 days, or incur interest charges of 2.0% per month and \$75.00 late payment charges.
8. Client is entitled to an original report and three copies. Additional reports or reports for additional distribution will be charged to Client at \$25.00 each.
9. It shall be Client's sole responsibility to notify RES in writing of any prevailing wage requirements before any services are performed for the project. In the event notification is not given to RES, Client shall be fully responsible for payment of all fines, penalties, and/or damages imposed upon RES.
10. RES reserves the right to collect a \$800 retainer fee before commencing work on this Project.
11. RES requires 48-hour notification in order to cover your inspection. Dispatch hours are 8:00 a.m. to 4:00 p.m. Although we will try to accommodate all dispatch requests, we cannot guarantee requests scheduled less than 48 hours prior to the requested time of inspection. If a day's inspection is cancelled for any reason, please notify the dispatch office by 4:00 p.m. on the day prior to the scheduled inspection. Cancellations received on the day of inspection are subject to a 2-hour show-up charge. In addition, the following Basis of Charges will be in effect during our participation on your project.
12. Signatures received by facsimile and email will be treated as originals.
13. This paragraph limits RES' liability: Client understands and acknowledges that the services pose certain risk to both RES and the Client. Client further acknowledges and agrees that the amount of risk RES accepts by this Agreement is commensurate with the amount of compensation received under this Agreement for the services. RES' fee for the services is based on and reflects the Client's agreement to limit RES liability as described below. Client specifically acknowledges and agrees that but for this promise to limit RES liability, RES' fee would be significantly higher to accommodate RES for the risks posed by the services and entering this Agreement. Client acknowledges its right to discuss this provision with legal counsel and negotiate with RES regarding this provision and the proposed fee. In reliance on the foregoing and consideration for the fee proposed, Client specifically acknowledges and agrees that, to the fullest extent permitted by law, RES' total liability for any and all injuries, claims, liabilities, losses, costs, expenses or damages whatsoever, including, without limitation, attorney's fees and legal costs (hereinafter "Claims") to Client and any third party arising out of or in any way related to the services or this Agreement from any cause or causes including, but not limited to, RES' negligence, errors, omissions, breach of contract or any duty, is limited to Twenty-Five Thousand Dollars (\$25,000.00) or the amount of RES' fee, whichever is greater.
14. Client agrees to \$150.00 flat fee for "Additional Insured" Insurance Certificate if required
15. RES, under this Agreement, will strive to perform in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the locality of the Project. No other warranty, express or implied is made.
16. If any party hereto commences an action or arbitration proceeding to interpret or enforce this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs in addition to all other amounts awarded by the court or arbitrator.
17. Client agrees that RES has been engaged to provide technical professional services only, and that RES does not owe a fiduciary responsibility to Client.
18. Unless otherwise agreed in writing, test specimens or samples will be disposed of immediately upon completion of testing.
19. This agreement is governed by the laws of the State of California and is entered into in the County of San Francisco, City of San Francisco.
20. All inspection services are billed on a portal-to-portal basis.
21. These rates are subject to change per any increases associated with International Union of Operating Engineers, AFL-CIO (Operating Engineers Local Union No. 3).
22. Terms of unsigned proposals expire in ninety (90) days from date of proposal.

Work from 0 – 4 hours	4-hour minimum billing	Work from 4-8 hours	8-hour minimum billing *
Show-up time	2-hour minimum billing	Work over 8 hours or Saturdays	Time and one-half
Weekend work	4-hour minimum billing	Work over 12 hours, Sundays and Holidays	Double time
Swing/Graveyard Shift Premium	\$15.00 per hour		
Reimbursables	Cost plus 20%	Project Engineering & Management	5% of fees

**OUT OF AREA SERVICES**

Per Diem	\$90.00 per day	Travel Time	Basic Hourly Rate
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\*Fractions of hours will be rounded up to the next hour

# RES Engineers, Inc.

1250 Missouri St., Suite 207  
 San Francisco, CA 94107  
 Office: (415) 822-4625  
 Fax: (415) 822-8925  
 T.I.N. 68-0390447

# Invoice

Project # 19-117  
 Invoice #: 19-117/1R  
 Invoice Date: 5/31/2019  
 P.O. Number:

**PAID**  
 07/06/2019

**Bill To:**

37 Moss LLC  
 4844 Telegraph Ave.  
 Oakland, CA 94609  
 Attn: Mr. Sam Wiggin

**Reference:**

Testing & Inspection Services

**Project**

37 Moss Avenue  
 Oakland, CA

Serviced	Description	Hours/Qty	Rate	Amount
5/3/2019	Anchors, Rebar and Welding Inspection and Ultrasonic Testing	8	100.00	800.00
5/6/2019	Welding Inspection	8	100.00	800.00
5/7/2019	Welding Inspection	8	100.00	800.00
5/16/2019	Concrete Inspection (1 set of 5 cyl)	4	100.00	400.00
5/23/2019	Welding Inspection	4	100.00	400.00
	Letter of Completion		300.00	300.00
	Travel & Mileage	5	25.00	125.00
	UT Test Equipment	8	27.00	216.00
	Concrete cylinders at \$44.00/cylinder	5	44.00	220.00
	Sample pick-up charges at \$23.00/cylinder	5	23.00	115.00
	Subtotal			4,176.00
	Project Management & Supervision at 5%		5.00%	208.80

2.0% per month will be assessed after 30 days. Payment thereafter will be applied first to accrued interest, and then to unpaid principal amount. Attorney's fees or other costs incurred in collecting any delinquent amounts shall be paid by the client. Our liability of error or negligence in connection with this work and report covered by this bill is limited to the amount above.

<b>Total</b>	<b>\$4,384.80</b>
<b>Payments/Credits</b>	<b>-\$4,384.80</b>
<b>Balance Due This Invoice</b>	<b>\$0.00</b>
<b>Customer Balance Total</b>	<b>000079 \$0.00</b>

37 MOSS LLC

1004

11-8166/3210

95

4/30/19

DATE

PAY TO THE  
ORDER OF

RES Engineers, Inc.

\$ 800.00

Eight hundred and 00/100

DOLLARS



Photo  
Safe  
Deposit  
Details on



FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
Ph 888-408-0288 Customer Care

19417

FOR Deposit / <sup>Seismic</sup> Inspections / 37 Moss Seismic

*[Signature]*

MP

Harland Clarke

000080

PAY TO THE ORDER OF CALIFORNIA BANK  
& TRUST CA 122232109 FOR DEPOSIT  
ONLY RES ENGINEERS INC 1290089701

19-117

000081

37 MOSS LLC

1012

11-8166/3210  
95

7/1/19 DATE

PAY TO THE ORDER OF RES Engineers, Inc. \$ 3,584.80

Three thousand five hundred eighty-four and 80/100 DOLLARS



Hayland Clarke



FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
Ph 833-408-0288 Customer Care

FOR Seismic inspections Inv. 19-117/1R



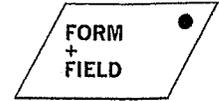
000082

PAY TO THE ORDER OF CALIFORNIA BANK  
& TRUST CA 122232109 FOR DEPOSIT  
ONLY RES ENGINEERS INC 1290089701

19-117

# Form & Field LLC

350 Townsend St Ste 421  
San Francisco, California 94107  
formandfield.com | 628-400-3182



**Invoice Date**  
09/02/2019

**Due Date**  
09/17/2019

**BILL TO**  
37 Moss LLC  
77 Van Ness Ave, Suite 101-1040  
SF, CA 94102  
sam@summitwestrealestate.com

**INVOICE**  
IN-10398

ITEM	QTY	RATE	TOTAL
<b>Project Management</b> Date: 07/10/2019 Contract	0.25	\$0.00	\$0.00
<b>Project Management</b> Date: 07/12/2019 Emails	0.25	\$180.00	\$45.00
<b>Project Management</b> Date: 07/16/2019 Site mtg	0.5	\$180.00	\$90.00
<b>Travel</b> Date: 07/16/2019	0.33	\$90.00	\$29.70

ITEM

QTY

RATE

TOTAL

**Design**

0.25

\$180.00

\$45.00

Date: 07/29/2019

Paint, carpet

**Design**

1.25

\$180.00

\$225.00

Date: 07/30/2019

Paint, carpet

**Project Management**

0.33

\$180.00

\$59.40

Date: 07/31/2019

Call w/ client, updates to specs

**SUBTOTAL** \$494.10

**TAXES** \$0.00

**TOTAL** \$494.10

**MEMO**

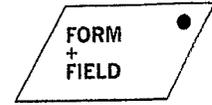
Personal check or Bill Pay from your online banking website are accepted. Checks are to be made out to Form & Field LLC and mailed to 350 Townsend St Ste 421, San Francisco, CA 94107. Credit card is also accepted for a 3% fee. Bank transfer is available at no cost upon request.

**TAGS**

Design Fees

# Form & Field LLC

350 Townsend St Ste 421  
San Francisco, California 94107  
formandfield.com | 628-400-3182



**Invoice Date**  
09/02/2019

**Due Date**  
09/17/2019

## BILL TO

37 Moss LLC  
77 Van Ness Ave, Suite 101-1040  
SF, CA 94102  
sam@summitwestrealestate.com

## INVOICE

IN-10418

ITEM	QTY	RATE	TOTAL
<b>Travel</b> Date: 08/02/2019 Site visit (round trip)	0.5	\$90.00	\$45.00
<b>Project Management</b> Date: 08/02/2019 Client mtg	0.33	\$180.00	\$59.40

**SUBTOTAL** \$104.40

**TAXES** \$0.00

**TOTAL** \$104.40

## MEMO

Personal check or Bill Pay from your online banking website are accepted. Checks are to be made out to Form & Field LLC and mailed to 350 Townsend St Ste 421, San Francisco, CA 94107. Credit card is also accepted for a 3% fee. Bank transfer is available at no cost upon request.

## TAGS

Design Fees

1019

11-8155/3210  
05

37 MOSS LLC

9/6/19

DATE

PAY TO THE  
ORDER OF

Form + Field LLC

\$ 598.50

Five hundred ninety-eight and 50/100 — DOLLARS



Photo  
Safe  
Deposit  
Box



FIRST REPUBLIC BANK

Private Banking-San Francisco  
111 Pine Street  
San Francisco, CA 94111  
P: 800-406-0228 Customer Care

FOR

37 Moss-Design Fav. 10375 + 10418

*[Handwritten Signature]*



⑆ 3000 0889  
60007248786

Security Features exceed industry standards and include:

- ImageMatch - Matching account and check number
- MobileMark - Mobile Deposit check mark to indicate check has been deposited via mobile device
- The Security Weaver - pattern on back designed to deter fraud
- Microprint - MP lines printed on front and back
- The words ORIGINAL DOCUMENT across the back
- Photo Safe Deposit - icon visible on front and back

Do not cash if

- Any of the features listed above are missing or appear altered
- Fugitive Ink on back is not pink or has disappeared
- Brown stains and colored spots appear on both front and back



First Republic Bank  
(San Francisco, CA)  
111 Pine Street  
09/16/19-11:59:53  
925990771

CREDITED TO THE  
ACCOUNT OF WITHIN  
NAMED PAYEE

<<<<321081669>>>>

ENCLOSURE

CHECK HERE IF MOBILE OR REMOTE DEPOSIT  
AT  
FINANCIAL INSTITUTION NAME

*First Republic*

**EXPERT SEWERS & DRAINS**  
**THE PLUMBING MINISTRY**

**WE'RE HERE TO HELP!**

7901 Oakport St. #2750  
 Oakland, Ca 94621  
 PH: 510-430-1853  
 FX: 510-430-1290  
 e-mail: [plumbingministry@gmail.com](mailto:plumbingministry@gmail.com)  
[www.theplumbingministry.com](http://www.theplumbingministry.com)  
 License # 894946

**PAID**

**Invoice**

**Date** 3/25/2019 **Invoice #** 2769

**Bill To**

Lapham Company  
 4844 Telegraph Ave  
 Oakland, Ca 94609  
 Ben: 925-876-4078

**Due Date**

3/25/2019

**Project**

37 Moss Ave., Oakland

Item	Description	Amount
Sewer & Drain Ser...	<p>Excavate exterior areas where drain leaves building foundation, at property line for new clean out installation and in street where building sewer connects to city main sewer. Jackhammer, remove and dispose of asphalt in street where building sewer connects to city main sewer. Provide Trench safety equipment and personnel per Cal OSHA. Provide vehicle right away management as needed. Disconnect and remove piping in excavated areas. Replace required length of leaking sewer lateral, pipe to be replaced via trenchless pipe-bursting method, using required sized high density polyethylene piping with cast iron fittings at transitions. Replace wye connection on city main sewer if needed. Install cleanouts where required. Reconnect piping in excavated areas. Pressure test to ensure a leak proof system. Schedule and complete Tap inspection for city main sewer connections. Backfill excavated areas, install Christy boxes at clean-out locations. Schedule and complete compaction test before paving. Re-pave excavations as required. New paving, landscaping and hardscaping may not be a perfect match to existing pavement color and texture. Clean site. Sewer permits and inspection fees included. If any, Sewer compliance test is included. This project will take approximately 3 days, based on weather conditions and Inspectors availability.</p> <p>NOTE: Homeowners presence should not be required if access to front, sides and rear of property are available. Building occupants will be left with functioning plumbing facilities at the end of each work day. Working hours will be 8:45am-4pm, weekdays. The Plumbing Ministry will need to use the buildings's electricity for the length of the project. Plumbing Ministry cannot retrieve your sewer compliance deposit and is to paid the day after completion of project. The Plumbing Ministry is not responsible for loss or damaged vegetation (trees, bushes, flowers, etc.) or buried irrigation piping &amp; tubing. Please have your gardener remove any valued vegetation in construction zone.</p>	2,100.00
<p>With a no-negotiable 3% processing fee. We accept all major credit cards. Please remit payment when your project or requested service is complete. Interest may begin accumulation after 5 days at a rate of 10% unless special arrangements have been made between contractor and client. We reserve the right to use a mechanics lien on all projects.</p>		<p><b>Total</b></p>
		<p><b>Balance Due</b></p>

**EXPERT SEWERS & DRAINS**  
**THE PLUMBING MINISTRY**

**WE'RE HERE TO HELP!**

7901 Oakport St. #2750  
 Oakland, Ca 94621  
 PH: 510-430-1853  
 FX: 510-430-1290  
 e-mail: [plumbingministry@gmail.com](mailto:plumbingministry@gmail.com)  
[www.theplumbingministry.com](http://www.theplumbingministry.com)  
 License # 894946

**PAID**

**Invoice**

**Date** 3/25/2019 **Invoice #** 2769

**Bill To**

Lapham Company  
 4844 Telegraph Ave  
 Oakland, Ca 94609  
 Ben: 925-876-4078

**Due Date**

3/25/2019

**Project**

37 Moss Ave., Oakland

Item	Description	Amount
	<p>ACCESS TO BUILDINGS ELECTRICAL AND WATER SUPPLY REQUIRED</p> <p>All scheduling communication to be done through the main office or company owner only.</p> <p>FINAL PAYMENT IS DUE THE SAME DAY AS COMPLETION OF YOUR PROJECT!</p>	

With a no-negotiable 3% processing fee, We accept all major credit cards. Please remit payment when your project or requested service is complete. Interest may begin accumulation after 5 days at a rate of 10% unless special arrangements have been made between contractor and client. We reserve the right to use a mechanics lien on all projects.

<b>Total</b>
<b>Balance Due</b>

**EXPERT SEWERS & DRAINS**  
**THE PLUMBING MINISTRY**

**WE'RE HERE TO HELP!**

7901 Oakport St. #2750  
 Oakland, Ca 94621  
 PH: 510-430-1853  
 FX: 510-430-1290  
 e-mail: [plumbingministry@gmail.com](mailto:plumbingministry@gmail.com)  
[www.theplumbingministry.com](http://www.theplumbingministry.com)  
 License # 894946

**PAID**

**Invoice**

**Date** 3/25/2019 **Invoice #** 2769

**Bill To**

Lapham Company  
 4844 Telegraph Ave  
 Oakland, Ca 94609  
 Ben: 925-876-4078

**Due Date**

3/25/2019

**Project**

37 Moss Ave., Oakland

Item	Description	Amount
Deposit	Down payment for sewer lateral	-2,100.00
With a no-negotiable 3% processing fee, We accept all major credit cards. Please remit payment when your project or requested service is complete. Interest may begin accumulation after 5 days at a rate of 10% unless special arrangements have been made between contractor and client. We reserve the right to use a mechanics lien on all projects.		<b>Total</b> \$0.00
		<b>Balance Due</b> \$0.00



	Description	DB Amount	CR Amount	Serial Num	Ref Num
--	-------------	--------------	--------------	------------	---------

03/18/2019	Check Paid	<u>\$2,100.00</u>		0000202048	077030575
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<b>Totals for Account 9500839941</b>	<b>\$2,100.00</b>		
--	-------------------	--	--

<b>Total Debits/Credits</b>	<b>1</b>	<b>0</b>	
-----------------------------	----------	----------	--

<b>Totals for ABA 321081669</b>	<b>\$2,100.00</b>		
---------------------------------	-------------------	--	--

<b>Total Debits/Credits</b>	<b>1</b>	<b>0</b>	
-----------------------------	----------	----------	--

<b>Totals for Report</b>	<b>\$2,100.00</b>		
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<b>Total Debits/Credits</b>	<b>1</b>	<b>0</b>	
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# INVOICE

4432 Telegraph Avenue, Oakland, CA 94609  
 Phone: 510-652-2477 Fax: 510-652-7081  
 www.reedbrotherssecurity.com

- Access Controls
- Alarm Systems
- Intercoms
- Telephone Entry Systems
- C.C.T.V.
- Emergency Service Available

- Locks
- Keys
- Safes
- Iron Bars & Doors
- Automatic Driveway Gates
- Apartment Mailboxes

303960

A Division of Security Central, Inc.  
 SOLD TO: Lapham Company  
37 Moss Ave  
Oakland CA 94610

**RECEIVED**  
 AUG 08 2019

TECHNICIAN #13 Samir
WORK ORDER # 129102
CASH AMOUNT ACCOUNT <input type="checkbox"/> \$2421.29 <input checked="" type="checkbox"/> C15313
C'K AMOUNT C'K# <input type="checkbox"/>
C.C AMOUNT EXP. DATE <input type="checkbox"/>
C.C #

JOB LOC.: " " EMAIL:  
Mailbox Install

DATE 7/30/19	PURCHASE ORDER #	CONTACT PERSON Ben	TELEPHONE (510) 594-7600
-----------------	------------------	-----------------------	-----------------------------

QUANTITY	DESCRIPTION	PRICE	EXTENSION
1	Salsbury 3312BLKU	1903.20	1903.20
1	Freight Charge for Mailbox	125.00	125.00
1	Misc scrap wood materials	50.00	50.00
<del>3</del>	Labor to remove recessed mailbox / dispose patch hole with wood / studs and install pedestal mounted mailbox. Box covers majority of old opening and is caulked / sealed, Lapham will need to stucco patch remaining exposed wood. (coordination with PAID mechanic.)	120.00	360.00
			1967.60
		W/DROP#	IP 626
		VENDOR#	3812
		GL CODE	6793
		DATE	8/2/19
		CK#	208346
	-10% Lapham Discount		-269.04

PLEASE PAY FROM THIS INVOICE. Make checks payable to Reed Brothers Security.  
 TERMS: Net 30 days on pre-approved accounts. A service charge of 1.5% per month will be charged on all past due balance (min. \$50). Returned check charge is \$35.00.  
 Buyer agrees to pay attorney fees and court costs for collection of past due balances.  
 Warranty service is to be performed during normal business hours.

Received by **X** Date 7/30/19  
 Print name \_\_\_\_\_

MATERIALS	1953.20
TAXABLE LABOR	180.66
TAX	<del>196.76</del> 00
LABOR	560.00
TRIP CHARGE	60.00
<b>TOTAL</b>	<b>\$2750.92</b>



APT Maintenance Inc.  
 4844 Telegraph Ave, Suite 250  
 Oakland, CA 94609  
 5107479713  
 info@aptmaintenanceinc.com  
 www.aptmaintenanceinc.com

# Invoice 36421

**BILL TO**  
 1p-626 ( 37 Moss Ave.)

DATE 08/05/2019	PLEASE PAY \$648.59	DUE DATE 08/05/2019
--------------------	------------------------	------------------------

DATE	ACTIVITY	QTY	RATE	AMOUNT
08/01/2019	Maintenance Common areas - Assessed dispatch. Assessed site work and procured materials. Lath & plaster over old mailbox opening. Masked areas with plastic as needed. Prepped opening where the old mailbox was removed. Installed mesh wire/building paper as needed. Applied stucco (lath/plaster) several times due to removal of old mailbox and textured as needed. Cleaned all work related trash upon completion of work. ( A.C. & J.R. ).	8.50	65.00	552.50
08/05/2019	Materials			96.09

CA License # 975959

**TOTAL DUE \$648.59**

THANK YOU.

PROP # 1p-626

VENDOR # \_\_\_\_\_

GL CODE \_\_\_\_\_

AUTH \_\_\_\_\_

DATE \_\_\_\_\_

6611 - \$162.50  
 8789 - \$390.00  
 8813 - \$96.09

PAID

AM 08/08

CHK# 208208

Please note payment is due upon receipt of invoice and delinquent 30 days later. Delinquent invoices are subject to a monthly Late Charge of 2% of the invoice amount. Delinquent invoices that are 60 days late will continue to incur the same Late Charge and may be sent to collection.

000097

**LAPHAM COMPANY 1P**

MANAGEMENT TRUST ACCOUNT  
4844 Telegraph Avenue  
Oakland, CA 94609  
510-594-7600

First Republic Bank  
Private Banking San Francisco  
San Francisco, CA 94111

208208

11-8166/3210

PAY \*\*\*\* SEVENTY SIX THOUSAND FORTY SEVEN AND 70/100 DOLLARS

DATE  
08/08/2019

AMOUNT  
\$76,047.70\*\*

TO THE  
ORDER OF

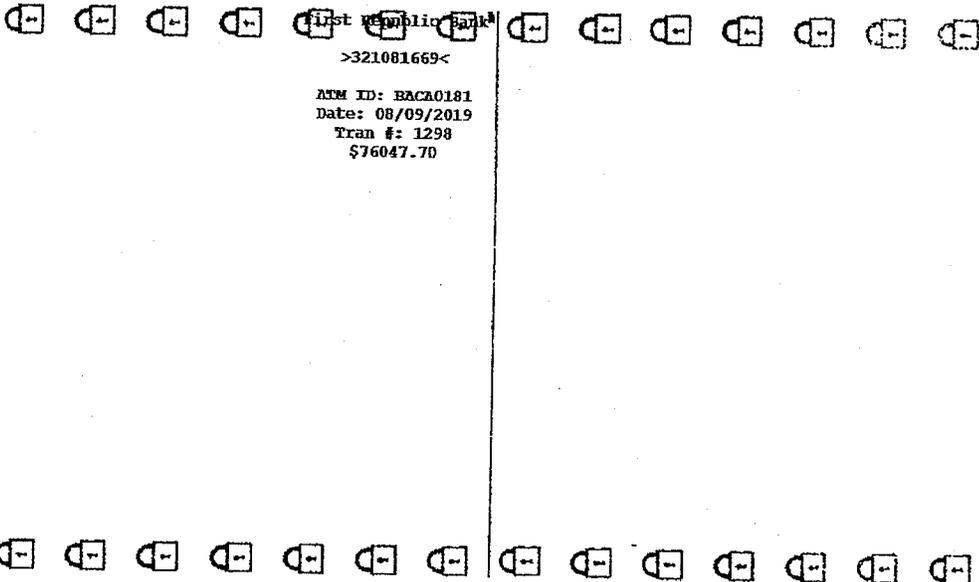
APT Maintenance Inc.



ENDORSE CHECK HERE

X

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE  
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First Republic Bank  
>321081669<  
ATM ID: BACA0181  
Date: 08/09/2019  
Tran #: 1298  
\$76047.70

The security features listed below are in accordance with the law as well as the industry and federal security standards.  
Security Features: Results of the security features listed on the back of checks are subject to change without notice. For more information, please visit www.frb.com. © 2019 First Republic Bank. All rights reserved.

Bay Area Contract Carpets, Inc.  
 747 Independent Road  
 Oakland, CA 94621

Invoice

Date	Invoice #
8/28/2019	59515

Bill To
Lapham Company 4844 Telegraph Ave Oakland, Calif 94609

RECEIVED  
 SEP 04 2019

Description	Amount
Job Address: 37 Moss Ave. Oakland CA.	0.00
New carpet installation: Three Common Halls Tear out and haul existing carpet and padding. Furnish and install new commercial carpet over new 32oz. Superlock padding.	
Pentz Carpet, Style Chivalry, Color Character	3,164.00
State of California Mandatory Carpet Recycling Assessment - effective 04/01/2015- if any questions see www.carpetrecovery.org	52.73
PAID SEP 10 2019 CK# 709482	
PROP# 19626 VENDOR# 2216 GL CODE 1421 AUTH DATE	
Payment is due upon receipt of Invoice. Thank you for your business.	<b>Total</b> \$3,216.73

Phone #	Fax #	E-mail	Web Site
(510) 613-0300	(510) 613-0303	kevin@bayareacontractcarpets....	www.bayareacontractcarpets.com

000099

**LAPHAM COMPANY 1P**

MANAGEMENT TRUST ACCOUNT  
4844 Telegraph Avenue  
Oakland, CA 94609  
510-594-7600

First Republic Bank  
Private Banking San Francisco  
San Francisco, CA 94111

209482

11-8166/3210

PAY \*\*\*\* THREE THOUSAND FOUR HUNDRED ELEVEN AND 73/100 DOLLARS

DATE  
09/10/2019

AMOUNT  
\$3,411.73\*\*\*

TO THE  
ORDER OF

Bay Area Contract Carpets, Inc.  
747 Independent Rd.  
Oakland, CA 94621



Microfilm strip (blacked out)



ENDORSE CHECK HERE

X

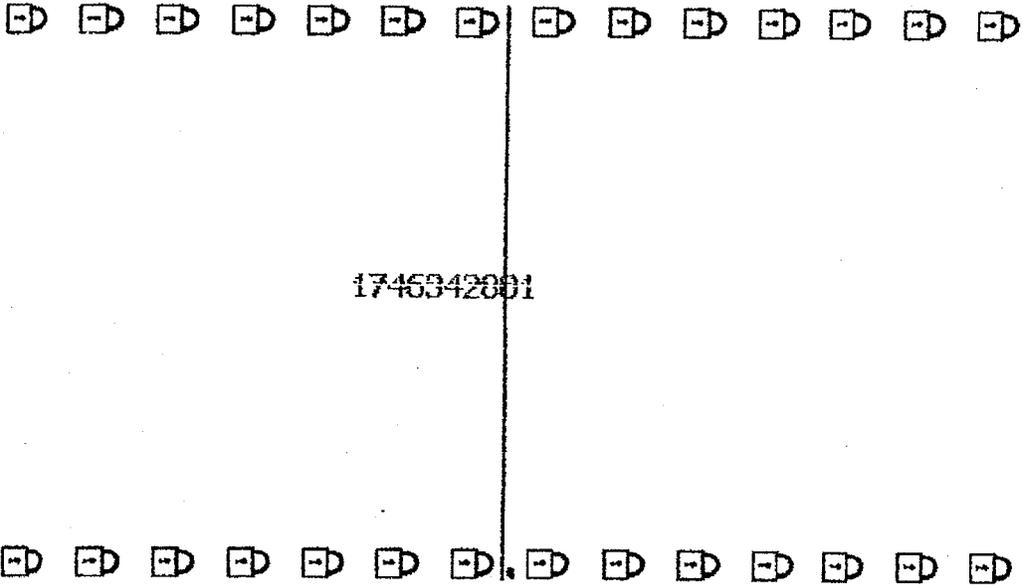
FOR DEPOSIT ONLY

5307360973

BAY AREA CONTRACT CARPETS

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE  
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1745342001



000100

 The security features listed below, as well as those not listed, exceed industry guidelines.  
Security Features: Results of document alteration, SWIR System, Robustness of Security Feature, varnish on back of check, Microfilm on Back, Serial, DPA in MP line, appears dotted when photocopied.  
\*FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

Thank you for shopping at Lumens. Here are the details of your order.



CALL US 877-875-3619  
M-F 6-5 PT

# Thank You for Your Order

**Order Number:** SO5802847  
**Order Placed:** 8/8/2019  
**Sales Rep:** Kristina Klarenbach

Dear [REDACTED]

Thanks for your order SO5802847. Take a look at your information below to make sure it's correct and let us know as soon as possible if you need to make changes. You'll hear from us as soon as your order ships or if there are any changes.

Have questions? Our team is here to help Monday thru Friday, or you can always check your order status online.

**CHECK YOUR ORDER STATUS**



**Kristina Klarenbach**  
Trade Account Manager  
ALA Certified

### Order Information

**Billing Address:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Shipping Address:**

THE LAPHAM COMPANY, INC  
4844 Telegraph Ave  
Oakland CA 94609  
United States

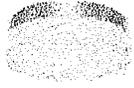
**Payment Total:**

Order Subtotal: \$3,160.20  
Shipping: Ship Surcharge \$0.00  
Shipping Cost: \$0.00  
Sales Tax: \$292.33

**Order Total: \$3,452.53**

Item	Price	Qty	Amount
Dot LED Flushmount by dweLED Item #: WACP201432 : DWE1851099 MPN: FM-W57812-30-BK	\$169.15	6	\$1,014.90

**000101**  
8/8/2019



**Shipping Method:** US Mainland Ground  
**Shipping Cost:** \$0.00  
**Sidemark:** 37 Moss



**LED Flushmount by George Kovacs**  
**Item #:** GKOP123842 : GKO613717  
**Finish :** Painted Copper Bronze Patina  
**Size :** 10-Inch  
**MPN:** P842-647B-L  
**Shipping Method:** US Mainland Ground  
**Shipping Cost:** \$0.00  
**Sidemark:** 37 Moss

\$93.46      24      \$2,243.04



**Item #:** Subtotal  
**Shipping Cost:**

\$0.00      1      \$3,257.94

**Volume Discount**

(\$97.74)

**How can we help you?**

- Changing or Canceling an Order
- Return Process Exceptions
- Warranty
- Damaged Goods
- Defective Goods
- Privacy & Security Policies
- Contact Us

37 MOSS LLC

1017

11-8186/3210

95

8/12/19

DATE

PAY TO THE  
ORDER OF

Summit West Real Estate LLC

\$ 3,452.53

Three thousand four hundred fifty two and 53/100 DOLLARS



Photo  
Safe  
Deposit  
Checks on Hand



FIRST REPUBLIC BANK

First Republic Bank - San Francisco  
111 Pine Street  
San Francisco, CA 94111  
P: 888-468-0188 Customer Care

37 Moss lighting reimbursement

*[Handwritten signature]*

000103



APT Maintenance Inc.  
 4844 Telegraph Ave, Suite 250  
 Oakland, CA 94609  
 5107479713  
 info@aptmaintenanceinc.com  
 www.aptmaintenanceinc.com

# Invoice 36794

**BILL TO**  
 1p-626 ( 37 Moss Ave. )

<b>DATE</b> 09/03/2019	<b>PLEASE PAY</b> \$2,265.48	<b>DUE DATE</b> 09/03/2019
---------------------------	---------------------------------	-------------------------------

DATE	ACTIVITY	QTY	RATE	AMOUNT
08/21/2019	<b>Maintenance</b> Common areas - Assessed dispatch. Assessed site work and procured additional materials as needed. Removed/replaced all light fixtures at front/back stairways in building also replaced light fixture box/brackets, existing is 2".5" and new LED light fixtures brackets are 3".5". ( LED Light Fixtures provided by Lapham). Returned at later and patched/prepped around new LED light fixtures. Applied touch up paint around newly installed LED light fixtures for proper finish. Cleaned all work related trash upon completion of work. Bagged/hailed out old light fixtures/boxes/trash to local dump and techs made three trips as needed. ( J.C.T. T.Jr. R.G. & Jimmy ).	34	65.00	2,210.00
09/03/2019	<b>Materials</b>			17.48
09/03/2019	<b>Dump Fees</b>			38.00

CA License # 975959

PROP # 1p-626 6613 — 17.48  
 VENDOR # 9110 6245 — 38.00  
 GL CODE          6755 — 98.00  
 AUTH [Signature] 6781 — 601.00  
 DATE          6795 — 1,211.00  
           6630 — 120.00  
           6611 — 180.00

**TOTAL DUE \$2,265.48**

THANK YOU.

**PAID**  
**SEP 13 2019**  
**CK# 209607**

Please note payment is due upon receipt of invoice and delinquent 30 days later. Delinquent invoices are subject to a monthly Late Charge of 2% of the invoice amount. Delinquent invoices that are 60 days late will continue to incur the same Late Charge and may be sent to collections.

**000105**

**LAPHAM COMPANY 1P**

MANAGEMENT TRUST ACCOUNT  
4844 Telegraph Avenue  
Oakland, CA 94609  
510-594-7600

First Republic Bank  
Private Banking San Francisco  
San Francisco, CA 94111

209607

11-8166/3210

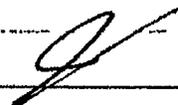
PAY \*\*\*\* TWENTY FOUR THOUSAND ONE HUNDRED TWENTY FOUR AND 57/100 DOLLARS

DATE  
09/13/2019

AMOUNT  
\$24,124.57\*\*

TO THE  
ORDER OF

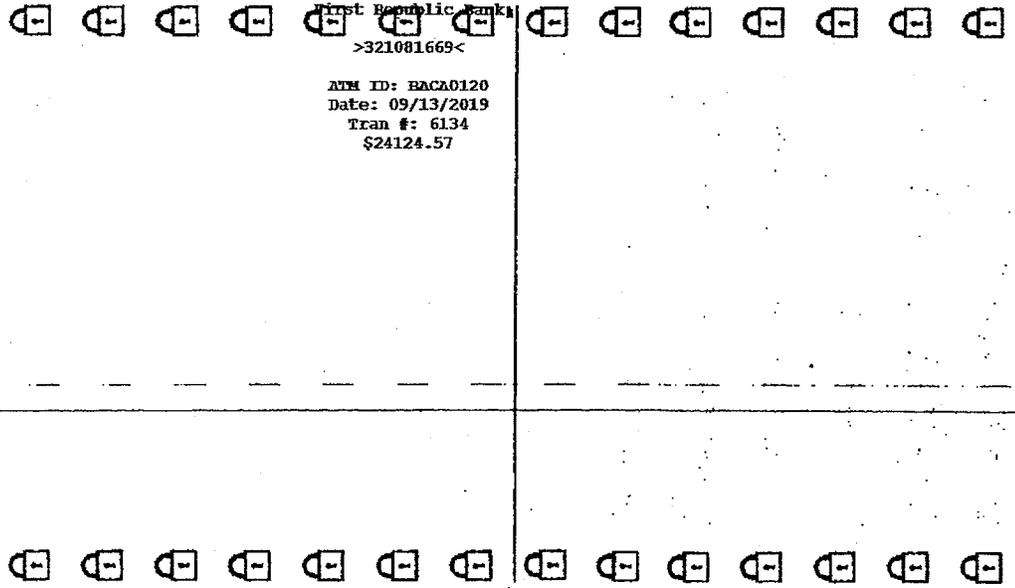
APT Maintenance Inc.



ENDORSE CHECK HERE



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The security features listed below, as well as those not listed, exceed industry guidelines.  
Security Features: Results of document alteration.  
Security Screen: Absence of "Security Feature" verbiage on back of check  
MicroPrint on Back: Small type in MP line appears dotted when photocopied.

\*FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

000106

# Alarcon ● Bohm

PAID

APR 24 2019

CK# 203694

Project: Deck vent and inspect for dry-rot  
 Address: 37 Moss Ave Oakland, CA

Date: 10/31/18

Scope of proposed work-

Cut in and install (8) deck vents, inspect for dry-rot and report back to owner.

**Schedule of Values**

1.0	Start up and Mobilization	\$	356
2.0	Cut in deck vent and inspect	\$	6,496
3.0	Framing and drywall	\$	-
4.0	Plumbing	\$	-
5.0	Electrical	\$	-
6.0	Interior trim	\$	-
7.0	Exterior	\$	-
8.0	π	\$	-
9.0	Paint	\$	862
10.0	Fixtures	\$	-
11.0	Engineering	\$	-
12.0	Punch list and final clean	\$	-
13.0	General Conditions	\$	950
14.0	General requirements, overhead items and equipment rental	\$	260
15.0	GL insurance	\$	134
15.0	Fee	\$	906

**TOTAL PROJECT COST \$ 9,964**

Notes/Terms and Conditions

Permits and Fee are excluded.

General Conditions includes daily site clean up, PM, safety, small tools, consumables.

PROP # 11584  
 VENDOR # 2801  
 GL CODE 6788  
 AUTH [Signature]  
 DATE 4/23/19

**LAPHAM COMPANY 1P**  
MANAGEMENT TRUST ACCOUNT  
4844 Telegraph Avenue  
Oakland, CA 94609  
510-594-7600

First Republic Bank  
Private Banking San Francisco  
San Francisco, CA 94111

203694

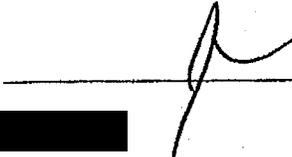
11-8166/3210

PAY \*\*\*\* NINE THOUSAND NINE HUNDRED SIXTY FOUR AND 00/100 DOLLARS

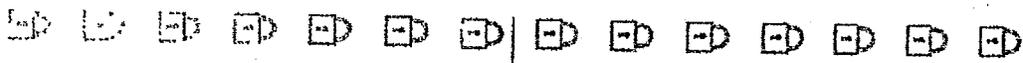
DATE AMOUNT  
04/24/2019 \$9,964.00\*\*\*

TO THE  
ORDER OF

Alarcon Bohm  
P O Box 24301  
Oakland, CA 94623



6

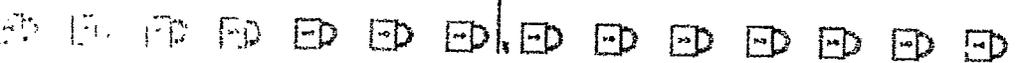


05132019 021001000115090 121141877

ENDORSE CHECK HERE

X  
PAY TO THE ORDER OF  
BANK OF MARIN  
FOR DEPOSIT ONLY  
Ac# 2130249

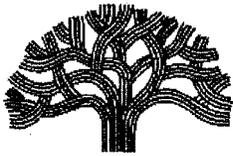
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000108

2019 DEC -5 PM 1:56



CITY OF OAKLAND

**RENT ADJUSTMENT PROGRAM**

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

*ac/um*

**CASE NUMBER L19-0253**

**TENANT RESPONSE CONTESTING RENT INCREASE**

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

Your Name <i>ZIGMOND COLLINS</i>	Complete Address (with Zip Code) <i>37 MOSS AVE APT #11 OAKLAND, CALIF 94610</i>	Telephone <i>415-870-0619 Cell Phone E-mail: Zigmund0832@att.net 510-547-5644 Home Phone</i>
Your Representative's Name <i>THE LAPHAM COMPANY INC</i>	Complete Address (with Zip Code) <i>4844 TELEGRAPH AVE OAKLAND, CALIF 94609</i>	Telephone <i>510-594-7600 E-mail: info@laphamcompany.com</i>

Number of Units on the parcel: 12

Are you current on your rent? Yes X No \_\_\_\_\_

**Rental History:**

Date you entered into the Rental Agreement for this unit: JUNE 01, 2001

Date you moved into this unit: JUNE 01, 2001

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

Yes \_\_\_\_\_ No X

Initial Rent: \$ 1209.92

Initial rent included (please check all that apply)

( ) Gas ( ) Electricity  Water  Garbage  Parking ( ) Storage ( ) Cable TV ( )

Other (if other please specify): \_\_\_\_\_

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

Yes X No \_\_\_\_\_

Please list the date you first received the Notice to Tenants JANUARY 08, 2019 From new owner.

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

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
JANUARY 08, 2019 <sup>OR 06/21, 2019</sup>	August 01, 2019	\$1169.00	\$1209.92	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
June 21, 2017	August 01, 2017	\$1106.00	\$1131.00	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
MAY 18, 2016 <sup>OR 06/21, 16</sup>	August 01, 2016	\$1085.00	\$1106.00	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
JUNE 16, 2015	August 01, 2015	\$1034.00	\$1085.00	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
MAY 22, 2014	August 01, 2014	\$982.00	\$1034.00	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Signed Addenda	November 25, 2008	\$932.00	\$982.00	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
September 12, 2007	November 01, 2007	\$886.00	\$932.00	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

CASE #  
T-14-0286

T-14-0286  
Attached  
Attached

**Contested Justification(s) for Rent**

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

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

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

**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.

*Rigmond Collins*  
Tenant's Signature

December 04, 2019  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

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

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

**File Review**

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

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

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

**MEDIATION PROGRAM**

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

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

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

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

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

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

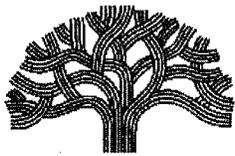
I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer.

*Zigmond Collins*  
Tenant's Signature (for Mediation)

December 04, 2019.  
Date

\_\_\_\_\_  
Tenant's Signature (for Mediation)

\_\_\_\_\_  
Date



CITY OF OAKLAND

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 DEC 13 PM 12:37

RC/44

### RENT ADJUSTMENT PROGRAM

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

**CASE NUMBER L19-0253**

### TENANT RESPONSE CONTESTING RENT INCREASE

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

Your Name <i>Ryan Trotter</i>	Complete Address (with Zip Code) <i>37 Moss Ave #7 Oakland CA 94610</i>	Telephone <i>206-898-6516</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 12

Are you current on your rent? Yes X No \_\_\_\_\_

#### **Rental History:**

Date you entered into the Rental Agreement for this unit: 10-2012

Date you moved into this unit: 10-18-2012

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

Yes \_\_\_\_\_ No X

Initial Rent: \$ 875.00

Initial rent included (please check all that apply)

( ) Gas ( ) Electricity  Water  Garbage ( ) Parking ( ) Storage ( ) Cable TV ( )

Other (if other please specify): \_\_\_\_\_

000112

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

Yes X No \_\_\_\_\_

Please list the date you first received the Notice to Tenants 3-2013

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

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To		
9-15-13	11-1-13	\$ 875	\$ 893	Yes <u>X</u>	No
9-15-14	11-1-14	\$ 893	\$ 911	Yes <u>X</u>	No
9-15-15	11-1-15	\$ 911	\$ 930	Yes <u>X</u>	No
9-15-16	11-1-16	\$ 930	\$ 953	Yes <u>X</u>	No
9-15-17	11-1-17	\$ 953	\$ 977	Yes <u>X</u>	No
9-15-18	11-1-18	\$ 977	\$ 1007	Yes <u>X</u>	No
		\$	\$	Yes	No

**Contested Justification(s) for Rent**

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

**Banking**

**Capital Improvements**

**Increased Housing Service Costs**

**Debt Service**

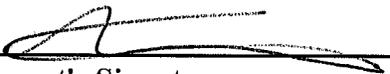
**Uninsured Repair Costs**

**Constitutional Fair Return**

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

**Verification**

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

  
 Tenant's Signature

11-21-19  
 Date

\_\_\_\_\_  
 Tenant's Signature

\_\_\_\_\_  
 Date

**Important Information**

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

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

**File Review**

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

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

**MEDIATION PROGRAM**

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

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

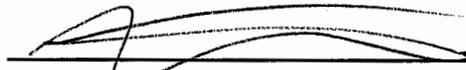
You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements.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

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

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

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

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer.

  
\_\_\_\_\_  
Tenant's Signature (for Mediation)

11-21-19  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature (for Mediation)

\_\_\_\_\_  
Date

11-30-2019

This serves as my statement against a rent increase above the limits placed by law on landlords for the building and unit located at 37 Moss Ave #7.

The landlord is requesting an increase of a currently unspecified amount. Without any amount given for an increase I must fully protest any increase above the amount mandated by local rent control ordinances.

The landlord claims that an increase above the limits is necessary because of Capital improvements which include seismic retrofit, painting, and new windows in the units for the building.

- The building paint job was wholly unnecessary. The paint, carpets, and light fixtures were all in good working order at the time of the work. I fully contest this as a reason to raise rents above the annual limit.
- The seismic retrofit was per my understanding, due to a deficiency in the building design and was to bring the building up to code. This provides little benefit or improvement to any of the tenant's living situation and conditions. This is a cost of doing business as a landlord and should be recouped by normal rental income.
- The existing windows were fully functional and did not require replacement.

None of the aforementioned improvements were requested by any tenant in the building that I have spoken to nor were they necessary. The actual benefit to tenants for these "improvements" are in absolute equivalence to what was present before and it seems to be little more than an attempt to circumvent rent control laws for the city of Oakland.

I have lived in the building for 8 years, I have never been late on my rent, had any complaints from the management or neighbors, and am in good standing with my lease. I request that the board deny any increase above the annual limits mandated by Oakland Rent Control Ordinances

Thank you for your consideration

Ryan Trottier

37 Moss Ave #7 Oakland CA 94610

000115

City of Oakland Rent Adjustment Program

Tenant Response

Case **L19-0253**  
 Property Address **37 Moss Avenue**

*Waleed Sabrah*

*Unit #10*

**Rental Property Information**

Type of unit you rent	Apartment, Room or Live-work
Total number of units	12
Are you current on your rent?	Yes
Please explain why the property owner is not entitled to the proposed increase.	

**Rent History**

When did you move into the unit?	02-10-2009
When did you enter into the rental agreement for this unit?	02-10-2009
When did you move into the unit?	02-10-2009
Initial monthly rent	1245
When did the property owner first provide you with the RAP Notice, a written notice of the existence of the Rent Adjustment Program?	2-10-2009
I was given a RAP NOTICE by my property owner.	Yes

**Mediation**

Mediation Requested	Yes
---------------------	-----

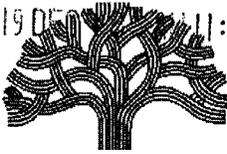
**RECEIVED**

**DEC 13 2019**

**RENT ADJUSTMENT PROGRAM  
 OAKLAND**

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 DEC 11: 55



CITY OF OAKLAND

## RENT ADJUSTMENT PROGRAM

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

**CASE NUMBER L19-0253**

### TENANT RESPONSE CONTESTING RENT INCREASE

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

Your Name <b>PAULOS ADKINOM</b>	Complete Address (with Zip Code) <b>37 MOSS AVE APT 2 OAKLAND CA 94610</b>	Telephone <b>510-712-6436</b>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 12

Are you current on your rent? Yes  No

#### **Rental History:**

Date you entered into the Rental Agreement for this unit: 11/02/2010

Date you moved into this unit: 11/2/2010

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

Yes  No

Initial Rent: \$ 1095.00

Initial rent included (please check all that apply)

( ) Gas ( ) Electricity  Water  Garbage ( ) Parking ( ) Storage ( ) Cable TV ( )

Other (if other please specify): \_\_\_\_\_

**000117**

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

Yes  No

Please list the date you first received the Notice to Tenants \_\_\_\_\_

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

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
06/21/17	8/01/2017	\$1,219.00	\$1,247.00	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
6/21/16	8/01/2016	\$1,196.00	\$1,219.00	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
6/22/15	08/01/15	\$1,173.00	\$1,196	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
5/20/14	8/1/2014	\$1,127	\$1,173	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
5/15/13	7/1/13	\$1,095	\$1,127	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
		\$	\$	Yes <input type="checkbox"/>	No <input type="checkbox"/>
		\$	\$	Yes <input type="checkbox"/>	No <input type="checkbox"/>

**Contested Justification(s) for Rent**

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

- Banking
- Capital Improvements
- Increased Housing Service Costs

- Debt Service
- Uninsured Repair Costs
- Constitutional Fair Return

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

**Verification**

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

\_\_\_\_\_  
 Tenant's Signature  
 \_\_\_\_\_  
 Tenant's Signature

12/16/19  
 \_\_\_\_\_  
 Date  
 12/16/19  
 \_\_\_\_\_  
 Date

**Important Information**

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**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 ONLY.**

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

**MEDIATION PROGRAM**

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

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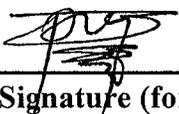
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**The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.**

**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.

  
\_\_\_\_\_  
Tenant's Signature (for Mediation)

12/16/19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Tenant's Signature (for Mediation)

12/16/19  
\_\_\_\_\_  
Date



Unit #2

P.O. Box 2905  
Berkeley, CA 94702  
Phone (510) 841-0929  
Fax (510) 841-0671

May 15, 2013

Paulos Adhinom & Ranel Bereve  
37 Moss #2  
Oakland, CA 94610

Please be notified that as of July 1, 2013 your monthly rent will increase to  
\$1~~4~~27.00 per month.

Thank you

Sandy Hryciuk  
Property Manager

000120



P.O. Box 2905  
Berkeley, CA 94702  
Phone (510) 841-0929  
Fax (510) 841-0671

May 20, 2014

Paulos Adhinom & Ranel Bereve  
37 Moss #2  
Oakland, CA 94610

Dear Paulos & Ranel

Please be notified that as of August 1, 2014 your new rent for the apartment at Moss will be \$1173.00 per month. This is calculated on the City of Oakland's banked rent increase percentages.

Thank You

Sandy Hryciuk  
Property Manager

000121



Date: 06/22/2015

To: Paulos Adhinom  
Ranel Berene  
And all others in possession of the premises located at:

37 Moss Ave, #2  
Oakland, CA 94610

## NOTICE OF CHANGE IN TERMS OF TENANCY(RENT)

You are hereby notified, in accordance with Civil Code Section 827, that the terms of tenancy under which you occupy the above-described premises are to be changed.

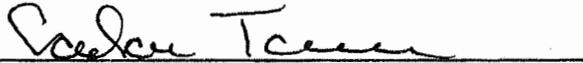
**Effective 08/01/2015, your rent will be increased from \$1,173.00 per month to \$1,196.00 per month, which is payable in advance on the first day of each month.**

If you fail to fulfill the terms of your credit obligations, a negative credit report may be submitted to a credit reporting agency.

Except as herein provided, all other terms of your tenancy shall remain in full force. Payment may be made to Owner/Agent at the following address: 466 40th St, Oakland CA 94609

Telephone number for above address: 510-428-1864

Payments made in person may be delivered to Owner/Agent between the hours of 9:30 am and 4:30 pm on the following days of the week: Monday through Friday.



Owner/Agent

Beacon Properties  
466 40th St  
Oakland, CA 94609

(510) 428-1864

000123

Date: 06/21/2016

To: Paulos Adhinom  
Rahel Berene  
And all others in possession of the premises located at:

37 Moss Ave, #2  
Oakland, CA 94610

## NOTICE OF CHANGE IN TERMS OF TENANCY(RENT)

You are hereby notified, in accordance with Civil Code Section 827, that the terms of tenancy under which you occupy the above-described premises are to be changed.

Effective 08/01/2016, your rent will be increased from \$1,196.00 per month to \$1,219.00 per month, which is payable in advance on the first day of each month.

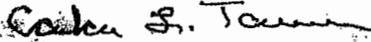
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Payments made in person may be delivered to Owner/Agent between the hours of 9:30 am and 4:30 pm on the following days of the week: Monday through Friday.

RENT ADJUSTMENT NOTICE IS ENCLOSED



Owner/Agent

Beacon Properties  
466 40th St  
Oakland, CA 94609

(510) 428-1864

000124

Date: 06/21/2017

To: Paulos Adhinom  
Rahel Berene  
And all others in possession of the premises located at:

37 Moss Ave, #2  
Oakland, CA 94610

## NOTICE OF CHANGE IN TERMS OF TENANCY(RENT)

You are hereby notified, in accordance with Civil Code Section 827, that the terms of tenancy under which you occupy the above-described premises are to be changed.

Effective 08/01/2017, your rent will be increased from \$1,219.00 per month to \$1,247.00 per month, which is payable in advance on the first day of each month.

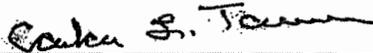
If you fail to fulfill the terms of your credit obligations, a negative credit report may be submitted to a credit reporting agency.

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Payments made in person may be delivered to Owner/Agent between the hours of 9:30 am and 4:30 pm on the following days of the week: Monday through Friday.

OAKLAND RENT ADJUSTMENT PROGRAM NOTICE IS ENCLOSED



---

Owner/Agent

Beacon Properties  
466 40th St  
Oakland, CA 94609

(510) 428-1864

000125



# BEACON PROPERTIES

PROPERTY MANAGEMENT & REAL ESTATE SALES

466 40<sup>th</sup> Street  
Oakland, CA 94609-2522  
TEL: (510) 428-1864  
FAX: (510) 601-1917  
e-mail: [beacprop@pacbell.net](mailto:beacprop@pacbell.net)

June 22, 2015

Dear Tenant,

The enclosed rent increase includes the currently allowable rent increase plus *banked* increases, explained below:

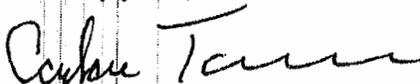
### Banking Calculation Instructions

1. Banking is any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the Owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the Regulations. (O.M.C. § 8.22.020)
2. Owners may only increase rent by banking plus the annual CPI increase or by the other justifications—capital improvements, increased housing service costs, debt service costs, or required constitutional or fair return. See Regulations § 8.22.070(B) and (C).
3. In any year in which the CPI increase is not passed on to the tenants because of an increase for capital improvements or uninsured repairs (casualty losses, it is *banked*. If an increase justified as increased housing service costs, debt service, or fair return is given that year, the CPI increase for that year is included in the calculation. In the case of fair return increases all prior banking is also included in the debt service or fair return calculation.
4. In order to calculate the amount of rent banked from a previous rental year, Owners must apply the percentage from the Table of Annual Allowable Rent Increases (found below) for the date when the rent increase could have been imposed.
5. A rent increase based on banking may not exceed three times the current allowable annual rate multiplied by the current base rent (rent without temporary increases or decreases).  
For example, the CPI Rent Adjustment for July, 2015 – June 30, 2016 is 1.7%, so an increase based on banking effective during the period may not exceed 5.1% x base rent. This limit INCLUDES the current year CPI Adjustment.

6/1/06 to 5/31/07		3.30%
7/1/07 to 6/30/08		3.30%
7/1/08 to 6/30/09		3.20%
7/1/09 to 6/30/10		0.70%
7/1/10 to 6/30/11		2.70%
7/1/11 to 6/30/12		2.00%
7/1/12 to 6/30/13		3.00%
7/1/13 to 6/30/14		2.10%
7/1/14 to 6/30/15		1.90%
7/1/15 to 6/30/16		1.70%

If you have questions, please call our office or the Rent Adjustment Program (see enclosed form).

Sincerely yours,



Carlon Tanner  
Broker

000127

22

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RENT ADJUSTMENT PROGRAM  
OAKLAND



CITY OF OAKLAND

**RENT ADJUSTMENT PROGRAM**

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

**CASE NUMBER L19-0253**

**TENANT RESPONSE CONTESTING RENT INCREASE**

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

Your Name <i>Bertha M. Gayles</i>	Complete Address (with Zip Code) <i>37 Moss Ave Apt 1 Oakland, CA 94610</i>	Telephone <i>510 839-6420</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 12

Are you current on your rent? Yes  No

**Rental History:**

Date you entered into the Rental Agreement for this unit: 1/3/09

Date you moved into this unit: 1/20/09

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

Yes  No

Initial Rent: \$ 1594<sup>00</sup>

Initial rent included (please check all that apply)

( ) Gas ( ) Electricity ( ) Water  Garbage  Parking ( ) Storage ( ) Cable TV ( )

Other (if other please specify): \_\_\_\_\_

000128

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

Yes  No

Please list the date you first received the Notice to Tenants 6-22-2015

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

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
6-20-2019	8-1-19	\$1594	\$1649.79	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/> Rescinded
6-20-2018	8-1-2018	\$1474	\$1524	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/> \$1524 + 70 parking 1594
6-21-2017	8-1-217	\$1441	\$1474	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
6-21-2016	8-1-2016	\$1413	\$1441	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	8-1-2015	\$1375	\$1413	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
5/20/2014	8-1-2014	\$1275	\$1375	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/> \$100
5/14/2013	7/1/2013	\$1250	\$1275	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/> Increase

**Contested Justification(s) for Rent**

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

**Banking**

**Capital Improvements**

**Increased Housing Service Costs**

**Debt Service**

**Uninsured Repair Costs**

**Constitutional Fair Return**

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

**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.

[Signature]  
Tenant's Signature

12-17-19  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

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**File Review**

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

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**MEDIATION PROGRAM**

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

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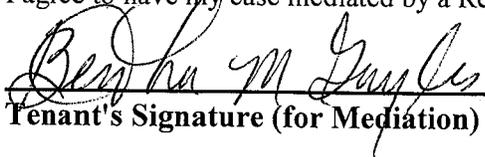
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**The Rent Adjustment Program will not schedule a mediation session if the owner does not file a response to the petition. Rent Board Regulation 8.22.100.A.**

**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.

  
\_\_\_\_\_  
Tenant's Signature (for Mediation)

12-17-19  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature (for Mediation)

\_\_\_\_\_  
Date

Bertha M Gayles  
37 Mass Ave Apt 1  
Oakland CA 94610  
12-17-19

To Whom it may concern:

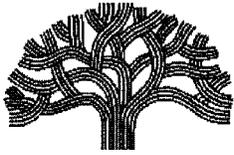
I moved into 37 Mass Ave, Apt 1 on 1/20/09. Everything in the apartment was new. The building was in good shape and the outside paint and hall carpets were fine. ~~I did not need~~ neither did I request new windows for my apartment. I did not request new hallway carpet or a new paint job for the building. I feel that it is wrong for the owner to pass the renovation cost to the tenants.

Sincerely yours  
Bertha M Gayles

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DEC 27 2013

RENT ADJUSTMENT PROGRAM  
OAKLAND



CITY OF OAKLAND

**RENT ADJUSTMENT PROGRAM**

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

**CASE NUMBER L19-0253**

**TENANT RESPONSE CONTESTING RENT INCREASE**

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

Your Name <i>Mekolelaunit Beraki</i>	Complete Address (with Zip Code) <i>37 Moss Avenue #4 Oakland, CA 94610</i>	Telephone <i>510 499 7048 510 710 4850</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: \_\_\_\_\_

Are you current on your rent?  Yes \_\_\_\_\_ No \_\_\_\_\_

**Rental History:**

Date you entered into the Rental Agreement for this unit: *October 8<sup>th</sup>, 2012*

Date you moved into this unit: *October 8<sup>th</sup>, 2012*

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

Yes \_\_\_\_\_  No \_\_\_\_\_

Initial Rent: \$ *1175.-*

Initial rent included (please check all that apply)

( ) Gas ( ) Electricity  Water ( ) Garbage ( ) Parking ( ) Storage ( ) Cable TV ( )

Other (if other please specify): \_\_\_\_\_

000132

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

Yes \_\_\_\_\_ No \_\_\_\_\_

Please list the date you first received the Notice to Tenants \_\_\_\_\_

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

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
08/05 / 2014	11/21 / 2014	\$ 1,175.-	\$ 1,221.-	<input checked="" type="radio"/> Yes	<input type="radio"/> No
05/19 / 2017	07/01 / 2017	\$ 1,221.-	\$ 1,268.-	<input checked="" type="radio"/> Yes	<input type="radio"/> No
05/18 / 2018	07/01 / 2018	\$ 1,268.-	\$ 1,311.-	<input checked="" type="radio"/> Yes	<input type="radio"/> No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No

**Contested Justification(s) for Rent**

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- Banking
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- Increased Housing Service Costs

- Debt Service
- Uninsured Repair Costs
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**Verification**

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

\_\_\_\_\_  
Tenant's Signature

12/02/2019  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

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

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer.

\_\_\_\_\_  
**Tenant's Signature (for Mediation)**

\_\_\_\_\_  
**Date**

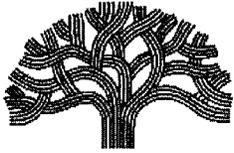
\_\_\_\_\_  
**Tenant's Signature (for Mediation)**

\_\_\_\_\_  
**Date**

RECEIVED

DEC 27 2019

RENT ADJUSTMENT PROGRAM  
OAKLAND



CITY OF OAKLAND

**RENT ADJUSTMENT PROGRAM**

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

**CASE NUMBER L19-0253**

**TENANT RESPONSE CONTESTING RENT INCREASE**

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

Your Name <i>Givmay Haregewoin</i>	Complete Address (with Zip Code) <i>37 MOSS AVENUE #4 Oakland, CA 94610</i>	Telephone
Your Representative's Name	Complete Address (with Zip Code)	Telephone <i>510 499 7046</i>

Number of Units on the parcel: *#4*

Are you current on your rent?  Yes  No

**Rental History:**

Date you entered into the Rental Agreement for this unit: *October 8<sup>th</sup>, 2012*

Date you moved into this unit: *October 8<sup>th</sup>, 2012*

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

Yes   No

Initial Rent: \$ *1,175*

Initial rent included (please check all that apply)

Gas  Electricity  Water  Garbage  Parking  Storage  Cable TV

Other (if other please specify): \_\_\_\_\_

000135

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

Yes \_\_\_\_\_ No \_\_\_\_\_

Please list the date you first received the Notice to Tenants \_\_\_\_\_

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

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To		
08/05/2014	11/01/2014	\$ 1,175.-	\$ 1,221.-	<input checked="" type="radio"/> Yes	<input type="radio"/> No
05/19/2017	07/01/2017	\$ 1,221.-	\$ 1,268.-	<input checked="" type="radio"/> Yes	<input type="radio"/> No
05/18/2018	07/01/2018	\$ 1,268.-	\$ 1,311.-	<input checked="" type="radio"/> Yes	<input type="radio"/> No
		\$	\$	<input type="radio"/> Yes	<input type="radio"/> No
		\$	\$	<input type="radio"/> Yes	<input type="radio"/> No
		\$	\$	<input type="radio"/> Yes	<input type="radio"/> No
		\$	\$	<input type="radio"/> Yes	<input type="radio"/> No

**Contested Justification(s) for Rent**

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

- Banking
- Capital Improvements
- Increased Housing Service Costs

- Debt Service
- Uninsured Repair Costs
- Constitutional Fair Return

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

**Verification**

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

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date 12/02/2019

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

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

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

**File Review**

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

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

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

**MEDIATION PROGRAM**

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

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

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

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

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

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

I agree to have my case mediated by a Rent Adjustment Program Staff Hearing Officer.

\_\_\_\_\_  
**Tenant's Signature (for Mediation)**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Tenant's Signature (for Mediation)**

\_\_\_\_\_  
**Date**

RECEIVED

DEC 27 2010

RENT ADJUSTMENT PROGRAM  
OAKLAND



CITY OF OAKLAND

**RENT ADJUSTMENT PROGRAM**

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

**CASE NUMBER L19-0253**

**TENANT RESPONSE CONTESTING RENT INCREASE**

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

Your Name <i>MULUGETA MAHARAY</i>	Complete Address (with Zip Code) <i>37 MOSS AVE #4 Oakland, CA 94610</i>	Telephone <i>510 499 7046</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: \_\_\_\_\_

Are you current on your rent?  Yes \_\_\_\_\_ No \_\_\_\_\_

**Rental History:**

Date you entered into the Rental Agreement for this unit: *October 8<sup>th</sup>, 2012*

Date you moved into this unit: *October 8<sup>th</sup>, 2012*

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

Yes  No

Initial Rent: \$ *1,175.-*

Initial rent included (please check all that apply)

Gas  Electricity  Water  Garbage  Parking  Storage  Cable TV

Other (if other please specify): \_\_\_\_\_

000138

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

Yes \_\_\_\_\_ No \_\_\_\_\_

Please list the date you first received the Notice to Tenants \_\_\_\_\_

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

Date Notice Given (Mo/Day/Yr)	Date Increase Effective	Rent Increased		Did you receive a NOTICE TO TENANTS with the notice of rent increase?	
		From	To	Yes	No
08/31/2014	11/1/2014	\$1,175.	\$1,224.	<u>Yes</u>	No
05/19/2017	07/01/2017	\$1,221.	\$1,268.	<u>Yes</u>	No
05/18/2018	07/01/2018	\$1,268.	\$1,311.	<u>Yes</u>	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No
		\$	\$	Yes	No

**Contested Justification(s) for Rent**

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

- Banking
- Capital Improvements
- Increased Housing Service Costs

- Debt Service
- Uninsured Repair Costs
- Constitutional Fair Return

For the detailed text of these justifications, see Oakland Municipal Code Chapter 8.22 and the Rent Board Regulations on the City of Oakland web site. The property owner has the burden of proving the contested rent increase is justified.

**Verification**

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

\_\_\_\_\_  
Tenant's Signature

12/02/2019  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

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

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

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

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

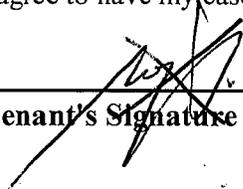
You may choose to have the mediation conducted by a Rent Adjustment Program Hearing Officer or select an outside mediator. Rent Adjustment Program Hearing Officers conduct mediation sessions free of charge. If you and the owner agree to an outside mediator, please call (510) 238-3721 to make arrangements. 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.

  
\_\_\_\_\_  
Tenant's Signature (for Mediation)

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature (for Mediation)

\_\_\_\_\_  
Date

### Rent Roll

37 Moss Apartments (1p626)

As Of = 08/09/2021

Month Year = 08/2021

Unit	Unit Type	Unit Resident	Name	Market	Actual	Resident	Other Move In	Lease	Move Out
		Sq Ft		Rent	Rent	Deposit	Deposit	Expiration	
<b>Current/Notice/Vacant Residents</b>									
01	2/1	0.00	t0017627 James Gayles	0.00	1,524.00	1,700.00	0.00	01/03/2009	
02	2/1	0.00	t0017628 Paulos Adhinom	0.00	1,289.00	1,500.00	0.00	11/02/2010	
03	1/1	0.00	VACANT VACANT	0.00	0.00	0.00	0.00		
04	2/1	0.00	t0017629 Mahray Mulugeta	0.00	1,311.00	1,800.00	0.00	10/08/2012	
05	2/1	0.00	t0020883 Justin Lamb	0.00	2,895.00	2,895.00	0.00	02/16/2021	
06	2/1	0.00	t0017631 Mark Rizkallah	0.00	1,507.00	1,800.00	0.00	07/08/2013	
07	1/1	0.00	t0017632 Ryan Trottier	0.00	1,007.00	1,200.00	0.00	10/02/2012	
08	2/1	0.00	t0017633 Clarissa Vargas	0.00	1,451.00	1,500.00	0.00	03/22/2010	
09	2/1	0.00	t0020963 Raysean Jones	0.00	2,580.00	600.00	0.00	03/16/2021	
10	2/1	0.00	t0017635 Waleed Sabrah	0.00	1,474.00	1,700.00	0.00	02/10/2009	
11	1/1	0.00	t0017636 Zigmond Collins	0.00	1,169.00	1,600.00	0.00	01/01/2010	
12	2/1	0.00	t0017637 Janice Carter	0.00	1,514.00	1,700.00	0.00	01/06/2009	
		<b>Total</b>	<b>37 Moss Apartn</b>	<b>0.00</b>	<b>17,721.00</b>	<b>17,995.00</b>	<b>0.00</b>		

Summary Groups	Square Footage	Market Rent	Actual Rent	Security Deposit	Other Deposits	# Of Units	% Unit Occupancy	% Sqft Occupied
Current/Notice/Vacant Residents	0.00	0.00	17,721.00	17,995.00	0.00	12.00	91.66	0.00
Future Residents/Applicants	0.00	0.00	0.00	0.00	0.00	0.00		
Occupied Units	0.00	0.00				11	91.66	0.00
Total Non Rev Units	0.00	0.00				0	0.00	0.00
Total Vacant Units	0.00	0.00				1	8.33	0.00
<b>Totals:</b>	<b>0.00</b>	<b>0.00</b>	<b>17,721.00</b>	<b>17,995.00</b>	<b>0.00</b>	<b>12</b>	<b>100.00</b>	<b>0.00</b>

## CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

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

### **HEARING DECISION**

**CASE NUMBER:** L19-0253, 37 Moss LLC v. Tenants

**PROPERTY ADDRESS:** 37 Moss Ave., Oakland, CA

**DATE OF HEARING:** August 9, 2021

**DATE OF DECISION:** September 17, 2021

**APPEARANCES:** Ben Lewis, Property Manager for The Lapham Co.  
Liz Hart, Owner's Representative  
Rahel Berehe and Paulos Adhinom, Tenants (Unit #2)  
Ryan Trottier, Tenant (Unit #7)  
Clarissa Vargas, Tenant (Unit #8)  
Walleed Sabrah, Tenant (Unit #10)  
Zigmond Collins, Tenant (Unit #11)  
Travis Bell, Observer

### **SUMMARY OF DECISION**

The Owner Petition is granted.

### **CONTENTIONS OF THE PARTIES**

On November 4, 2019, the owner filed a Petition for Approval of Rent Increase based on capital improvements relating to a variety of projects.

The tenants in the subject building were notified of the petition and the remote hearing date. Tenants in units #1, 2, 4, 7 and 11 filed responses to owner's petition, and only the tenants listed above appeared for the remote hearing. The tenants in the remaining units did not file responses and did not appear for the hearing.

### **THE ISSUE**

Are the projects considered capital improvements and, if so, what is the amount that can be passed to the tenants?

**000142**

## EVIDENCE

### Background

The current ownership acquired the property on December 18, 2018, and provided the notice of the existence of the Rent Adjustment Program (RAP Notice) to the tenants on January 8, 2019. The subject property is a residential dwelling consisting of a total of twelve (12) residential units.

The property manager submitted an updated tenant roster showing the current rents as of August 9, 2021.<sup>1</sup> He testified at the hearing that he is not seeking the rent increase approvals for Units #3, #5 and #9 because those units were either vacant at the time the petition was filed or the tenants moved in after the improvements were completed.

### Scope and Cost of the Projects

The property manager testified that the projects included the following work: seismic retrofit, exterior and interior painting, replacement of windows, new sewer lateral, new carpet and lighting in the common areas, installation of high security mailboxes, and installation of deck vents that included an inspection of dry-rot areas under the balconies.

With the owner's petition, the property manager submitted copies of checks paid to the Oakland Business Tax and for the RAP Fee, copies of the Building permits, and the Sewer Lateral Certificate issued on 3/25/2019.<sup>2</sup> This packet was admitted into evidence without objection.

Prior to the hearing the property manager submitted a packet of documents, consisting of 78 pages, that included copies of engineering and inspection reports, contracts, invoices from the contractors, copies of checks paid to the contractors relating to the projects that are subject of this petition.<sup>3</sup> This packet was admitted into evidence without objection.

Seismic Retrofit: This project was completed by SFT Construction and Honigman LLP structural engineers for the cost of \$129,047.89 and complies with the seismic upgrade per O.M.C. §15.27 for soft-story buildings in Oakland. The permit was issued on March 4, 2019, and finalized on July 20, 2019.<sup>4</sup> The RES Engineering was retained for testing, construction supervision and inspections for the cost of \$4,384.80. The seismic work was completed and paid for by July 25, 2019, and the property manager submitted

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<sup>1</sup> Exhibit A

<sup>2</sup> Exhibit B, pages 16-23 attached to Owner Petition

<sup>3</sup> Exhibit C, pages 1-78

<sup>4</sup> Exhibit B, pages 18-23

copies of the signed contract, invoices and checks paid to the contractors for the total cost of \$133,432.69 (\$129,047.89 + \$4,384.80).<sup>5</sup>

Windows: The ownership retained C&R Contractors to replace 44 windows and 11 patio doors, in the units and laundry room. The property manager submitted copies of the permit, receipt for permit fees (\$1,352.91), invoices and checks paid to the contractor (\$34,300) for the total cost of \$35,652.91.<sup>6</sup> The permit shows the final inspection approved on September 10, 2019.<sup>7</sup>

Exterior and Interior Painting: The ownership retained Gonzalez Painting for the interior painting of common areas and exterior painting of the building. The painting was completed and paid for on August 19, 2019, and the property manager submitted an invoice and a copy of the check paid to the contractor in the amount of \$29,200.00.<sup>8</sup>

Sewer Lateral: The ownership retained The Plumbing Ministry to excavate and replace the sewer pipes. This work was completed and paid for on March 18, 2019, for \$2,100.00 and the property manager submitted an invoice and a copy of the check paid to the contractor.<sup>9</sup> The Compliance Certificate was issued on March 25, 2019.<sup>10</sup>

Common Areas Upgrade – Carpet and Lights: The ownership retained Bay Area Carpets to install new carpet in the interior common areas for the cost of \$3,216.73.<sup>11</sup> The property manager testified that new light fixtures were installed in the interior hallways and interior and exterior stairwells for \$5,707.01, which included the cost of the light fixtures (\$3,452.53) and labor for installation (\$2,254.48). This work was completed and paid for by September 13, 2019, and the property manager submitted copies of invoices and checks paid to the contractors for these projects.<sup>12</sup>

Mailboxes: Reed Brothers Security installed post-mounted high security Salsbury mailboxes for \$2,409.82 in August of 2019. APT Maintenance repaired the wall after the old inset-wall mailboxes were removed from the wall for \$648.59. The property manager submitted copies of invoices and checks paid for this project, totaled \$3,058.41.<sup>13</sup>

Installation of Deck Vents: The ownership retained Alarcon Bohm to inspect for dry-rot under decks and balconies. The inspection revealed no dry rot under the balconies and, per the contractor's recommendation, eight deck vents were installed. The property manager submitted an invoice from the contractor and a copy of the check paid to the contractor for \$9,964.00 on April 24, 2019.<sup>14</sup>

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<sup>5</sup> Exhibit C, pages 1-32 and 46-53

<sup>6</sup> Exhibit C, pages 33-41

<sup>7</sup> Exhibit B, pages 21-22

<sup>8</sup> Exhibit C, pages 42-45

<sup>9</sup> Exhibit C, pages 60-64

<sup>10</sup> Exhibit B, page 23

<sup>11</sup> Exhibit C, pages 69-70

<sup>12</sup> Exhibit C, pages 71-76

<sup>13</sup> Exhibit C, pages 65-68

<sup>14</sup> Exhibit C, pages 77-78

The tenants who appeared at the hearing made statements on the record and testified that the property manager's testimony about the projects and the building were true and thanked the owner for the improvements. All tenants, except tenant Sabrah, testified that they have been pleased with the work and liked the improvements done to the building.

Tenant Sabrah read a statement on the record. He testified that the ownership received a discount from the purchase price when they purchased the building and that the discount was the cost of the retrofit. The tenant testified that he was interested in purchasing the property himself and speculated that the seller discounted the purchase price for the cost of the retrofit. He also testified that he believed the painting was done in 2007 or 2008 and was not necessary, that the windows were fine and did not need to be replaced, and the work did not benefit the tenants. He submitted no evidence.

There was no evidence of deferred maintenance or gold plating or that any work was performed to correct a code violation relating to any part of the project in this petition.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Capital Improvements**

A rent increase in excess of the C.P.I. Rent Adjustment may be justified by capital improvement costs.<sup>15</sup> Capital improvement costs are those improvements which materially add to the value of the property, appreciably prolong its useful life or adapt it to the new building codes, and must primarily benefit the tenant rather than the property owner.<sup>16</sup> Normal routine maintenance and repair is not a capital improvement.<sup>17</sup> The owner is entitled to the capital improvements pass through of 70% of the total of costs expended for the Capital Improvement project.<sup>18</sup>

All improvements which are determined to be capital improvements shall be amortized over the useful life of the improvement as set out in the Amortization Schedule attached as Exhibit 1 to the Appendix A in the Regulations.<sup>19</sup>

### **Cost Allowed in the Calculation of Capital Improvement Pass-through**

Seismic Retrofit: The City Council mandates the seismic upgrade to make the buildings safe for the tenants and the Seismic Ordinance specifically regards the seismic upgrade as a capital improvement because it primarily benefits the tenants.<sup>20</sup>

<sup>15</sup> O.M.C. Section 8.22.070(C)

<sup>16</sup> Regulations, Appendix A, Section 10.2

<sup>17</sup> Regulations, Appendix A, Section 10.2.2 (4)(d)

<sup>18</sup> City Council Resolution No. 84936

<sup>19</sup> Regulations, Appendix A, Section 10.2.3 (2)

<sup>20</sup> O.M.C. §15.27

Therefore, this project qualifies as capital improvement and the owner would be required to do this work under the ordinance between February 2020 to 2023. The fact that the owner proactively did the project in 2019 before it was mandated is not relevant and does not change the capital improvement qualification. The argument that the owner received a discount from the purchase price for the cost of the retrofit is not relevant. There is no evidence of this fact and even if this fact were true, the owner could have received the discount and not do the work. The Ordinance requires the project benefits the tenants, the work is completed and paid for, which is evidenced by proof of payments paid to the contractor.

Windows: The replacement of new windows qualifies as a capital improvement because it primarily benefits the tenants, complies with the new building codes, while making the units more energy efficient, increases sound proofing and prevents leaks and moisture intrusion into the units.

Paint: The new exterior paint is considered a capital improvement because it benefits the tenants as it prevents moisture intrusion into the building and the property appears well-maintained.

Sewer: The sewer lateral replacement qualifies as a capital improvement because it benefits the tenants. The tenants argued that the owner was required to do it to transfer the property. The reason for the project is not relevant. The work was done to comply with the current building code, and the replacement of new sewer lateral will prevent sewage back-ups and issues for the tenants. Therefore, this project qualifies as a capital improvement.

Carpet/Lights/Mailboxes: These common areas projects qualify as capital improvements because they benefit the tenants as the interior common areas and exterior of the building appear well maintained, secured and cared for.

Balconies/Deck Vents: The Court held that dry-rot work is considered a capital improvement and not a deferred maintenance as the damage is not self-evident and it cannot be revealed by an ordinary inspection.<sup>21</sup> The dry-rot work inspections under decks and balconies and installation of deck vents enhanced the structural safety and delayed the need for future repairs by replacing worn structures and dry-rot wood with new wood and materials, which prolonged the useful life of the decks and balconies for the benefits of the tenants. Therefore, this project qualifies as a capital improvement.

#### Calculation of the Approved Capital Improvements

The owner submitted proof of payments in the form of contracts, invoices and bank checks paid for the work. Therefore, the owner is entitled to a capital improvement pass-through of 70% of the cost of those improvements allowed in this Hearing Decision. The improvements benefit all units and the cost will be divided by the total number of units in the building (12).

<sup>21</sup> Farley Levine Prop. v. HRRRB (RG18923811)

The attached Table calculates the cost for the Capital Improvements plus imputed interest and sets forth the amortization period for the rent increases pursuant to the formula set forth in the Appendix A and Exhibit 1 of the Regulations. In addition, the City Council changed the maximum rent increase from 10% to align with the allowable increase under state law, which is currently 8.8% after August 1, 2021.<sup>22</sup> Accordingly, the amortization periods for some units had to be increased to keep the allowable pass-through under 8.8%.

### ORDER

1. The Owner Petition L19-0253 is granted.
2. The maximum approved amount per month per unit and specified amortization period is shown below:

Units #1, #6 and #12:	\$129.95 per month for 10 years
Units #2 and #4:	\$112.46 per month for 12 years
Unit #7:	\$83.70 per month for 18 years
Units #8 and #10:	\$120.40 per month for 11 years
Unit #11:	\$100.05 per month for 14 years
3. The rent increase will expire at the end of the amortization period and each tenant's monthly rent will decrease by the amount stated above per each Unit.
4. This rent increase will not apply to Units #3, #5 and #9 in the subject building.
5. If the owner decides to pass on the rent increase approved by this Hearing Decision, the owner must serve a thirty-day rent increase notice, together with a *RAP Notice*, and the attached *Decision Summary*. The owner must wait twelve (12) months from the effective date of the last rent increase before he/she may raise the rent again.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal by filing a completed RAP appeal form within 15 days after service of the decision, shown on the attached Proof of Service.

Dated: September 17, 2021

  
\_\_\_\_\_  
Linda M. Moroz, Hearing Officer  
Rent Adjustment Program

<sup>22</sup> Tenant Protection Act of 2019







## CITY OF OAKLAND

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

Housing and Community Development Department  
Rent Adjustment Program

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

### DECISION SUMMARY

**CASE NUMBER:** L19-0253 37 Moss LLC v. Tenants

**PROPERTY ADDRESS:** 37 Moss Ave., Oakland, CA

**DATE OF HEARING:** August 9, 2021

**DATE OF DECISION:** September 17, 2021

1. The Owner Petition L19-0253 for Approval of Rent Increase is granted.
2. The maximum approved amount per month per unit and specified amortization period is shown below:

Units #1, #6 and #12:	\$129.95 per month for 10 years
Units #2 and #4:	\$112.46 per month for 12 years
Unit #7:	\$83.70 per month for 18 years
Units #8 and #10:	\$120.40 per month for 11 years
Unit #11:	\$100.05 per month for 14 years

3. The rent increase will expire at the end of the amortization period and each tenant's monthly rent will decrease by the amount stated above per each Unit.

4. This rent increase will not apply to Units #3, #5 and #9.

5. If the owner decides to pass on the rent increase approved by this Hearing Decision, the owner must serve a thirty-day rent increase notice, together with a *RAP Notice*, and the attached *Decision Summary*. The owner must wait twelve (12) months from the effective date of the last rent increase before he/she may raise the rent again.

000150

**PROOF OF SERVICE**  
**Case Number L19-0253**

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

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

**Documents Included**

Hearing Decision  
Decision Summary

**Owner**

37 Moss LLC  
4844 Telegraph Avenue  
Oakland, CA 94609

**Owner Representative**

The Lapham Company Inc  
4844 Telegraph Avenue  
Oakland, CA 94609

**Tenant**

Bertha Gayles  
37 Moss Avenue # 1  
Oakland, CA 94610

**Tenant**

Chitsuttha Khunanuwachaidet  
37 Moss Avenue # 5  
Oakland, CA 94610

**Tenant**

Chris Sevem  
37 Moss Avenue # 6  
Oakland, CA 94610

**Tenant**

Clarissa Vargas  
37 Moss Avenue # 8  
Oakland, CA 94610

**000151**

**Tenant**

Fred Carter  
37 Moss Avenue # 12  
Oakland, CA 94610

**Tenant**

Girma Haregewoin  
37 Moss Avenue # 4  
Oakland, CA 94610

**Tenant**

James Gayles  
37 Moss Avenue # 1  
Oakland, CA 94610

**Tenant**

Janice Carter  
37 Moss Avenue # 12  
Oakland, CA 94610

**Tenant**

Jeffrey Dang  
37 Moss Avenue # 5  
Oakland, CA 94610

**Tenant**

Kanitha Maneewan  
37 Moss Avenue # 5  
Oakland, CA 94610

**Tenant**

Mahray Mulugeta  
37 Moss Avenue # 4  
Oakland, CA 94610

**Tenant**

Mark RizKhallah  
37 Moss Avenue # 6  
Oakland, CA 94610

**Tenant**

Mekdelawit Beraki  
37 Moss Avenue # 4  
Oakland, CA 94610

**Tenant**

Plaulos Adhinom  
37 Moss Avenue # 2

Oakland, CA 94610

**Tenant**

Rahel Berene  
37 Moss Avenue # 2  
Oakland, CA 94610

**Tenant**

Ryan Trottier  
37 Moss Avenue # 7  
Oakland, CA 94610

**Tenant**

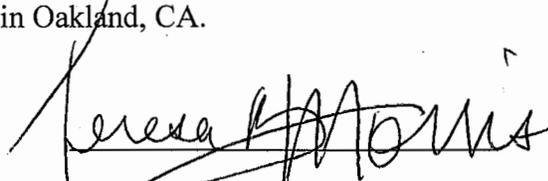
Waleed Sabrah  
37 Moss Avenue # 10  
Oakland, CA 94610

**Tenant**

Zigmond Collins  
37 Moss Avenue # 11  
Oakland, CA 94610

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **September 24, 2021** in Oakland, CA.



Teresa Brown-Morris

Oakland Rent Adjustment Program

000153

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

<b>Appellant's Name</b> Waleed Sabrah		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 37 Moss Ave, APT 10, Oakland, CA 94610			
<b>Appellant's Mailing Address (For receipt of notices)</b> PO BOX 20596, Piedmont, CA 94620		<b>Case Number</b> L19-0253	
		<b>Date of Decision appealed</b> 09/17/2021	
<b>Name of Representative (if any)</b> Arlo Hale Smith SBN 96971		<b>Representative's Mailing Address (For notices)</b> PO BOX 20596, Piedmont, CA 94620	

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

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

For more information phone (510) 238-3721.

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

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

**• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •**  
 I declare under penalty of perjury under the laws of the State of California that on October 14, 2021, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b><u>Name</u></b>	37 Moss LLC
<b><u>Address</u></b>	4844 Telegraph Ave
<b><u>City, State Zip</u></b>	Oakland, CA 94609
<b><u>Name</u></b>	The Lapham Company Inc
<b><u>Address</u></b>	4844 Telegraph Ave
<b><u>City, State Zip</u></b>	Oakland, CA 94609

<i>A.H. Smith</i>	10/14/2021
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

For more information phone (510) 238-3721.

## **IMPORTANT INFORMATION:**

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

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

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

**ARLO HALE SMITH**  
**Attorney At Law**  
378 Golden Gate Ave. #326  
San Francisco, CA 94102  
415-685-9331

October 14, 2021

Re: L19-0253  
37 Moss LLC v. Tenants

**Attachment to Sabrah's Appeal**

- 1- The Hearing officer denied Mr. Sabrah's due process. Mr. Sabrah testified that the previous building owner discounted the sale price for the current owner specifically to offset the cost of the retrofit. During the hearing when Mr. Sabrah asked the Landlord's representatives about the discount, they dodged the question and refused to answer it. The Hearing Officer then interrupted Mr. Sabrah and refused to mandate the Landlord representatives to answer the question.
- 2- The Hearing Officer decision failed to specify the maintenance necessity for the carpet/lights/mailboxes. To the contrary, the decision expressly justified the expenses even they were only aesthetic improvements.
- 3- The Hearing officer decision failed to specify the maintenance necessity to repaint the building. To the contrary, the decision expressly justified it as an aesthetic improvement.
- 4- Mr. Sabrah testified that he rejected installation of the windows in his unit.

**000157**



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE**

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

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

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

I served a copy of:

APPEAL AND ATTACHEMNT

(insert name of document served)

And Additional Documents

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

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

**PERSON(S) SERVED:**

Name	37 MOSS LLC
Address	4844 TELEGRAPH AVE
City, State, Zip	OAKLAND, CA 94609

Name	The Lapham Company Inc
Address	4844 TELEGRAPH AVE
City, State, Zip	OAKLAND, CA 94609

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 10/14/2021 (insert date served).

Arlo Hale Smith SBN 96971  
PRINT YOUR NAME

A.H. Smith  
SIGNATURE

10/14/21  
DATE

1 Clifford E. Fried SBN 118288  
2 Angelica A. Sandoval SBN 318093  
3 Fried & Williams LLP  
4 1901 Harrison Street, 13<sup>th</sup> Floor  
5 Oakland, California 94612  
6 Telephone: (510) 625-0100  
7 Facsimile: (510) 550-3621  
8 Email: asandoval@friedwilliams.com

9 Attorneys for Respondent  
10 Lapham Company Inc.

11 **DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT AGENCY**  
12 **RENT ADJUSTMENT PROGRAM**

13 Waleed Sabrah

14 Appellant/Tenant,

15 vs.

16 Lapham Company Inc.

17 Respondent/Owner.

**RENT BOARD CASE NO.: L19-0253**

**RESPONDENT RESPONSE TO APPEAL**

Hearing Date: January 13, 2022

18 **I. INTRODUCTION**

19 On September 17, 2021, Hearing Officer Linda Moroz issued a decision after  
20 holding a hearing on a capital improvement passthrough rent increase petition (hereafter  
21 “2021 Decision”). The 2021 Decision was served by mailing a copy to the parties on  
22 September 24, 2021. A true and correct copy the 2021 Decision with proof of service is  
23 attached hereto as **Exhibit A**.

24 Waleed Sabrah (hereafter “Appellant”) filed his Appeal with Oakland’s Rent  
25 Adjustment Program (the “RAP”) on October 15, 2021. *This is one day after the appeal was*  
26 *due*. A true and correct screenshot of the rent board’s website is attached hereto as **Exhibit**

27 **B.**

1           The RAP did not receive a copy of the appeal until October 19, 2021. A true and  
2 correct copy of Acknowledgement of Appeal is attached hereto as **Exhibit C**.

3           Appellant’s brief includes an unnecessary diatribe complaining about irrelevant  
4 facts. It’s obvious that Appellant dislikes the outcome reached by the hearing officer and  
5 that he simply disagrees with the Decision. Appellant fails to provide any cogent argument  
6 based on law or fact for granting an appeal. The capital improvement passthrough petition  
7 should be upheld.

## 8           II.    **APPEAL GROUNDS:**

- 9           1.    The decision is inconsistent with OMC Chapter 8.22;
- 10          2.    The decision raises a new policy issue that has not been decided by the Board;
- 11          3.    The decision is not supported by substantial evidence;
- 12          4.    Appellant was denied a sufficient opportunity to present claims; and
- 13          5.    Other.

## 14           III.   **ARGUMENTS**

### 15           A.    **Appellant failed to demonstrate how the Decision is inconsistent with Oakland’s** 16           **law, regulations, or prior decisions.**

17           When alleging a decision is inconsistent with the law, regulations, or prior  
18 decisions, an appellant is required to identify the Ordinance section, regulations, or prior  
19 Board decision, and describe how the decision is inconsistent. Appellant has not provided  
20 this information and thus fails to meet his burden of proof.

21           It is very difficult for Appellant to prepare a response to the appeal since  
22 Appellant does not identify the law, regulation, or prior decision that is different. For the  
23 same reason, the RAP cannot grant the appeal.

### 24           B.    **Appellant failed to provide any statement of the “new” issue(s).**

25           Appellant fails to articulate any new policy issue(s). The petition filed by  
26 Respondent is your standard capital improvement passthrough petition. A capital  
27 improvement is defined by Oakland’s Appendix A.10.1.2 as “any major or unusual housing  
28 improvement is defined by Oakland’s Appendix A.10.1.2 as “any major or unusual housing

1 service costs (i.e., major repair which does not occur every year) shall be considered a  
2 capital improvement.” Additionally, “[c]apital improvement Costs are those improvements  
3 which materially add to the value of the property and appreciably prolong its useful life or  
4 adapt it to new building codes. Those improvements primarily must benefit the tenant rather  
5 than the landlord.” Oakland’s Appendix A.10.2.

6 The RAP determined that painting the exterior and the interior of building and  
7 equipment that is permanently fixed in place or relatively immobile such as carpet, lights,  
8 and mailboxes are considered eligible for capital improvement costs. See Oakland’s  
9 Appendix A.10.2.2(1) & (2).

10 When alleging that a decision raises a new policy issue, appellant is required to  
11 provide a detailed statement of the issue and why the issue should be decided in his/her  
12 favor.

13 It appears that Appellant is alleging that the following are new issues not  
14 previously considered by the RAP: 1) no capital improvement costs should be passed  
15 through to the tenants when the owner receives a price reduction when purchasing a  
16 building because of the required retrofit work that will need to be done at the property; 2)  
17 carpets, lights, mailboxes, and repainting the building are aesthetic improvements and do  
18 not qualify as capital improvement costs; and 3) when a tenant objects to the placement of  
19 windows, that costs is not considered a capital improvement cost. All the above issues are  
20 non-sensical arguments.

21 The RAP and hearing officer are experienced with capital improvement  
22 passthrough petitions. The hearing officer is capable of determining if the above listed  
23 issues should be considered capital improvements. No novel issues were presented. Thus,  
24 Appellant’s appeal should be denied on that basis.

25 **C. Appellant fails to show the 2021 Decision is not supported by substantial**  
26 **evidence.**

27 The RAP Board on appeal applies the substantial standard when reviewing the  
28 hearing officer’s decision. The Board’s function is not to decide whether it would have

1 reached the same factual conclusions as the hearing officer. Instead, the Board's task is to  
2 decide whether a reasonable factfinder could have come to the same conclusion based on  
3 the facts in the record. Because the hearing officer observed the witnesses testify, she is in a  
4 better position to decide what happened, who was telling the truth, and how much weight to  
5 give to all the evidence presented. The evidence presented at the hearing demonstrated that  
6 capital pass-through rent increase is proper, and that Respondent met its burden of proof for  
7 such a petition.

8           It is unclear from Appellant's petition what evidence was not supported by  
9 substantial evidence. If we take the same punch list mentioned above - carpet, lights  
10 mailboxes, repainting the building, and installation of windows, Appellant fails to meet his  
11 burden of showing how there was a lack of substantial evidence. Appellant does not dispute  
12 the evidence that was submitted. Instead, he argues that the work involving the carpets,  
13 lighting, and paint were unnecessary; that there is no guarantee that the mailbox will not be  
14 broken into; that he was dissatisfied with the placement of the windows; and that  
15 Respondent is receiving a windfall because Respondent received a discount in the purchase  
16 price because of the required seismic retrofit that was needed.

17           Respondent submitted proof of payments in the form of contracts, invoices, and  
18 bank check paid for the work. The hearing officer reviewed those documents when making  
19 the 2021 Decision and held that Respondent provided sufficient evidence to meet his  
20 burden. The hearing officer held that the seismic retrofit was required by Oakland's law and  
21 any discount in the purchase price is irrelevant; that the new exterior and interior painting of  
22 the common area hallway prevents moisture intrusion into the building; that the replacement  
23 windows make the units more energy efficient, increase sound proofing and prevents leaks  
24 and moisture intrusion; that the new sewer lateral replacement prevents sewage back-ups;  
25 and that the common areas projects such as the carpet, lights, and mailboxes benefit the  
26 tenants. Thus, all these projects qualify as capital improvements because they are for the  
27 primary benefit of the tenants.

1           **D. Appellant was not denied his due process rights at the hearing even though he failed to**  
2           **file a response to Respondent’s petition.**

3           A tenant is required to file a response to an owner’s petition within thirty days of  
4 service of the petition. O.M.C. 8.22.090.5. The Rent Adjustment Program has held, that  
5 when an Appellant does not file a response prior to a hearing, the appellant is not permitted  
6 to present new evidence at the hearing or on appeal. T06-0059-0060; Martinez v. Wu and  
7 T10-0073, Hunter-Nicholson v. Hogan/Vest.

8           Appellant did not allege any issues with service. On the record, Appellant testified  
9 that due to personal issues he was unable to file a response to Respondent’s petition. See  
10 RAP recording at 48:53-49:39. This means Appellant was not permitted to present new  
11 evidence at the hearing. Despite this, the hearing officer permitted Appellant to testify at the  
12 hearing and raise his objections to Respondent’s petition. Appellant was not denied his due  
13 process at the hearing.

14           **E. Appellant filed his Appeal after the deadline.**

15           Oakland Municipal Code 8.22.120 and the 2021 Decision state that either party  
16 may appeal the Hearing Officer’s decision within fifteen days after service of the notice of  
17 decision. Oakland’s rent adjustment regulations 8.22.120.H states, “staff may dismiss an  
18 appeal that is not timely filed”.

19           Based on information from the Rent Adjustment Board’s website, Appellant filed  
20 his appeal on October 15, 2021, one day after the deadline. The RAP received a copy of the  
21 appeal on October 19, 2021. This is no good cause for the late filing and there is no legal  
22 authority to allow the consideration of a late appeal. Thus, Appellant’s Appeal should be  
23 denied.

24           **IV. CONCLUSION**

25           Appellant is the only tenant dissatisfied by this work. The hearing officer and  
26 other tenants in the building believe that that all this work is for the primary benefit of the  
27 tenants and that it increases the safety for all occupants. The hearing officer noted that there  
28 was no evidence provided to show deferred maintenance or gold plating or that any work

1 was performed to correct a code violation related to any part of the project that was subject  
2 to Respondent's petition. See hearing decision page 4, paragraph 3; **Exhibit A**. Thus,  
3 Appellant has failed to provide a valid argument and evidence as to why this work should  
4 not be considered as capital improvements. The appeal should be denied in its entirety.

5  
6 Date: November 19, 2021

FRIED & WILLIAMS LLP

7  
8  DocuSigned by:  
Angie Sandoval  
3FD3AA6FDD0C407...

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Angelica A. Sandoval  
Attorneys for Respondent 37 Moss, LLC and  
11 The Lapham Company Inc.  
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# EXHIBIT B

The screenshot shows a web browser window with the URL [apps.oaklandca.gov/appetitions/SearchCases.aspx](https://apps.oaklandca.gov/appetitions/SearchCases.aspx). The page title is "Rent Adjustment Program". The navigation bar includes "Home", "DashBoard", "Search", and "File a Petition or a Response to a Petition". There are "Login" and "Register" buttons, and an "OAK APPS" logo. The main content is a table with the following data:

Hearing Completed/Decision In-Process	Completed	08-09-2021
Hearing Decision	Submitted	09-20-2021
Hearing Decision Mailed	Completed	09-24-2021
Appeal Due	Action needed	10-14-2021
Other	Submitted	10-15-2021
Appeal submitted	Submitted	10-15-2021
Appeal Acknowledgement Letter	Completed	10-21-2021
Appealed	Completed	10-25-2021
Appeal Date Scheduled	Completed	01-13-2022
Updated Party Contact Information	Submitted	10-27-2021
Appeal Date Rescheduled	Completed	01-27-2022



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**

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

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE**

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

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

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

I served a copy of: Response to Appeal- Rent Adjustment Case No.: L19-0253  
 (insert name of document served)  
 And Additional Documents

and (write number of attached pages) 20 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

**PERSON(S) SERVED:**

Name	Arlo Hale Smith
Address	P.O. Box 20596
City, State, Zip	Piedmont, CA 94620

Name	Waleed Sabrah
Address	37 Moss Ave. Apt. #10
City, State, Zip	Oakland, CA 94610

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 11/19/2021 (insert date served).

Claire Starks  
\_\_\_\_\_  
PRINT YOUR NAME

SIGNATURE  4601A4CC63A34A2...

11/19/2021  
\_\_\_\_\_  
DATE

## CHRONOLOGICAL CASE REPORT

Case No.: L14-0065

Case Name: 525-655 Hyde Street CNML Properties, LLC

Property Address: 3921 Harrison Street, Oakland, CA 94611

Parties:

- Tsegab Assefa (Owner Representative)
- Liz Hart (Owner Representative)
- Angie Sandoval (Owner Representative)
- Clifford Fried (Owner Representative)
- The Honorable Frank Roesch (Representative)
- Ana Mira (Tenant Representative)
- Stanley Amberg (Tenant Representative)
- Alexander Taylor (Tenant)
- Alexandru Butnaru (Tenant)
- Alexandru Vasilescu (Tenant)
- Andrew Simkin (Tenant)
- Angelique Johnson-Martinez (Tenant)
- Bianca Penaloza (Tenant)
- Cooper Spinelli (Tenant)
- Dana Sarvestani (Tenant)
- Elena Butnaru (Tenant)
- Elizabeth VanLanen (Tenant)
- Fernando Garcia (Tenant)
- Jessica Simkin (Tenant)
- Jilleun Eglin (Tenant)
- Julie Amberg (Tenant)
- Kate Garcia (Tenant)
- Lexie Eglin (Tenant)
- Lisa Romero (Tenant)
- Mari Oda (Tenant)
- Ria Cruz (Tenant)
- Steven Miller (Tenant)
- Suzanne Miller (Tenant)
- Tadeusz Butnaru (Tenant)

Todd McMahon (Tenant)  
Tyler Ritter (Tenant)  
Zoe Bridges (Tenant)  
Zvetlana Butnaru (Tenant)

**TENANT APPEALS:**

<u>Activity</u>	<u>Date</u>
Owner Petition filed	November 10, 2014
Tenant Response filed (Johnson)	December 17, 2014
Tenant Response filed (Oda)	December 19, 2014
Tenant Response filed (McMahon)	December 19, 2014
Tenant Response filed (Z. Butnaru)	December 22, 2014
Tenant Response filed (A. Butnaru)	December 22, 2014
Tenant Response filed (Amberg)	December 22, 2014
Tenant Response filed (Simkin & Simkin)	December 22, 2014
Tenant Response filed (Miller)	December 22, 2014
Tenant Response filed (Garcia)	December 23, 2014
Tenant Response filed (Vasilescu & Bridges)	December 23, 2014

**000172**

Tenant Response filed (L. Eglin)	January 13, 2015
Tenant Response filed (J. Eglin)	January 13, 2015
Hearing Date	April 27, 2015
Hearing Decision mailed	May 29, 2015
Owner Appeal filed	June 18, 2015
Tenant's Respond Brief	August 31, 2016
Tenant Amberg Response Brief on Appeal	November 17, 2016
Appeal Decision mailed	March 7, 2017
Order Granting Motion to Augment the Record and Granting Petition for Writ of Mandate	August 23, 2018
Request for Stay of Proceedings	November 13, 2018
Writ of Administrative Mandamus	December 12, 2018
Judgment Granting Writ of Administrative Mandamus	December 12, 2018
Notice of Entry of Judgment and Issuance of Writ	December 13, 2018
Request for Stay of Proceedings	May 13, 2019
Opposition to Request for Stay of Proceedings	May 22, 2019
Order Re Hearings mailed	June 4, 2019

Court of Appeals Decision	February 26, 2021
Hearing Decision mailed	October 4, 2021
Letter from Owner's Attorney	October 15, 2021
Tenant Appeal filed (Amberg)	October 22, 2021
Tenant Appeal filed (McMahon & Oda)	October 22, 2021
Respondent's Response to Appeal	November 23, 2021
Tenant Amberg's Reply to Owner's Response to Appeal	December 6, 2021
Tenant McMahon & Oda's Reply to Owner's Response to Appeal	December 6, 2021

SK

L14-0065 kmi

<b>CITY OF OAKLAND</b> <b>RENT ADJUSTMENT PROGRAM</b> 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	For date stamp. <div style="text-align: center;">           RECEIVED            CITY OF OAKLAND            RENT ADJUSTMENT PROGRAM              2014 NOV 10 AM 10:55    <b>LANDLORD PETITION</b>  <b>FOR CERTIFICATE OF EXEMPTION</b>            (OMC §8.22.030.B)         </div>
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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 525, 655 Hyde Street CNML Properties, LLC	Complete Address (with zip code) Tsegab Assefa c/o Lapham Company 4844 Telegraph Avenue Oakland, CA 94609	Telephone Day: <u>510-594-7600</u>	
Your Representative's Name Liz Hart c/o Fried & Williams LLP	Complete Address (with zip code) 480 Ninth Street Oakland, CA 94607	Telephone Day: <u>510-625-0100</u>	
Property Address 3921 Harrison Street		Total number of units in bldg or parcel. 16	
Type of units (circle one)	<input type="checkbox"/> Single Family Residence (SFR)	<input type="checkbox"/> Condominium	<input checked="" type="checkbox"/> Apartment or Room
If an SFR or condominium, can the unit be sold and deeded separately from all other units on the property?		<input type="checkbox"/> Yes	<input type="checkbox"/> 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:

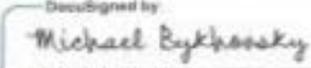
1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
2. Did the prior tenant leave after being a notice of rent increase under Civil Code Section 827?
3. Was the prior tenant evicted for cause?
4. Are there any outstanding violations of building, housing, fire, 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):

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

**Section 4. Verification** Each petitioner must sign this section.

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

DocuSigned by:  
  
 Owner's Signature

11/4/2014  
 Date

Owner's Signature

Date

**Important Information**

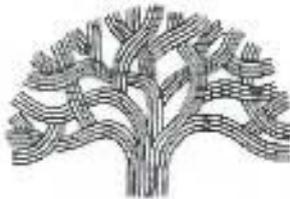
**Burden of Proof** The burden of proving and producing evidence for the exemption is on the Owner. A Certificate of Exemption is a final determination of exemption absent fraud or mistake.

**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.

3921 Harrison Street, Oakland, CA 94611

Tenant Contact Information

- 101: Jilleun Eglin & Lexie Eglin, 3921 Harrison St., #101, Oakland, CA 94611
- 102: Alexandru & Elena Butnaru & Tadeusz Butnaru, 3921 Harrison St., #102, Oakland, CA 94611
- 103: Angelique Johnson-Martinez, 3921 Harrison St., #103, Oakland, CA 94611
- 104: Zvetlana Butnaru, 3921 Harrison St., #104, Oakland, CA 94611
- 105: Alexander Michael Taylor & Ria Cruz, 3921 Harrison St., #105, Oakland, CA 94611
- 201: Suzanne Miller, 3921 Harrison St., #201, Oakland, CA 94611
- 202: Fernando Garcia & Kate Flick Garcia, 3921 Harrison St., #202, Oakland, CA 94611
- 203: Cooper Spinelli & Dana Sarvestani, 3921 Harrison St., #203, Oakland, CA 94611
- 204: Bianca Penalosa, 3921 Harrison St., #204, Oakland, CA 94611
- 205: Lisa Romero, 3921 Harrison St., #205, Oakland, CA 94611
- 301: Alexandru Vasilescu & Zoe Bridges, 3921 Harrison St., #301, Oakland, CA 94611
- 302: Julie Amberg, 3921 Harrison St., #302, Oakland, CA 94611
- 303: Tyler Ritter, 3921 Harrison St., #303, Oakland, CA 94611
- 304: Mari Oda & Todd McMahon, 3921 Harrison St., #304, Oakland, CA 94611
- 305: Andrew Simkin & Jessica Simkin, 3921 Harrison St., #305, Oakland, CA 94611
- Penthouse: Steven Miller & Elizabeth VanLanen 3921 Harrison St. PH, Oakland, CA 94611



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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

RECEIVED  
for Data-Stamp Only AND  
RENT ARBITRATION PROGRAM  
2014 DEC 17 PM 3:05

CASE NUMBER L14-0065

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 <i>Angelique Johnson</i>	Complete Address (with Zip Code) <i>3921 HARRISON ST. #103, OAKLAND, CA 94611</i>	Telephone <i>510-658-8799</i>
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 \_\_\_\_\_

**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.**

<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>  
<sup>2</sup> <http://www.oaklandnet.com/government/hcd/rentboard/rules.html>

**Verification**

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

  
\_\_\_\_\_  
Tenant's Signature

17 December 2014  
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**

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

for Date Stamp Only. RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2014 DEC 19 AM 11:27

CASE NUMBER L14-0065

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 <b>MARI ODA</b>	Complete Address (with Zip Code) <b>3921 HARRISON ST, #304 OAKLAND, CA 94611</b>	Telephone <b>510-207-8263</b>
Your Representative's Name —	Complete Address (with Zip Code) —	Telephone —

Number of Units on the parcel:

**16**

The unit I rent is:

a house

an apartment

a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

**11-25-81**

Date you moved into this unit:

**12-1-1981**

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 **11-20-2014**

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

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

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

*Tenant Response*

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.

*Mani Oke*

*12-14-2014*

Tenant's Signature

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.

I AM DISPUTING THE OWNER'S REQUEST FOR EXEMPTION. WE HAVE RECEIVED ADJUSTMENTS TO OUR RENT ON A SCHEDULED BASIS, INCLUDING AN ADJUSTMENT FOR CAPITAL IMPROVEMENTS IN 2012. THE OWNER'S RECENT PROJECT WAS ORIGINALLY ANNOUNCED AS A ROOF REPLACEMENT SCHEDULED TO BEGIN DECEMBER 16, 2013 AND END JANUARY 7, 2014. SINCE WORK BEGAN, THE OWNER CONTINUED TO ADD MORE CONSTRUCTION WITH SIGNIFICANT INCONVENIENCE TO THE TENANTS. IN THE END, WHAT WAS ORIGINALLY A ROOF REPLACEMENT LASTING A FEW WEEKS HAD BEEN EXTENDED INTO A PROJECT LASTING OVER SIX MONTHS.



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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

RECEIVED  
for Date Stamped Only: OAKLAND  
RENT ADJUSTMENT PROGRAM  
2014 DEC 19 AM 11:27

CASE NUMBER L14-0065

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 <i>TODD McMAHON</i>	Complete Address (with Zip Code) <i>3921 HARRISON ST #304 OAKLAND CA 94611</i>	Telephone <i>(510) 306-4114</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

*16*

The unit I rent is:

a house

an apartment

a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

*5-18-2004*

Date you moved into this unit:

*5-18-2004*

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 *NOV 20, 2014*

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.

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

<sup>1</sup> <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.

Tom McMan  
Tenant's Signature

12-14-2014  
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.

*I dispute the new owners claim of SUBSTANTIAL REHABILITATION. Only outside of the building was Re-stuccoed, along with very partial interior remodeling of 4 or 5 units. Owner may have opened a can of worms, and the project was continually expanded, as substantial structural defects were found. The cost of the Rehabilitation is less than 50% (FIFTY PERCENT) of new construction of 116 UNIT BUILDING, with 13 parking spots.*

Mari Oda/Todd McMahon Rent Adjustment History  
 3921 Harrison St, #304  
 Oakland, CA 94611

Effective Date	Rent Increase	Comment
1-May-2013	47.40	
1-May-2012	82.00	2% CPI plus capital improvements. Temporary for 60 months.
1-Aug-2011	18.59	
1-Aug-2010	24.43	
1-Aug-2009	6.29	
1-Aug-2008	27.87	
1-Aug-2007	24.00	
1-Aug-2006	27.05	
1-Jul-2005	15.25	
1-Jun-2004	23.00	
1-Jun-2003	27.00	
1-Jun-2002	21.50	Adjustment within 6 months of previous adjustment
1-Dec-2001	60.00	
1-Jun-2000	20.00	
1-Jun-1999	53.00	
1-Dec-1991	10.00	
1-Dec-1990	10.00	
1-Dec-1989	28.00	
1-Dec-1988	31.00	
1-Dec-1987	30.00	
1-Dec-1986	28.00	
1-Dec-1985	35.00	
1-Dec-1984	32.00	
1-Dec-1983	36.00	
1-Dec-1982	33.00	

March 22, 2013

Mari Oda Todd McMahon  
3921 Harrison Street 304  
Oakland, CA 94611

***RE: RENT ADJUSTMENT***

Dear Mari Oda Todd McMahon:

Enclosed you will find a notice of a modest rental rate adjustment which become effective as of May 1, 2013. As you know, Oakland has a rent control ordinance that limits how much an annual rent adjustment can be, and for the year July 1, 2012 – June 30, 2013, the allowable annual adjustment is 3%. Last year's, the allowable rate was 2%.

You will note that the noticed rent adjustment for this year is more than 3%. The reason for the additional amount above 3% is that the owner applied a prior year's rent increase that was not taken at the allowable time, and therefore, that unapplied allowable increase was "banked" to future year(s). This "Banked Rent" application is allowed under Oakland's rent ordinance provided that the total rent adjustment does not exceed the times the current allowable rent adjustment. For this year, that maximum limitation is 9% ( $3 \times 3\% = 9\%$ ), and the rent increase on the attached notice remains below that 9% maximum value.

If you have any questions, please don't hesitate to call our office at 510-594-7600.

Thank you.

***LAPHAM COMPANY – Accounting  
Agent of Property Owner***

**LAPHAM**

REAL PROPERTY ASSET MANAGEMENT

Email: [info@laphamcompany.com](mailto:info@laphamcompany.com)

[www.laphamcompany.com](http://www.laphamcompany.com)

**000185**

March 22, 2013

**\*\* NOTICE TO CHANGE TERMS OF TENANCY \*\***

To :

Mari Oda Todd McMahon  
3921 Harrison Street 304  
Oakland, CA 94611

Dear Mari Oda Todd McMahon,

You are hereby notified that that the terms of tenancy under which you occupy the above described premises is to be changed.

It has been twelve months or more since your rental rate was reviewed and or adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset city, county, and state taxes that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective, 5/1/2013 your rent will be increased by \$47.40 per month, from \$947.98 per month, to \$995.38 per month, payable in advance.

As a reminder, the City of Oakland has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City.

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact our office at (510) 594-7600 for information about the allowed increase under local Ordinance #9980 and addenda. While we have provided this information to your previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the property owner that the balance of any allowed rent increases under the Ordinance are banked under provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

  
\_\_\_\_\_  
Owner/Agent

This notice was served by the Owner/Manager in the following manner (check those which apply):

- by personal delivery to the tenant,  
 by leaving a copy with someone on the premises other than the tenant,  
 by mailing  
 by posting.

The Lapham Company  
4844 Telegraph Avenue  
Oakland, CA 94609  
(510) 594-7600

000186

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM  
SUPPLEMENT REQUIRED WITH NOTICE INCREASING RENT OR CHANGING  
TERMS OF TENANCY

Oakland has a Rent Adjustment Program that limits rent increases.

A rental property owner may increase rent only once every 12 months. A tenant who receives a rent increase above an annual amount (CPI Rent Adjustment) may petition the Rent Adjustment Program to require the owner to justify the amount of the increase in excess of the CPI Rent Adjustment. A tenant must file the petition within 60 days of the owner's serving the rent increase notice or the tenant gives up the right to contest the increase.

When a rent increase exceeds the CPI amount allowed, a tenant may request a summary of the justifications for the rent increase from the owner. The request must be made in writing within 30 days of receipt of the notice of increase. The owner must provide a written response within 15 days of the tenant serving the request for the summary or the increase notice is invalid.

The tenant and the owner are encouraged to communicate with each other to resolve their differences without the need for filing a petition.

The current annual increase allowed is 3%

This notice provides limited information. For further information, contact the Rent Adjustment Program at 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA 94612 - (510) 238-3721.

Optional by owner: If you file a petition with the Rent Program on the petition is decided by the Rent Adjustment Program. This amount is \$ \_\_\_\_\_

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served this rent increase, you must pay the amount of the increase equal to the CPI Rent Adjustment until the Change of Terms of Tenancy and Supplemental Notice, of which this is a true copy, on the above mentioned Tenant in Possession in the manner(s) indicated below:

On \_\_\_\_\_ I handed the Notice to the tenant .

I handed the Notice to a person of suitable age and discretion at the tenant's residence / business on \_\_\_\_\_ .

I posted the Notice in a conspicuous place at the tenant's residence on \_\_\_\_\_

I sent by 1<sup>st</sup> class mail a true copy of the Notice to the tenant at his place of residence on March 22, 2013

Executed March 22, 2013, at Oakland, CA

See Reverse

000187



# CITY OF OAKLAND

P.O. BOX 70243, OAKLAND, CALIFORNIA 94612-0243

Community and Economic Development Agency  
Rent Adjustment Program

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

## NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM

- The City of Oakland has a Residential Rent Adjustment Program ("RAP") (Chapter 8.22 of the Oakland Municipal Code) that covers most residential rental units built before 1983. It does not apply to units rented under section 8, most single family dwellings and condominiums and some other types of units. For more information on which units are covered, call the RAP office. This Program limits rent increases and some changes in terms of tenancy for covered residential rental property in Oakland.
- You have a right to file a petition with the RAP to contest a rent increase that is greater than the annual general rent increase (the CPI increase). A landlord can increase rent more than the CPI rate, but with some limits, for: capital improvements, operating expense increases, debt service, and deferred annual rent increases. You can also complain about other violations of the Rent Adjustment Ordinance. The landlord must provide you with a written summary of the reasons for any increase greater than the CPI rate if you request one in writing.
- If there is a decrease in the housing services provided to you, this may be considered an increase in your rent. A decrease in housing service includes substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP using the Rent Program's form, within sixty (60) days after first receiving written notice of the RAP or within sixty (60) days of receiving a notice of rent increase or change in terms of tenancy, whichever is later. You can obtain information and the petition forms from the Rent Adjustment Program office or online at <http://www.oaklandnet.com/government/hod/rentboard/tenant.html>
- If you contest a rent increase, you must pay your rent, with the contested increase, until you file a petition. After you file your petition, you may pay only the portion of the increase due to the CPI Rent Adjustment percentage if the CPI increase amount has been stated on the notice of rent increase. If it has **not** been stated separately, you may pay only the rent you were paying before the notice of rent increase. If the increase is approved and you did not pay the increase as noticed, you will owe the amount of the increase retroactive to the date it would have been effective under the notice.
- Eviction controls are in effect in the City of Oakland (the Just Cause for Eviction Ordinance, O.M.C. 8.22.200, et seq.). You cannot be arbitrarily evicted if your rental unit is covered by the Just Cause for Eviction Ordinance. For more information call the Rent Adjustment Office.

Oakland charges landlords a Rent Program Service Fee of \$30 per unit per year. If the landlord pays the fee on time, the landlord is entitled to get half of the fee (\$15) per unit from you. The \$15 you pay for the annual fee is not part of the rent.

The Nuisance Eviction Ordinance (O.M.C. Chapter 8.23) may require that a tenant who commits or permits certain illegal acts in the Rental Unit or on the land on which the unit is located or in the common areas of the rental complex **must** be evicted. If the owner does not evict, the City Attorney may do so.

### TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit A <sup>all units in the building</sup> the unit you plan to rent.
- Smoking (circle one) IS or IS NOT permitted in other units of your building. (If both smoking and non-smoking units exist in the tenant's building, attach a list of units in which smoking is permitted.)
- Smoking is PROHIBITED in all common areas, both indoors and outdoors.
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_

\_\_\_\_\_

此份呈寄 (奧克蘭) 市租客權利通知書附有中文版本。請致電 (510) 238-3721 索取副本。

La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.

Bản Thông Báo quyền lợi của người thuê trong Oakland này cũng có bản tiếng Việt. Để có một bản sao, xin gọi (510) 238-3721.

March 23, 2012

Mari Oda  
Todd McMahon  
3921 Harrison Street #304  
Oakland, California 94611

***RE: CAPITAL RENTAL ADJUSTMENT***

Dear Mari and Todd:

Enclosed you will find a NOTICE OF CHANGE OF TERMS OF TENANCY wherein your rent will be raised as of **May 1, 2012**. As you may know, Oakland has a rent ordinance placing limits on rent increases by property owners. Generally, increases are limited to the CPI raise that requires no justification. Currently, the CPI limit is 2.0%. There are several specific reasons wherein a property owner can exceed this limit as is the case here. The justification for the increase in your case is based on **capital improvements**. In this case, the specific justification is the recent structural and access upgrades to the building.

Below you will find the relevant portion of the rent ordinance that deals with increases beyond the CPI limit. If you would like to look at the original text on the City's website, the address is [http://www.oaklandnet.com/government/bcd/rents/and\\_tenant.html#limits](http://www.oaklandnet.com/government/bcd/rents/and_tenant.html#limits). If you refer to the blue hyperlink entitled **specific reasons**, you see the City's explanation of other methods that are permissible. You can also contact the rent office by phone at 510.238.3501 and speak with a housing officer. If you do call, please make sure to mention that the justification for the increase beyond CPI is CAPITAL IMPROVEMENTS.

**Rent Increase Limits:**

Increases are limited to the CPI increase announced each year by the Residential Rent Adjustment Program unless the landlord can justify a higher amount. The law limits these to specific reasons for a higher rent increase.

- Only one increase is allowed in a twelve-month period.
- Generally, if tenants do not file a petition within 60 days of receiving a rent increase, they will lose their rights to challenge the increase.
- In most cases, there is no limit on increases when a tenant moves out and a new tenant moves in. Once the new tenant moves in, future increases are limited by the Rent Law.

March 23, 2012

**\*\* NOTICE TO CHANGE TERMS OF TENANCY \*\***

To :  
Mari Oda Todd McMahon  
3921 Harrison Street 304  
Oakland, CA 94611

Dear Mari Oda Todd McMahon,  
You are hereby notified that that the terms of tenancy under which you occupy the above described premises is to be changed.

It has been twelve months or more since your rental rate was reviewed and or adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset city, county, and state taxes that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective, 05/01/2012 your rent will be increased by \$82.00 per month, from \$947.98 per month, to \$1029.98 per month, payable in advance. This \$82.00 rent adjustment is temporary for 60 months only.

As a reminder, the City of Oakland has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City.

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact our office at (510) 594-7600 for information about the allowed increase under local Ordinance #9980 and addenda. While we have provided this information to your previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the property owner that the balance of any allowed rent increases under the Ordinance are banked under provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

  
\_\_\_\_\_  
Owner/Agent

This notice was served by the Owner/Manager in the following manner (check those which apply):

- by personal delivery to the tenant,  
 by leaving a copy with someone on the premises other than the tenant,  
 by mailing  
 by posting.

The Lapham Company  
4844 Telegraph Avenue  
Oakland, CA 94609  
(510) 594-7600

MAILED  
MAR 23 2011  
MAILED

000190

CITY OF OAKLAND RENT ADJUSTMENT PROGRAM  
SUPPLEMENT REQUIRED WITH NOTICE INCREASING RENT OR CHANGING  
TERMS OF TENANCY

Oakland has a Rent Adjustment Program that limits rent increases.

A rental property owner may increase rent only once every 12 months. A tenant who receives a rent increase above an annual amount (CPI Rent Adjustment) may petition the Rent Adjustment Program to require the owner to justify the amount of the increase in excess of the CPI Rent Adjustment. A tenant must file the petition within 60 days of the owner's serving the rent increase notice or the tenant gives up the right to contest the increase.

When a rent increase exceeds the CPI amount allowed, a tenant may request a summary of the justifications for the rent increase from the owner. The request must be made in writing within 30 days of receipt of the notice of increase. The owner must provide a written response within 15 days of the tenant serving the request for the summary or the increase notice is invalid.

The tenant and the owner are encouraged to communicate with each other to resolve their differences without the need for filing a petition.

The current annual increase allowed is 2%

This notice provides limited information. For further information, contact the Rent Adjustment Program at 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA 94612 - (510) 238-3721.

Optional by owner: If you file a petition with the Rent Program on the petition is decided by the Rent Adjustment Program. This amount is \$ \_\_\_\_\_

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served this rent increase, you must pay the amount of the increase equal to the CPI Rent Adjustment until the Change of Terms of Tenancy and Supplemental Notice, of which this is a true copy, on the above mentioned Tenant in Possession in the manner(s) indicated below:

On \_\_\_\_\_ I handed the Notice to the tenant .

I handed the Notice to a person of suitable age and discretion at the tenant's residence / business on \_\_\_\_\_ .

I posted the Notice in a conspicuous place at the tenant's residence on \_\_\_\_\_

I sent by 1<sup>st</sup> class mail a true copy of the Notice to the tenant at his place of residence on March 23, 2012

Executed March 23, 2012, at Oakland, CA



See Reverse

000191



# CITY OF OAKLAND

P.O. BOX 70243, OAKLAND, CALIFORNIA 94612-0243

Community and Economic Development Agency  
Rent Adjustment Program

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

## NOTICE TO TENANTS OF RESIDENTIAL RENT ADJUSTMENT PROGRAM

- The City of Oakland has a Residential Rent Adjustment Program ("RAP") (Chapter 8.22 of the Oakland Municipal Code) that covers most residential rental units built before 1983. It does not apply to units rented under section 8, most single family dwellings and condominiums and some other types of units. For more information on which units are covered, call the RAP office. This Program limits rent increases and some changes in terms of tenancy for covered residential rental property in Oakland.
- You have a right to file a petition with the RAP to contest a rent increase that is greater than the annual general rent increase (the CPI increase). A landlord can increase rent more than the CPI rate, but with some limits, for: capital improvements, operating expense increases, debt service, and deferred annual rent increases. You can also complain about other violations of the Rent Adjustment Ordinance. The landlord must provide you with a written summary of the reasons for any increase greater than the CPI rate if you request one in writing.
- If there is a decrease in the housing services provided to you, this may be considered an increase in your rent. A decrease in housing service includes substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP using the Rent Program's form, within sixty (60) days after first receiving written notice of the RAP or within sixty (60) days of receiving a notice of rent increase or change in terms of tenancy, whichever is later. You can obtain information and the petition forms from the Rent Adjustment Program office or online at <http://www.oaklandnet.com/government/hcd/rentboard/tenant.html>
- If you contest a rent increase, you must pay your rent, with the contested increase, until you file a petition. After you file your petition, you may pay only the portion of the increase due to the CPI Rent Adjustment percentage if the CPI increase amount has been stated on the notice of rent increase. If it has **not** been stated separately, you may pay only the rent you were paying before the notice of rent increase. If the increase is approved and you did not pay the increase as noticed, you will owe the amount of the increase retroactive to the date it would have been effective under the notice.
- Eviction controls are in effect in the City of Oakland (the Just Cause for Eviction Ordinance, O.M.C. 8.22.200, et seq.). You cannot be arbitrarily evicted if your rental unit is covered by the Just Cause for Eviction Ordinance. For more information call the Rent Adjustment Office.

Oakland charges landlords a Rent Program Service Fee of \$30 per unit per year. If the landlord pays the fee on time, the landlord is entitled to get half of the fee (\$15) per unit from you. The \$15 you pay for the annual fee is not part of the rent.

The Nuisance Eviction Ordinance (O.M.C. Chapter 8.23) may require that a tenant who commits or permits certain illegal acts in the Rental Unit or on the land on which the unit is located or in the common areas of the rental complex **must** be evicted. If the owner does not evict, the City Attorney may do so.

### TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) **IS** or IS NOT permitted in Unit A, <sup>all units in the building</sup> the unit you plan to rent.
- Smoking (circle one) IS or IS NOT permitted in other units of your building. (If both smoking and non-smoking units exist in the tenant's building, attach a list of units in which smoking is permitted.)
- Smoking is **PROHIBITED** in all common areas, both indoors and outdoors.
- There (circle one) IS or **IS NOT** a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_

此份屋寄(奧克蘭)市租客權利通知書附有中文版本。請致電(510) 238-3721 索取副本。  
 La Notificación del Derecho del Inquilino está disponible en español. Si desea una copia, llame al (510) 238-3721.  
 Bản Thông Báo quyền lợi của người thuê trong Oakland này cũng có bằng tiếng Việt. Để có một bản sao, xin gọi (510) 238-3721.



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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

RECEIVED  
for Date Stamp Only  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2014 DEC 22 AM 10:54  
CASE NUMBER L14-0065

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 <i>Zvetlana Butnaru</i>	Complete Address (with Zip Code) <i>3921 Harrison St. #104 Oakland, CA 94611</i>	Telephone <i>646-831-5049</i>
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 Nov. 19<sup>th</sup> 2014

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

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

Tenant Response

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.

*C. Brubaker*  
Tenant's Signature

12/22/2014  
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**

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

For Date Stamping Only  
RENT ADJUSTMENT PROGRAM  
2014 DEC 22 AM 10:54

CASE NUMBER L14-0065

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 <i>Alexandry Butnary</i>	Complete Address (with Zip Code) <i>3921 Harrison St. # 102, Oakland, CA 94611</i>	Telephone <i>(510) 595-7792</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

*16*

The unit I rent is:

a house

an apartment

a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

*May, 2009*

Date you moved into this unit:

*May, 2009*

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

*Nov. 19<sup>th</sup>, 2014*

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

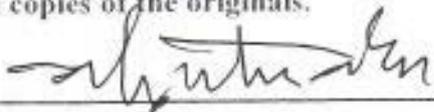
<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

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

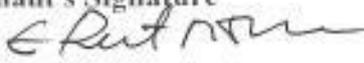
*Tenant Response*

Verification

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



Tenant's Signature



12/22/2014

Date

12/22/2014

Tenant's Signature

T. Butmaru

Date

12/22/2014

**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**

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

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2014 DEC 22 PM 3:44

CASE NUMBER L14-0065

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 <i>Julie Amberg (and young child)</i>	Complete Address (with Zip Code) <i>3921 Harrison St. #302 Oakland, CA 94611</i>	Telephone (private/unlisted) <i>510-506-6006</i>
Your Representative's Name <i>(Reserve Right to (re)assign representative at later Date (by Landlord))</i>	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

*16*

The unit I rent is:

a house

an apartment

a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

*July 1996*

Date you moved into this unit:

*July-Aug 1996*

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

If you are lawfully withholding rent, attach a written explanation of the circumstances. *(actually have a credit for over-payment)*

**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. *(see over)* →

Please list the date you first received the Notice to Tenants *November 25, 2014*

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.

① *5/8/2013 & 11/28/2013 → \$97.15/mo - \$67.26/mo (see RAP case T12-0151 in folder)*

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

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

Rev. 7/1/02

② *03/23/2012 - \$82.00/month (will submit notice later if needed. per with mason)*  
③ *08/01/2011 - \$23.81/mo (from \$1,192.15/mo to \$1215.99/mo) (mailed 6/23/2011)*

*Please note I was charged 2 increases in a 12m period*

John Amberg  
 3121 Harrison St  
 #202  
 Oakland  
 L14-0065  
 (From RAP case T12-0151)

payments is identical to the payment in question, and the last payment is for the last third of the progress payments. The cost estimate, the invoices and cancelled checks for the first two-thirds of the work, and the canceled check for the last payment are sufficient evidence to support the capital improvement cost under Keith Construction invoice 2132 for the last progress payment of \$17,793.60.

Pursuant to the Hearing Decision dated November 28, 2013, the allowed capital improvement allocation is itemized in the following table:

**CAPITAL IMPROVEMENTS**

Improvements and repairs benefitting all units 15

IMPROVEMENT OR REPAIR	DATE COMPLETED	COST ALLOWED	MONTHLY COST PER UNIT
Balconies/Railings	1-Jan-12	\$56,613 <sup>4</sup>	\$58.98
Painting	12-Mar-12	\$2,552	\$ 2.66
Garage Gate	14-Jun-11	\$5,394	\$5.62
TOTAL		\$64,559	\$67.26

RECEIVED  
 CITY OF OAKLAND  
 RENT ARBITRATION PROGRAM  
 2014 DEC 22 PM 3:44

**ORDER**

1. Tenant petition T12-0151 is granted in part.
2. The owner may increase the tenant's rent by \$67.26 monthly based on capital improvements. The capital improvements pass-through expires five years from May 1, 2012, the effective date of the pass-through.
3. The total rent payment for tenant Amberg is stated below as follows:

Base rent	\$1,215.99 per month
Plus capital improvement pass-through 5/1/12-4/30/17	\$ 67.26 per month
Plus tenant underpayment for May-2012-May 2013-\$67.26 x 13=\$874.38 divided by 9=\$97.15	\$ 97.15 per month
Rent payment for June 2013-February 2014	\$ 1,380.40 per month

Right to Appeal: This decision is the final decision of the Rent Adjustment Program Staff. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received

<sup>4</sup> This total includes \$3,231, which consisted of engineering fees and field support, supported by cancelled check number 68845, affirmed by the Board at the Appeal Hearing, Ex. no. pp. 23,34



? 12832

1215  
 + 67.26  
 = 1282.25

Tenant Response

June 22, 2011

L14-0065  
①

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

\*\* NOTICE TO CHANGE TERMS OF TENANCY 2014 DEC 22 PM 3:44

To :  
Julie Amberg  
3921 Harrison Street 302  
Oakland, CA 94611

Dear Julie Amberg ,  
You are hereby notified that that the terms of tenancy under which you occupy the above described premises is to be changed.

It has been twelve months or more since your rental rate was reviewed and or adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset city, county, and state taxes that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective, 06/01/2011 your rent will be increased by \$23.84 per month, from \$1,192.15 per month, to \$1,215.99 per month, payable in advance.



As a reminder, the City of Oakland has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City.

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact our office at (510) 594-7600 for information about the allowed increase under local Ordinance #9980 and addenda. While we have provided this information to your previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the property owner that the balance of any allowed rent increases under the Ordinance are banked under provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

Owner/Agent

This notice was served by the Owner/Manager in the following manner (check those which apply):

- by personal delivery to the tenant,
- by leaving a copy with someone on the premises other than the tenant,
- by mailing
- by posting.

The Lapham Company  
4844 Telegraph Avenue  
Oakland, CA 94609  
(510) 594-7600

RECEIVED  
JUN 22 2011  
MAY 23

000199

L14-0065 (2)  
CITY OF OAKLAND RENT ADJUSTMENT PROGRAM  
SUPPLEMENT REQUIRED WITH NOTICE INCREASING RENT OR CHANGING  
TERMS OF TENANCY

Oakland has a Rent Adjustment Program that limits rent increases.

A rental property owner may increase rent only once every 12 months. A tenant who receives a rent increase above an annual amount (CPI Rent Adjustment) may petition the Rent Adjustment Program to require the owner to justify the amount of the increase in excess of the CPI Rent Adjustment. A tenant must file the petition within 60 days of the owner's serving the rent increase notice or the tenant gives up the right to contest the increase.

When a rent increase exceeds the CPI amount allowed, a tenant may request a summary of the justifications for the rent increase from the owner. The request must be made in writing within 30 days of receipt of the notice of increase. The owner must provide a written response within 15 days of the tenant serving the request for the summary or the increase notice is invalid.

The tenant and the owner are encouraged to communicate with each other to resolve their differences without the need for filing a petition.

The current annual increase allowed is 2.7%

This notice provides limited information. For further information, contact the Rent Adjustment Program at 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA 94612 - (510) 238-3721.

Optional by owner: If you file a petition with the Rent Program on the petition is decided by the Rent Adjustment Program. This amount is \$ \_\_\_\_\_

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served this rent increase, you must pay the amount of the increase equal to the CPI Rent Adjustment until the Change of Terms of Tenancy and Supplemental Notice, of which this is a true copy, on the above mentioned Tenant in Possession in the manner(s) indicated below:

On \_\_\_\_\_, 22 \_\_\_\_ I handed the Notice to the tenant .

I handed the Notice to a person of suitable age and discretion at the tenant's residence / business on \_\_\_\_\_, 22 \_\_\_\_ .

I posted the Notice in a conspicuous place at the tenant's residence on \_\_\_\_\_, 22 \_\_\_\_ .

I sent by 1<sup>st</sup> class mail a true copy of the Notice to the tenant at his place of residence on June 22, 2011

Executed June 22, 2011, at Oakland, CA

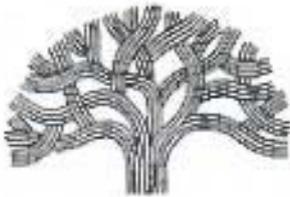


2014 DEC 22 PM 3:44

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM

000200





**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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

RECEIVED  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2014 DEC 22 PM 2:40

CASE NUMBER L14-0065

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 <i>Jessica Simkin Andrew Simkin</i>	Complete Address (with Zip Code) <i>3721 Harrison St. #205 Oakland, CA 94611</i>	Telephone <i>818-469-0625</i>
Your Representative's Name <i>—</i>	Complete Address (with Zip Code) <i>—</i>	Telephone <i>—</i>

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 11/24/14

**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.**

*May 2011 - 1,110/month; June 2012 - 1,200/month; June 2013 - 1,250.85/month*

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

Apr 23, 2013

**\*\* NOTICE TO CHANGE TERMS OF TENANCY \*\***

To :  
Andrew Simkin Jessica Simkin  
3921 Harrison Street 305  
Oakland, CA 94611

Dear Andrew Simkin Jessica Simkin,  
You are hereby notified that that the terms of tenancy under which you occupy the above described premises is to be changed.

It has been twelve months or more since your rental rate was reviewed and or adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset city, county, and state taxes that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective, 6/1/2013 your rent will be increased by \$32.85 per month, from \$1,170.00 per month, to \$1,202.85 per month, payable in advance. Please note as there is a previous capital improvement increase of \$30.00 that needs to be calculated into your overall rent increase. You will also note that this year's increase was calculated only using your base rent and not the capital improvement amount. Therefore, your total rent obligation is \$1,232.85.

As a reminder, the City of Oakland has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City.

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact our office at (510) 594-7600 for information about the allowed increase under local Ordinance #9980 and addenda. While we have provided this information to your previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the property owner that the balance of any allowed rent increases under the Ordinance are banked under provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

  
\_\_\_\_\_  
Owner/Agent

This notice was served by the Owner/Manager in the following manner (check those which apply):

- by personal delivery to the tenant,  
 by leaving a copy with someone on the premises other than the tenant,  
 by mailing  
 by posting.

The Lapham Company  
4844 Telegraph Avenue  
Oakland, CA 94609  
(510) 594-7600

MAILED  
APR 24 2013  
MAILED

000203

December 21, 2014

City of Oakland  
Rent Adjustment Program  
250 Frank H. Ogawa Plaza, Suite 5313  
Oakland, CA 94612

To Whom It May Concern:

We are writing to dispute the Certificate of Exemption our landlord is pursuing with the Rent Adjustment Program for the building at 3921 Harrison Street. There are several reasons why this petition should be denied.

We first received notice of this petition on November 24, 2014, and according to the notice our response is due by December 23, 2014 (35 days from the date the notice was mailed, which was November 19, 2014). It is unfair to hold the tenant review time period during the holiday season when many individuals, including ourselves, are busier now than during the rest of the year and do not have a reasonable amount of time to respond to this important petition. The Rent Adjustment Program should extend the comment period for tenants by 30 days (and therefore push back the March 18 hearing by a month as well) so that all tenants have sufficient time after the holidays to adequately review and respond to the notice instead of trying to unfairly push this review time through during the holidays. Many people are traveling or spending time with friends and family and are not around or available to respond. In addition, many legal aid representatives are also taking time off during the holidays, making it difficult to find the appropriate legal resources tenants need to make informed decisions. Especially since the review time included Thanksgiving, which is a federal holiday, the comment time for tenants should be extended to ensure a fair process moving forward and that all who would like to comment on the petition are afforded the ability to do so.

The work that was done on our apartment building this past year does not qualify as capital improvement work, but was rather delayed maintenance work that a landlord is required to provide in order to ensure the health and safety of their tenants. Many of the items completed were unnecessary and were either a result of poor coordinating with the contractor or a desire to spend a large amount of money in order to qualify for the exemption the landlord is now seeking. For example, when we moved into our apartment in May 2011, we already had plastic framed (energy efficient) windows. However during construction the contractor removed our existing windows and replaced them with the exact same windows we already had. This work was unnecessary as there was no change from existing conditions or net benefit. The landlord should not be able to seek reimbursement from tenants for this type of work that was unnecessary and provided no benefit to the tenant.

Several units in the building received remodeled kitchens/bathrooms/etc during construction. Our unit received no such improvements. The Rent Adjustment Program must ensure that the amount the landlord is claiming was spent on the building does not include any remodeling work that was completed in individual units by requesting itemized receipts listing what was spent where. Tenants that

did not receive remodeling work in their units should not have to pay higher rent to help the landlord pay for new fixtures and appliances we do not get to enjoy or use.

During the building construction and ever since, there are several cracks above the corners of the windows and doors within our unit. We have reported these cracks to the property management company (Lapham), but every time the construction contractor (Gallagher) comes out to fix the cracks they just paint over them and walk away. A few weeks later, the cracks begin to show again. They have attempted to fix the cracks so many times that the paint covering the cracks up is now textured and spotty and does not match the rest of the paint. We have not benefited from this work (the interior walls of our apartment look worse than when construction began) and so should not have to pay higher rent for this work.

Prior to the work on the apartment building, we had a metal awning over our balcony that provided shade in the summer and cover during rain. As part of the construction work on the building, this awning was removed and never replaced. Now all of our plants and patio furniture/amenities either receive direct sunlight or get pounded during rain events, making this space worse off than prior to the work on the building taking place. About two weeks ago during a rain event, we noticed a leak in our ceiling where the furnace is located. A roofer has had to come out twice to fix it. We were told that a brand new roof was put on the building around the end of 2013, but if that is the case how can it already be leaking? Work that has been done to the building has been of poor quality, and we are no better off than before this work was completed.

During construction, there were several inefficiencies in how the work was performed that the tenants should not have to pay for. Scaffolding first went up around the building in December 2013, but was then taken down a week later, just to be put back up again in January 2014. Often crews would show up at 8AM just to leave a couple hours later. Often in construction if you reserve a crew, you pay them for the entire day regardless of whether or not they worked a full day. The Rent Adjustment Program must ensure that what was spent by the landlord was for work that was done in as efficient a manner as possible and that the tenants are not forced to pay for the mistakes and poor planning of the contractor.

This construction project disrupted our lives month after month. We were not able to work at home due to the noise and the uncertainty of when the contractor would be entering our apartment (their notices to enter would cover days and weeks at a time, while other times they would enter without prior written notice). We did not have use of our balconies for several months, and had our outdoor patio furniture/plants/etc cluttered up around our dining area. We couldn't even look out of the windows for months because there was plastic sheeting up during the lead/asbestos removal process and also because there were contractors walking back and forth at all and odd hours of the day. The scaffolding that remained around our apartment also became an open invitation to thieves, who one night climbed the scaffolding to the third floor, broke into the apartment building, took the elevator down to the parking garage, and broke into at least one tenant's car. All the tenants had to endure with months and months of a never ending construction project, and we have not been fairly compensated for loss of usable square footage of our unit during the construction project during this time.

The purpose of rent stabilization regulations is to protect tenants from drastic increases in rent that would force them out of their home and potentially the area. We believe that the construction work that was done on our apartment building was not for the benefit of the tenants, but rather was used by the landlord as a means to circumvent the law and now file for a Certificate of Exemption so that our

rent can be drastically increased, allowing the landlord to either make a larger profit off of the higher rent or potentially sell the building for much more than when they purchased it in 2013. Please use your best judgment to ensure that the tenants of this building are not exploited and potentially forced out of the community.

Sincerely,

Andrew and Jessica Simkin  
3921 Harrison Street, Apt 305  
Oakland, CA 94611

**Verification**

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

  
\_\_\_\_\_  
Tenant's Signature

12/21/14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Tenant's Signature

12/21/2014  
\_\_\_\_\_  
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**

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

for Date Stamp Only  
CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM  
2014 DEC 22 AM 11:23

CASE NUMBER L14-0065

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 <b>Suzanne Miller</b>	Complete Address (with Zip Code) <b>3921 Harrison St. #201 Oakland, CA 94611</b>	Telephone <b>510.332. 5108</b>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

**16**

The unit I rent is:

a house

an apartment

a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

**7/1/09**

Date you moved into this unit:

**6/26/09**

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 **11/21/14**

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

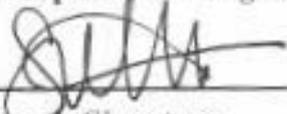
<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

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

*Tenant Response*

**Verification**

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

  
\_\_\_\_\_  
Tenant's Signature

12/22/14  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

**Important Information**

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

**File Review**

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

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

December 20, 2014

To Whom it May Concern,

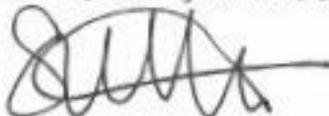
I am writing in contest of the proposed exemption of our building from rent control. I feel this would be an unfair situation to the tenants for numerous reason.

When the building was sold, we had already been slated to receive new windows, as they were very old and let cold air into the building. This project took much longer than anticipated to get started, as I believe this is when the sale of the building was beginning to take place. As the windows finally were to be installed, there was a first major setback in the discovery of lead in the paint and walls. This lead to the needs for a major lead-abatement process-- stripping the building of the stucco to remove all dangerous chemicals. As this process was underway, it was then discovered that the wood on our balconies had become rotten with water and other types of damage. They then had to be torn down and rebuilt. These things had to be done to bring the building up to safety code-- and were in NO WAY capital improvements. They had to be done for safety purposes. I then believe that because of the amount of work that had been done, more things were required to make sure the structure was sound and safe for tenants to be in. Again, not capital improvements that the tenant should be responsible to pay for, in my opinion.

It is my understanding that some units (mainly vacant ones where rent could indeed be increased for new tenants) received remodeling to the kitchens and bathrooms. However, this is **NOT** the case for all, if not most units, **mine being one to have received NO upgrades**. I have an old kitchen and bathroom. I do not feel as if these few renovations to other units should be a reason to raise my rent more than rent-control allows yearly. These expenses did not benefit the building as a whole, and therefore I do not believe should effect the tenants as a whole.

This building being rent-control exempt who be tragic for some tenants. Tenants who had lived here for years, consider this home, and would be left with few in no options for housing as they are elderly, disabled, or supporting families.

Thank you for your time and consideration,



Suzanne Miller  
3921 Harrison St. #201  
Oakland, Ca 94611  
510.332.5108

000210

March 22, 2013

**\*\* NOTICE TO CHANGE TERMS OF TENANCY \*\***

To :  
Suzanne Miller Nikolas Radey  
3921 Harrison Street 201  
Oakland, CA 94611

Dear Suzanne Miller Nikolas Radey,  
You are hereby notified that that the terms of tenancy under which you occupy the above described premises is to be changed.

It has been twelve months or more since your rental rate was reviewed and or adjusted based on the cost of living and other economic factors. In order to keep up with the operating costs at the property and to offset city, county, and state taxes that have been charged to the property for services enjoyed by the tenants, your rental rate will be changed as follows:

Effective, 5/1/2013 your rent will be increased by \$64.75 per month, from \$1295.00 per month, to \$1359.75 per month, payable in advance.

As a reminder, the City of Oakland has a Residential Rent Arbitration Ordinance (RRAO) which sets forth certain guidelines for annual rent increases for rentals within the City.

Should you have any questions about the propriety of the subject rent increase, please don't hesitate to contact our office at (510) 594-7600 for information about the allowed increase under local Ordinance #9980 and addenda. While we have provided this information to your previously, we have attached a duplicate copy of the ordinance summary herewith for your reference. It is the express intention of the property owner that the balance of any allowed rent increases under the Ordinance are banked under provisions of the RRAO and can be added to any future increases and transferred to any future property owners.

  
\_\_\_\_\_  
Owner/Agent

This notice was served by the Owner/Manager in the following manner (check those which apply):

- by personal delivery to the tenant,  
 by leaving a copy with someone on the premises other than the tenant,  
 by mailing  
 by posting.

The Lapham Company  
4844 Telegraph Avenue  
Oakland, CA 94609  
(510) 594-7600

MAILED

MAR 22 2013

MAILED

000211

12/22/14

In addition to the attached rental increase notice, I am also paying a temporary (60 months, I believe) \$50.00/mo. increase for capital improvements that were done to the front of our building.



Suzanne Miller



**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 OAKLAND  
RENT ADJUSTMENT PROGRAM  
2014 DEC 23 PM 3:12

CASE NUMBER L14-0065

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 <i>Fernando Garcia</i>	Complete Address (with Zip Code) <i>3921 Harrison Street Apt. 202 Oakland CA 94611</i>	Telephone <i>510-654-5897</i>
Your Representative's Name <i>N/A</i>	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel:

*16*

The unit I rent is:

a house

an apartment

a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

*on or about  
June 15 1995*

Date you moved into this unit:

*July 1 1995*

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 *Nov. 20, 2014*

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

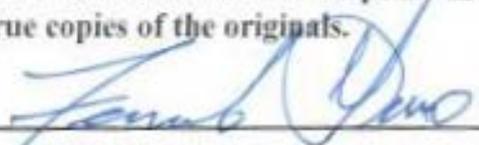
<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

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

*Tenant Response*

Verification

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

  
\_\_\_\_\_  
Tenant's Signature

12/22/2014  
\_\_\_\_\_  
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.

[ See Attached Statement ]

STATEMENT OF FERNANDO GARCIA IN SUPPORT OF PETITION TO CHALLENGE APPLICATION FOR EXEMPTION UNDER THE CITY OF OAKLAND RENT ADJUSTMENT ORDINANCE AND REGULATIONS THEREUNDER (Oakland Municipal Ordinance Sect. 7.22.030, and Regulation Section 10.0)

ARGUMENTS AGAINST GRANT EXEMPTION

Landlord has miscalculated the rehabilitation costs and expenses by lumping together (a) exterior building and building infrastructure improvements costs and (b) interior cosmetic construction costs and expenses.

The landlord/owner is claiming a "substantial rehabilitation" exemption in its Landlord Petition for Certification of Exemption (OMC Section 8.22.030.B) filed with the City of Oakland Rent Adjustment Board (the "Board") in connection with costs incurred for certain construction of the building, located at 3921 Harrison Street, Oakland, California (the "Building").

The Board has provided guidance to landlords requesting a certificate of exemption under the above referenced Ordinance in its publication *Landlord's Guide to Rent Adjustment*. Under the exemption for "capital improvements / uninsured repair costs" (pp 3 & 4), the *Guide* states, in relevant part:

"To justify a rent increase for capital improvements expenditures or uninsured repair expense the landlord must submit copies of receipts, invoices, bid contracts or other documentation showing the costs were incurred to improve the property **and benefit the tenants**, and evidence to show that the incurred costs were paid..." [Emphasis added]

The emphasis given in the above paragraph has direct bearing to the present circumstances. First, Building tenants can provide testimony that several apartment units within the building incurred interior improvements (the "apartment improvements") in the form of cosmetic, basic "wear and tear" repair work such as bathroom tiles replacement, new appliances to replace old ones, new carpeting, adding wood flooring (in one apartment), painting, replacing old cabinets in bathrooms or kitchens, and other miscellaneous items.

These apartment improvements should not be given the same effect as general infrastructure related rehabilitation improvements that do benefit all the tenants of the Building.

More importantly, the landlord/owner should not receive the benefit of increased market price rental for newly improved apartments units, at the expense of those long-termed tenants whose apartment units have not been improved in over ten years, in some cases, and are now

being asked to pay for these apartment improvements through the higher rents that will be available to landlord/owner should the Board grant the certificate of exemption.

The landlord/owner is already enjoying the benefits of the newly refurbished apartment units. For example, at or near the end of the major Building construction, at least three of the newly renovated apartments (#s 101, 203 & 204) were rented out at the expected higher market rent allowed when they became vacated. These apartment improvements fall outside the scope of "rehabilitation" incurred by the landlord/owner of the Building.

The policy underlying "Substantial Rehabilitation" is meant to improve and to *rehabilitate* old, housing stock within the City of Oakland. It should not be a policy designed to allow "hot money" to enter the old stock housing market to improve it for the dedicated purpose of obtaining an exemption to the City's policy of fair and affordable rental market pricing principle. Such a consulted application of the exemption principles would open the door to defacto discrimination against the City's current population diversity.

The Board should seek a detailed breakdown of the following expenses and costs, prior to making a decision:

A) Require a detailed breakdown between interior, non-infrastructure, building improvements and exterior, infrastructure related improvements;

B) After the submission of such additional proof to support the Petition, require a second hearing on the issue of whether the Landlord must implement a two-tier rental value approach to apportioning any future rent increases, if any are granted, under the Petition.

By: Fernando Garcia, Tenant at 3921 Harrison Street, Apt. 202



**CITY OF OAKLAND  
RENT ADJUSTMENT  
PROGRAM**

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

for RECEIVED  
DEC 23 2014  
OAKLAND RENT ADJUSTMENT

CASE NUMBER L14-0065

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 <i>Alex Vasilescu</i> <i>Zoe Bridges</i>	Complete Address (with Zip Code) <i>3921 Harrison St, Apt 301</i> <i>Oakland CA 94611</i>	Telephone <i>412-546-7943</i> <i>484-614-2637</i>
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

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

*\$0 so far*

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

Rev. 7/17/09

*Tenant Response*

000217

**Verification**

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

  
\_\_\_\_\_  
Tenant's Signature

December 19, 2014  
Date

  
\_\_\_\_\_  
Tenant's Signature

12/19/14  
Date

**Important Information**

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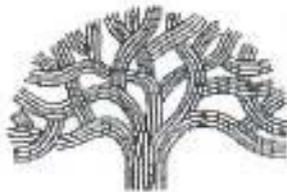
**You cannot get an extension of time to file your Response by telephone.**

**File Review**

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



**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

CASE NUMBER L14-0065

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 <b>LEXIE EBLIN</b>	Complete Address (with Zip Code) <b>3921 Harrison St. Apt 101 Oakland CA 94611</b>	Telephone <b>707.236.0161</b>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: **16**

The unit I rent is:  
a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

**09/01/2014**

Date you moved into this unit:

**09/01/2014**

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 **11/29/2014**

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

**N/A**

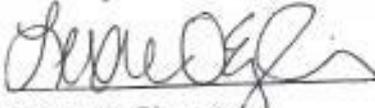
<sup>1</sup> <http://www.oaklandnet.com/government/hcd/rentboard/ordinance.html>

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*Tenant Response*

Verification

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

  
\_\_\_\_\_  
Tenant's Signature

12/31/2014  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Tenant's Signature

\_\_\_\_\_  
Date

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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 Date Received  
**RECEIVED**  
JAN 13 2015  
OAKLAND RENT ADJUSTMENT

CASE NUMBER L14-0065

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 <b>Jilleun Eghin</b>	Complete Address (with Zip Code) <b>3921 Hamson St. #101 Oakland CA 94611</b>	Telephone <b>7072360160</b>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: **16**

The unit I rent is: a house  an apartment  a condo

**Rental History:**

Date you entered into the Rental Agreement for this unit:

**08/01/2014**

Date you moved into this unit:

**08/01/2014**

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 **Nov. 29/2014**

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.

**N/A**

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

<sup>1</sup> <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.

Allen Elin  
Tenant's Signature

12/31/2014  
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:** L14-0065, 525, 655 Hyde St. CNML Properties LLC v. Tenants

**PROPERTY ADDRESS:** 3921 Harrison St., Oakland, CA

**DATE OF HEARING:** April 27, 2015

**DATE OF DECISION:** May 29, 2015

**APPEARANCES:** Elizabeth Hart (Owner Representative)  
Clifford E. Fried (Attorney for Owner)  
Michael Bykhovshy (Witness for Owner)  
Tsegab Assefa (Witness for Owner)  
Martin Gallagher (Witness for Owner)  
Tyler Ritter (Tenant)  
Svetlana Butnaro (Tenant)  
Jessica Simkin (Tenant)  
Andrew Simkin (Tenant)  
Alex Vasilescu (Tenant)  
Suzanne Miller (Tenant)  
Zoe Bridges (Tenant)  
Mari Oda (Tenant)  
Angelique Johnson (Tenant)  
Alexandro Butnaro (Tenant)  
Elena Butnaro (Tenant)  
Fernando Garcia (Witness for Tenants)  
Kate Flick Garcia (Witness for Tenants)  
David Harlan (Witness for Tenants)  
Ana Baires Mira (Attorney for Tenants)  
Ruth Holtzman (Interpreter)

000223

## SUMMARY OF DECISION

The owner's petition is denied.

## CONTENTIONS OF THE PARTIES

The owner filed a petition for a Certificate of Exemption for a residential building on the ground that it is a "substantially rehabilitated" building, pursuant to Oakland Municipal Code (O.M.C.) Section 8.22. Twelve tenants filed responses which contest the owner's claim of exemption.

## THE ISSUE

Is the subject building exempt from the Rent Adjustment Ordinance as being a "substantially rehabilitated" building?

## EVIDENCE

Building Services Evaluation Tables: The tenant requested the attendance of the City Building Services supervisor to testify with regard to how the City determines the present cost of new construction for the issuance of building permits. David Harlan, the Engineering Manager of the Bureau of Building appeared and testified at the Hearing. Mr. Harlan testified that his duties include oversight of all permit issuance, records management, and plan checking. He further testified that the City currently uses the table that was effective on August 1, 2009.<sup>1</sup> A copy of this document is attached as Table "A." Official Notice is taken of two other documents issued by the City Building Services agency: "Quarterly Cost Indexes (1926=100), a copy of which is attached as Table "B," and "Residential Building Minimum Evaluation Data," a copy of which is attached as Table "C."

Square Footage: The owners submitted a document on the letterhead of the Alameda County Assessor regarding the subject property, entitled "Property Characteristics Printed on 10/31/14."<sup>2</sup> This document states that the building area is 13,336 square feet. Martin Gallagher, a general contractor whose firm did most of the work on the construction project, testified that this figure does not include the 16 decks on the building, which were part of the construction expense. He further testified that 15 of the decks are 12 by 4 ½ feet, and the penthouse deck is approximately 16 by 12 feet.

Type of Construction: The owners also submitted a document entitled Certificate of Occupancy for the subject building, which was issued by the City Building Department on January 9, 1963.<sup>3</sup> This document states that the building type is "V-1." Martin Gallagher testified that the subject building is of wood frame construction.

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<sup>1</sup> Exhibit No. 138. This Exhibit, and all others to which reference is made in this Decision, were admitted into evidence without objection.

<sup>2</sup> Exhibit No. 5.

<sup>3</sup> Exhibit No. 6.

Expenses: The owner submitted into evidence invoices and proof of payment for work on the subject building in the year 2014, as follows:

Martin Gallagher Construction, Inc.	\$831,597 <sup>4</sup>
Kelly-Moore Paint	740 <sup>5</sup>
Bay Area Carpets	1,620 <sup>6</sup>
Craig Bull Construction	2,964 <sup>7</sup>
Advocate Painting	2,032 <sup>8</sup>
Raynard's Appliance Repair	194 <sup>9</sup>
Just Plumbing	9,660 <sup>10</sup>
Globe Plumbing Supply	439 <sup>11</sup>
Oak Leaf Painting	1,195 <sup>12</sup>
TOTAL	\$850,441

### FINDINGS OF FACT AND CONCLUSIONS OF 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.<sup>13</sup>

Eligible Expenses: It is found that the owner's eligible expenses total \$846,847. The owner also provided evidence of expenses for routine maintenance of the building such as replacement of light bulbs and a shower curtain liner, tree trimming, and the purchase of a dishwasher, ranges and draperies. The cost of these items totals \$6,693.<sup>14</sup> These costs do not enhance the structure, and the costs are not allowed.

<sup>4</sup> Exhibit Nos. 18, 19, 28, 29, 43-54, 57-81, 96-98, 117-129, 132, & 133

<sup>5</sup> Exhibit Nos. 20, 23, 90-92, & 107-109

<sup>6</sup> Exhibit Nos. 24, 25, 84, & 85.

<sup>7</sup> Exhibit Nos. 37 & 38

<sup>8</sup> Exhibit Nos. 41 & 42

<sup>9</sup> Exhibit Nos. 86 & 87

<sup>10</sup> Exhibit Nos. 89, 99, 100, 112-114, 130, & 131

<sup>11</sup> Exhibit Nos. 101, 102, 110, & 111

<sup>12</sup> Exhibit Nos. 105 & 106

<sup>13</sup> O.M.C. Section 8.22.030(B)(2)

<sup>14</sup> Exhibit Nos. 26, 30-32, 35, 39-40, 55-56, 82-83, 93, 99-100, 103-104, 112-114, 115-116, 103-131, 134-135, & 136-137

Square Footage: The building proper contains 13,336 square feet. However, since the owner has included the cost of balcony work in its documentation, the area of the balconies must be included in the calculation. Mr. Gallagher testified that the building has 15 balconies which are 12 x 4 ½ feet (810 total) plus the penthouse balcony which is 16 x 12 feet (192). Therefore, the balconies contain a total of 1002 square feet, and the building contains 14,338 square feet.

The Calculation: "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."<sup>15</sup> The construction in this case took place in the year 2014. The Tables referenced in this Decision were all issued by the City Building Services agency.

Table "A" lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown on the 2009 Table. The Building Services agency has recognized this fact, and therefore issued a document entitled "Quarterly Cost Indexes (1926 = 100)" (Table "B").

These tables are used as follows: (1) On Table "B," determine the number for the year of construction, geographical district, and type of construction; (2) Divide this number by the number in the same category for the year 2009. The resulting fraction 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 Certificate of Occupancy for the subject building states that the building is of "V-1" construction. The attached Table "C," being the prior valuation table issued by the City of Oakland, states that "Type V" is wood frame construction. This is consistent with the testimony of Martin Gallagher. If the work were done in the year 2009, the square foot cost would be \$127 (Apartment Building more than 2 units; new construction; Type V). This amount multiplied by 14,338 total square feet equals \$1,820,926. This figure is then increased, using Table "B," as follows:

October 2014	3004.3
	1.18%
October 2009	2550.2

One and 18/100 percent of \$1,820,926 is \$2,148,694; fifty per cent of \$2,148,694 is \$1,074,347. Therefore, if the owner spent at least \$1,074,347 on the construction project, the building is exempt from the Rent Ordinance.

Discussion: The owner spent \$850,441, which is far less than the required amount for the building to be declared "substantially rehabilitated." Furthermore, even if the square footage cost on the 2009 Table were used, the owner would not meet the required expense threshold.

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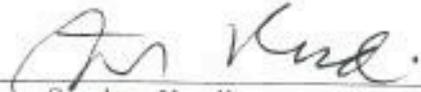
<sup>15</sup> O.M.C. Section 8.22.030(B)

The square footage of 14,338 multiplied by \$127 equals \$1,820,926; one-half of this amount is \$910,463. Therefore, the owner's petition is denied.

**ORDER**

1. Petition L14-0065 is denied.
2. The subject building has not been substantially rehabilitated.
3. Right to Appeal: **This decision is the final decision of the Rent Adjustment Program Staff.** Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received within twenty (20) calendar days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: May 29, 2015



Stephen Kasdin  
Hearing Officer  
Rent Adjustment Program

**City of Oakland**  
**Building Services**  
**Construction Valuation<sup>1</sup>**  
**For Building Permits<sup>4</sup>**  
**Effective Aug. 1, 2009**

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

12-18-09

Occ.	Description <sup>2</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swift 3Q 709 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/c)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.85	Section 12 pg 25 (C/c)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDS/c)
	Finished Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (S/c)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDS/c)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 52 pg 2 (6" wall)
	Foundation Upgrade (I.F.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R24x72)
	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/c600)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (C/c4car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12"rein./ft)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (B/c)
		III	\$156.91	\$81.59	\$203.98	\$106.07	Section 11 pg 18 (D/mil/c)
		V	\$127.00	\$66.04	\$166.10	\$85.65	Section 11 pg 18 (D/c)
<b>Non-Residential Occupancy</b>							
A	Church/Auditorium	I & II	\$247.07	\$126.40	\$321.19	\$167.02	Section 16 pg 9 (B/c)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (B/c)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 16 pg 9 (S/c)
A	Restaurant	I & II	\$221.82	\$115.35	\$288.37	\$149.95	Section 13 pg 14 (A-B/c)
		III	\$174.20	\$90.58	\$226.46	\$117.76	Section 13 pg 14 (C/c)
		V	\$166.80	\$86.74	\$216.84	\$112.76	Section 13 pg 14 (D/c)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$98.18	Section 13 pg 17 (C/c)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/c)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (C/c)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (D/c)
B	Medical Office	I & II	\$249.76	\$129.88	\$324.69	\$168.84	Section 15 pg 22 (A/c)
		III	\$243.19	\$126.46	\$318.15	\$164.40	Section 15 pg 22 (B/c)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (C/c)
B	Office	I & II	\$165.41	\$88.01	\$215.03	\$111.82	Section 15 pg 17 (B/c)
		III	\$120.77	\$62.80	\$157.00	\$81.54	Section 15 pg 17 (C/c)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (D/c)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-B/c)
		III	\$181.96	\$94.62	\$236.55	\$123.00	Section 18 pg 14 (C/c)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (D/c)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527C/c)
		III	\$160.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/c)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/c)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (B/c)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (C/c)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (D/c)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/c)
		III	\$117.10	\$60.80	\$152.23	\$79.16	Section 13 pg 26 (C/c)
		V	\$113.19	\$58.86	\$147.15	\$76.52	Section 13 pg 26 (D/c)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (B/c)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (C/c)
		V	\$111.93	\$58.20	\$145.51	\$75.66	Section 14 pg 15 (D/c)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.18	\$65.09	Section 14 pg 26 (A/c)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (B/c)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (C/mil/c)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/c)

<sup>1</sup> 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)

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

<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.

<sup>4</sup> Separate structures or occupancies valued separately.

<sup>5</sup> Separate fees assessed for EIPM permits, R.O.W. improvements, Fee Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.

TABLE "A" 138

# QUARTERLY COST INDEXES (1926 = 100)

## BUILDINGS - EASTERN DISTRICT

BUILDING CLASSES	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
A. Fireproofed steel frame	3069.4	3060.0	3051.0	3023.5	3000.2	2991.8	2983.3	2974.9	2966.4	2957.9	2949.4	2940.9	2932.4	2923.9	2915.4	2906.9	2898.4	2889.9	2881.4	2872.9	2864.4	2855.9	2847.4	2838.9
B. Reinforced concrete frame	3053.1	3041.4	3036.7	3011.9	2991.3	2977.3	2968.3	2959.3	2950.3	2941.3	2932.3	2923.3	2914.3	2905.3	2896.3	2887.3	2878.3	2869.3	2860.3	2851.3	2842.3	2833.3	2824.3	2815.3
C. Masonry bearing walls	3041.4	3027.5	3017.2	2990.7	2970.5	2958.4	2946.3	2934.2	2922.1	2910.0	2897.9	2885.8	2873.7	2861.6	2849.5	2837.4	2825.3	2813.2	2801.1	2789.0	2776.9	2764.8	2752.7	2740.6
D. Wood frame	3004.3	2988.5	2974.8	2956.0	2934.2	2920.5	2906.8	2893.1	2879.4	2865.7	2852.0	2838.3	2824.6	2810.9	2797.2	2783.5	2769.8	2756.1	2742.4	2728.7	2715.0	2701.3	2687.6	2673.9
S. Metal frame and walls	2768.7	2778.3	2773.5	2759.2	2746.4	2733.6	2721.9	2710.2	2698.5	2686.8	2675.1	2663.4	2651.7	2640.0	2628.3	2616.6	2604.9	2593.2	2581.5	2569.8	2558.1	2546.4	2534.7	2523.0

## BUILDINGS - CENTRAL DISTRICT

BUILDING CLASSES	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
A. Fireproofed steel frame	2760.6	2757.6	2753.8	2728.5	2726.6	2717.0	2695.1	2677.7	2668.0	2648.8	2630.6	2614.8	2601.6	2587.7	2571.9	2556.1	2527.9	2489.3	2461.2	2446.9	2442.9	2420.6	2400.0	2380.0
B. Reinforced concrete frame	2759.0	2752.5	2747.9	2723.9	2722.9	2719.9	2695.0	2673.3	2662.3	2642.3	2623.3	2606.0	2590.2	2575.3	2557.7	2532.5	2509.6	2485.8	2445.8	2431.8	2426.1	2400.0	2380.0	2360.0
C. Masonry bearing walls	2754.3	2748.7	2743.6	2718.8	2717.8	2714.8	2689.9	2668.2	2657.2	2637.2	2618.2	2600.9	2585.1	2570.2	2552.6	2527.4	2504.5	2480.7	2440.7	2426.7	2421.0	2395.0	2375.0	2355.0
D. Wood frame	2753.1	2744.2	2734.8	2710.8	2709.8	2706.8	2681.9	2660.2	2649.2	2629.2	2610.2	2592.9	2577.1	2562.2	2544.6	2519.4	2496.5	2472.7	2432.7	2418.7	2413.0	2387.0	2367.0	2347.0
S. Metal frame and walls	2477.0	2470.9	2466.2	2452.4	2451.1	2450.9	2439.3	2429.8	2420.8	2411.4	2402.5	2393.5	2384.1	2374.7	2365.3	2355.9	2346.5	2337.1	2327.7	2318.3	2308.9	2299.5	2290.1	2280.7

## BUILDINGS - WESTERN DISTRICT

BUILDING CLASSES	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
A. Fireproofed steel frame	3033.4	3022.5	3017.4	2976.7	2968.9	2954.7	2930.2	2911.2	2894.7	2878.9	2863.1	2847.2	2831.4	2815.6	2800.5	2786.8	2747.0	2737.0	2696.1	2666.1	2656.4	2646.0	2626.1	2606.2
B. Reinforced concrete frame	3009.5	3000.0	2973.4	2965.9	2946.5	2930.3	2913.3	2897.6	2881.8	2866.1	2850.3	2834.5	2818.7	2803.0	2787.2	2768.5	2711.9	2672.4	2637.5	2627.0	2614.0	2594.1	2574.2	
C. Masonry bearing walls	3028.3	3018.0	2985.8	2970.2	2966.9	2943.6	2927.6	2911.6	2895.6	2879.6	2863.6	2847.6	2831.6	2815.6	2799.6	2773.0	2717.8	2676.1	2633.6	2623.0	2610.0	2590.0	2570.0	
D. Wood frame	2993.3	2979.1	2958.8	2925.1	2922.6	2894.3	2878.2	2862.1	2846.0	2829.9	2813.8	2797.7	2781.6	2765.5	2749.4	2723.3	2717.8	2676.1	2633.6	2623.0	2610.0	2590.0	2570.0	
S. Metal frame and walls	2736.5	2699.4	2681.9	2669.5	2666.1	2655.4	2636.7	2625.1	2615.4	2604.0	2585.5	2571.8	2557.8	2543.8	2529.8	2509.6	2481.5	2469.1	2440.0	2433.7	2424.4	2404.9	2385.4	

## EQUIPMENT - NATIONAL AVERAGE

INDUSTRY	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009
Average of all	1593.7	1585.7	1569.0	1566.9	1563.7	1561.6	1556.6	1552.6	1551.6	1553.4	1542.1	1536.3	1533.3	1512.5	1490.2	1476.7	1473.3	1461.3	1449.3	1446.4	1446.4	1462.9	1477.7
Automobile mfg.	1883.2	1886.1	1868.6	1866.5	1862.3	1863.4	1860.5	1856.2	1859.1	1869.4	1856.2	1852.9	1847.9	1819.6	1787.8	1766.9	1761.3	1745.4	1730.2	1729.3	1736.0	1760.6	1785.7
Appliance	1133.0	1126.8	1117.4	1118.0	1117.2	1112.3	1105.9	1103.2	1098.1	1093.3	1083.6	1078.8	1076.4	1069.9	1052.8	1046.4	1044.1	1036.3	1026.1	1024.9	1023.2	1028.0	1028.7
Bakery	1552.5	1545.5	1527.3	1533.8	1520.2	1510.5	1514.4	1509.7	1507.6	1512.6	1496.4	1493.5	1490.5	1471.4	1451.2	1432.2	1430.2	1420.2	1405.4	1404.1	1403.2	1422.0	1434.2
Bank	1164.2	1156.5	1145.3	1144.0	1140.5	1138.3	1133.8	1133.5	1134.1	1133.0	1125.4	1121.4	1121.5	1108.8	1092.8	1085.0	1085.7	1076.4	1065.5	1065.3	1065.2	1073.1	1089.9
Bottling	1639.6	1630.6	1610.9	1608.6	1605.1	1601.6	1599.3	1599.1	1603.8	1598.8	1588.5	1584.8	1580.2	1569.2	1524.9	1520.5	1509.1	1493.9	1490.8	1491.2	1491.2	1509.5	1527.6
Brewery & distillery	2014.5	2003.7	1979.2	1976.6	1971.4	1970.0	1964.0	1961.4	1959.4	1959.3	1943.3	1939.3	1934.0	1909.1	1896.2	1870.8	1867.8	1856.0	1837.9	1833.4	1834.7	1851.0	1871.1
Candy	2003.8	1993.9	1968.5	1964.3	1960.3	1958.0	1951.8	1945.5	1942.5	1940.0	1927.2	1923.8	1920.3	1895.1	1886.7	1846.8	1845.1	1835.3	1810.7	1808.6	1808.3	1829.6	1842.5
Cannery (fish)	1932.9	1953.2	1928.7	1923.9	1920.5	1917.9	1912.0	1904.8	1903.3	1910.6	1890.0	1886.3	1882.7	1856.7	1827.0	1810.0	1807.5	1791.0	1772.5	1772.5	1772.5	1791.0	1810.2
Cannery (fruit)	1933.0	1933.9	1908.9	1904.3	1901.2	1898.0	1890.6	1882.3	1877.8	1882.5	1861.2	1857.9	1854.6	1831.6	1804.1	1787.8	1784.8	1769.6	1749.5	1747.0	1745.0	1764.1	1776.2
Cement mfg.	1680.9	1655.0	1642.2	1639.2	1633.5	1633.0	1620.5	1622.3	1620.7	1610.3	1596.7	1589.3	1589.0	1549.6	1532.6	1530.2	1519.2	1508.1	1492.0	1492.0	1492.0	1512.9	1531.1
Chemical	980.9	1061.9	1063.0	1061.0	1076.0	1077.4	1072.8	1074.2	1076.8	1078.4	1069.8	1069.0	1059.9	1037.4	1019.8	1007.3	1005.2	1003.5	981.8	981.3	981.3	1006.8	1023.8
Crushed	1307.1	1296.9	1283.0	1281.9	1278.0	1273.2	1264.7	1261.1	1256.7	1250.8	1240.8	1234.9	1234.0	1221.6	1206.4	1199.5	1190.1	1170.1	1176.7	1176.7	1176.7	1191.4	1198.6
Clay products	1832.8	1844.6	1831.1	1828.9	1824.3	1821.2	1815.2	1808.5	1807.8	1806.9	1795.9	1793.6	1779.2	1757.5	1734.3	1721.4	1718.3	1705.6	1696.0	1696.0	1696.0	1715.9	1736.4
Contractor's equip.	1826.6	1822.0	1801.9	1799.4	1798.3	1793.7	1786.8	1773.0	1767.6	1762.9	1749.9	1736.6	1728.6	1706.2	1686.7	1670.9	1663.5	1656.1	1645.8	1638.2	1638.2	1658.6	1696.3
Creamery & dairy	1721.0	1711.6	1691.1	1687.2	1684.3	1681.5	1677.4	1673.3	1669.7	1672.8	1656.9	1654.0	1649.9	1628.0	1606.2	1590.7	1586.3	1575.1	1558.7	1553.6	1552.7	1569.3	1582.7
Dwelling	1095.6	1085.4	1076.9	1077.9	1077.3	1072.3	1066.6	1064.7	1059.8	1055.7	1046.8	1042.1	1033.5	1033.2	1017.4	1015.6	1009.1	1002.7	993.1	993.9	990.4	992.4	994.6
Elec. equip. mfg.	1686.2	1678.6	1659.1	1656.6	1652.2	1646.3	1641.9	1636.7	1631.2	1626.5	1617.8	1610.2	1603.8	1583.8	1563.8	1549.7	1546.3	1544.9	1544.9	1544.9	1544.9	1564.3	1599.7
Elec. power equip.	1505.0	1497.0	1487.0	1493.0	1485.3	1482.2	1476.9	1471.9	1466.2	1461.2	1451.8	1444.0	1437.6	1418.1	1401.2	1384.9	1381.2	1370.0	1359.6	1357.3	1357.0	1376.7	1425.0
Flour, cereal & feed	1612.0	1604.6	1585.7	1582.3	1579.5	1578.7	1576.2	1569.0	1568.0	1572.0	1557.7	1553.4	1549.6	1528.2	1506.2	1491.5	1487.2	1470.1	1462.4	1459.4	1457.6	1477.1	1491.8
Garage	1223.5	1218.4	1200.9	1198.5	1196.0	1194.3	1188.9	1186.2	1183.2	1176.8	1167.1	1161.2	1150.0	1148.8	1122.7	1107.7	1102.6	1090.2	1078.5	1078.2	1078.2	1097.6	11

City of Oakland  
Residential Building Minimum Valuation Data

Approved by Calvin N. Wong Building Official to be effective February 1, 2001  
JN 06A

The following building valuation data are based on cost and value reported in "Marshal Valuation Services" published by Marshall and Swift dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.

Calculated Method * (\$/sf)		Segregated Cost Method	
Level ground construction (caisson found'n @ \$11.50/sf not included in this column)		Hillside construction Based on 20% slope (retaining wall not included)	
2001 NAGPA			
Apartment		Apartment	Deck (\$/sf of area)
Type I & II	1892.1 \$146.67	Type I & II	\$190.67
Type III	1911.5 \$113.27	Type III	\$147.25
Type V	1892.1 \$92.25	Type V	\$119.93
Basement	\$35.07	Basement	\$58.77
Garage	\$31.24	Garage	\$50.14
Type I Garage	\$39.71	Type I Garage	\$63.82
Custom Residences		Custom Residences	
Type III	\$184.23	Type III	\$239.50
Type V	\$178.35	Type V	\$231.86
Basement	\$69.63	Basement	\$74.02
Garage	\$64.78	Garage	\$84.21
Semi-Custom Residences		Semi-Custom Residences	
Type III	\$151.14	Type III	\$196.48
Type V	\$142.67	Type V	\$185.47
Basement	\$49.56	Basement	\$64.43
Garage	\$51.43	Garage	\$66.86
Single Family Residences		Single Family and Residences	
Type III	\$118.05	Type III	\$153.47
Type V	\$106.99	Type V	\$139.09
Basement	\$29.49	Basement	\$51.21
Garage	\$38.07	Garage	\$52.12
Starter Home		Starter Home	
Type V	\$76.59	Type V	\$99.57
Basement	\$24.74	Basement	\$32.17
Garage	\$28.11	Garage	\$36.54
			Deck (\$/sf of area)
			Ground level (< 6') \$22.44/sf
			Terrace level \$30.29/sf
			Fence ((\$/sf surface)
			-wood \$4.18/sf
			-chain link \$2.64/sf
			-masonry \$10.30/sf
			Fireplace \$6,270/ea
			Fire sprinkler \$3.28/sf
			Kitchen Appliance \$4983/set
			Patio Enclosure \$22.18/sf
			Solarium \$129.53/sf
			Stair
			-prefab \$149.16/Tread
			-wood \$125.07/Tread
			Wall - non-bearing
			-wood (footing extra) \$15.00/lf
			Wall - retaining (\$/sf surface)
			-concrete
			< 6' tall \$23.10/sf
			< 10' tall \$27.05/sf
			< 20' tall \$36.30/sf
			-masonry
			< 6' tall \$23.17/sf
			< 10' tall \$31.09/sf
			-wood
			< 6' tall \$17.66/sf
			< 10' tall \$22.44/sf

\* Calculator method includes typical built-in appliance and one fireplace only

**PROOF OF SERVICE**

**Case Number L14-0065**

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 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**

Alexander Michael Taylor  
3921 Harrison St #104  
Oakland, CA 94611

Alexandru Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Alexandru Vasilescu  
3921 Harrison St #301  
Oakland, CA 94611

Andrew Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Angelique Johnson-Martinez  
3921 Harrison St #103  
Oakland, CA 94611

Bianca Penaloza  
3921 Harrison St #204  
Oakland, CA 94611

Cooper Spinelli  
3921 Harrison St #203  
Oakland, CA 94611

Dana Sarvestani  
3921 Harrison St #203  
Oakland, CA 94611

Elena Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

**Tenant Representative**

Ana Baires Mira  
3022 International Blvd #410  
Oakland, CA 94601

**000231**

Elizabeth VanLanen  
3921 Harrison St Penhouse  
Oakland, CA 94611

Fernando Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Jessica Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Jilleun Eglin & Lexie Eglin  
3921 Harrison St #101  
Oakland, CA 94611

Julie Amberg  
3921 Harrison St #302  
Oakland, CA 94611

Kate Flick Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Lisa Romero  
3921 Harrison St #205  
Oakland, CA 94611

Mari Oda  
3921 Harrison St #304  
Oakland, CA 94611

Ria Cruz  
3921 Harrison St #105  
Oakland, CA 94611

Steven Miller  
3921 Harrison St Penhouse  
Oakland, CA 94611

Suzanne Miller  
3921 Harrison St #201  
Oakland, CA 94611

Tadeusz Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Todd McMahon  
3921 Harrison St #304  
Oakland, CA 94611

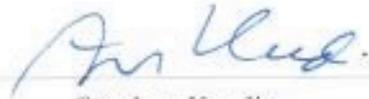
Tyler Ritter  
3921 Harrison St #303  
Oakland, CA 94611

Zoe Bridges  
3921 Harrison St #301  
Oakland, CA 94611

Zvetlana Butnaru  
3921 Harrison St #104  
Oakland, CA 94611

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 29, 2015 in Oakland, CA.



---

Stephen Kasdin  
Oakland Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number L14-0065**

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 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:**

**Owner Representative**

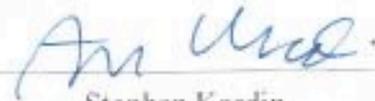
525-655 Hyde Street CNML Tsegab Asse  
4844 Telegraph Ave  
Oakland, CA 94609

Clifford E. Fried, Esq.  
480 9th St  
Oakland, CA 94607

Liz Hart  
480 9th St  
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 May 29, 2015 in Oakland, CA.



Stephen Kasdin

Oakland Rent Adjustment Program

000234

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2015 JUN 18 PM 4: 52  <b>APPEAL</b>	
<b>Appellant's Name</b> 525, 655 Hyde St. CNML Properties LLC		<input checked="" type="checkbox"/> <b>Landlord</b>	<input type="checkbox"/> <b>Tenant</b>
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> 4844 Telegraph Avenue Oakland, CA 94609		<b>Case Number</b> L14-0065	<b>Date of Decision appealed</b> 5/29/15
<b>Name of Representative (if any)</b> Clifford E. Fried Esq. Elizabeth Hart		<b>Representative's Mailing Address (For notices)</b> Fried & Williams LLP 480 Ninth St. Oakland, CA 94607	

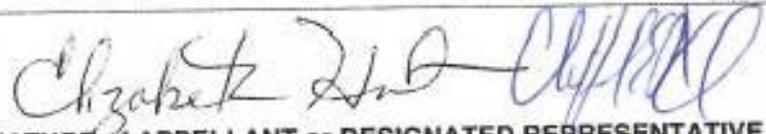
I appeal the decision issued in the case and on the date written above on the following grounds:  
*(Check the applicable ground(s). Additional explanation is required (see below). Please attach additional pages to this form.)*

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 [ 14 ]. 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 June 18, 2015, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	See attached list of 25 opposing parties along with their representative.
<b>Address</b>	
<b>City, State Zip</b>	
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

 <b>SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE</b>	June 18, 2015 <b>DATE</b>
--	------------------------------

**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.

## 3921 Harrison Street, Oakland, CA 94611

## Opposing Parties

Ana Baires Mira, 3022 International Blvd. #410, Oakland, CA 94601

Jilleun Eglin & Lexie Eglin, 3921 Harrison St., #101, Oakland, CA 94611

Alexandru & Elena Butnaru & Tadeusz Butnaru, 3921 Harrison St., #102, Oakland, CA 94611

Angelique Johnson-Martinez, 3921 Harrison St., #103, Oakland, CA 94611

Zvetlana Butnaru, 3921 Harrison St., #104, Oakland, CA 94611

Alexander Michael Taylor & Ria Cruz, 3921 Harrison St., #105, Oakland, CA 94611

Suzanne Miller, 3921 Harrison St., #201, Oakland, CA 94611

Fernando Garcia & Kate Flick Garcia, 3921 Harrison St., #202, Oakland, CA 94611

Cooper Spinelli & Dana Sarvestani, 3921 Harrison St., #203, Oakland, CA 94611

Bianca Penalosa, 3921 Harrison St., #204, Oakland, CA 94611

Lisa Romero, 3921 Harrison St., #205, Oakland, CA 94611

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Julie Amberg, 3921 Harrison St., #302, Oakland, CA 94611

Tyler Ritter, 3921 Harrison St., #303, Oakland, CA 94611

Mari Oda & Todd McMahon, 3921 Harrison St., #304, Oakland, CA 94611

Andrew Simkin & Jessica Simkin, 3921 Harrison St., #305, Oakland, CA 94611

Steven Miller & Elizabeth VanLanen 3921 Harrison St. PH, Oakland, CA 94611

## The Detailed Grounds for Appeal

### INTRODUCTION

This is a Landlord Petition for a Certificate of Exemption based upon substantial rehabilitation to a building located at 3921 Harrison Street, Oakland. Prior to the hearing, Landlord submitted a relevant table issued by the Building Services agency of the City of Oakland. This table was marked as Landlord's Exhibit 76/203 and was admitted into evidence at the hearing. Landlord's Exhibit 76/203 is commonly referred to as "Table 'A'" by the Rent Board. A copy of Table A is attached to this Appeal.

After all testimony concluded at the hearing, and all evidence of the parties was admitted into evidence, closing arguments were made by the parties. During the closing argument of Ana Baires Mira, attorney for some of the Tenants, reference was made to a new piece of evidence which the hearing officer took notice of. This new piece of evidence is entitled "Quarterly Cost Indexes (1926 = 100)." This evidence was provided to the Hearing Officer but not the Landlord. Objection to the use and introduction of this new evidence was made at the hearing. A copy of Quarterly Cost Indexes (1926 = 100) is attached to this brief and called Table B.

#### 1. The Decision is inconsistent with the Ordinance, the Rules & Regulations or prior Board decisions

Per 8.22.030 (B) 2 a & b

- 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.

When calculating the average basic cost for new construction in the decision, Hearing Officer Kasdin used a table that was not allowed as evidence into the record nor issued from the Chief Building Inspector for the time period when the substantial rehabilitation was completed.

The Tenants called as a witness David Harlan, the Engineering Manager of the Bureau of Buildings, to testify specifically on how the City calculates the value of new construction. Mr. Harlan testified that the City currently uses a table from 2009 (hereafter referred to as Table A). This table was presented as evidence by the Landlord.

Prior to the 2009 table, the City Building Department had issued a 2007 table (hereafter called Table E) and a 2001 table (hereafter called Table C) to calculate construction values. In this decision, the Hearing Officer used the 2001 Table C to establish the property was constructed of wood frame. All of these tables are obviously issued from the City of Oakland. They are all on letterhead from the City of Oakland, they each have a date establishing when they are to take effect and the 2001 Table C is actually signed by Calvin Wong, the City of Oakland's Building Official.

Yet Mr. Kasdin used a third table called Quarterly Cost Indexes (1926 = 100) (hereafter referred to as Table B) to calculate the cost for new construction. The attorney for the tenants cited 3 cases (L13-0028, T13-0196 and T07-0287) to introduce the Table B and bring it to the Hearing Officer's attention. However the table used in those 3 cases is not the Table B introduced at the hearing. Those cases cited by the Tenant's Attorney used a completely different document – one labeled Cost Indexes (1926 = 100) hereafter referred to as Table D. Neither Table B introduced by the Tenant Attorney or Table D cited by the Tenant's Attorney are on City letterhead, have a date when it was to take effect or is signed by anyone. Furthermore these 'Cost Indexes' Tables B and D have never been authenticated as having come from the City of Oakland. Only tables formally issued by the City of Oakland should be used in the calculations for construction values. Only Tables A, C and E meet that standard.

## **2. The Decision is not consistent with other hearing officers.**

Other hearings have established square footage with owner testimony, data from the County of Alameda's Assessor's Office, general contractor testimony, architectural or engineering plans and property reports such as FastWeb Property Profile, DataQuik and RealQuest.com. Evidence of square footage entered into the record at the hearings included a FastWeb Property Profile, an architectural plan of the building, a property characteristics report from the Assessor's office and testimony from the General Contractor - all of which provided the same figure of 13,336 for square footage.

However in the decision, the Hearing Officer added in the area of the balconies which inflated the correct 13,336 sf figure by an additional 1000 square feet. The Hearing Officer's reasoning was that as the cost of the repairs to the balconies were included as expenses, so the square footage of the balconies should be as well. But by that logic, the new roof, which cost \$50,000, should also have been included in the square footage, since it was included as an expense. But the Hearing Officer did not include the roof's area, and prior decisions do not include roof area - see 09-0001, 11-0004, 11-0018 and 12-0196. Each of these cases add the costs of a new roof to expenses without adding the roof's area to the square footage. More importantly, neither Roofs nor Balconies are habitable living spaces. Each is exposed to the elements, have no running water and have no source of heat. Neither the balconies nor the roof should be added to the square footage.

## **3. The Decision is not supported by substantial evidence**

The Hearing Officer miscalculated the eligible expense amount for the General Contractor by \$25,999. The Hearing Officer only counted 3 of 4 separate \$26,000 invoices for kitchen and bathroom remodels.

On page 3 of the Decision, the Hearing Officer tallies the construction expenses provided as evidence by the landlord including \$831,597 in payments to Martin Gallagher Construction. However the Landlord provided evidence that this vendor, Martin Gallagher Construction was actually paid \$857,596. The difference between the two amounts is exactly \$25,999. Among the evidence provided by the Landlord were 4 invoices for kitchen and bathroom remodels to units 203, 204, 303 and 304; each for \$26,000. We believe the Hearing Officer failed to count one of the 4 \$26,000 invoices.

**4. The Petitioner was denied a sufficient opportunity to present his claims or respond to petitioner's claims.**

Per OMC 8.22.110 (E) 3 e which covers Conduct of Hearing before the Hearing Officer, Section 3 specifically states that "each party shall the right to rebut the evidence against him or her."

During closing arguments and after the period when evidence would be allowed and entered into the record, the tenant's attorney, Ana Baires Mira presented the document Table B. Hearing Officer Kasdin accepted and took formal notice of this document, Table B and then used it when calculating the cost of new construction in his decision. Table B was not made available to the Landlord representative before or even during the hearing, it was not allowed into the record as evidence and as it was presented during closing arguments, the Landlord representative had no opportunity to rebut or challenge it or its usage in the hearing or the decision.

A tenant is required to file a response to an owner's petition within 30 days of service of the notice by the Rent Adjustment Program that an owner petition was filed. OMC Sec. 8.22.090.A.4. The Landlord and Tenants in this case were ordered to produce all proposed tangible evidence "not less than seven (7) days prior to the Hearing." See Notice of Hearing in this case served on all Tenants on November 19, 2015. By not filing the Quarterly Index and serving a copy on the Landlord, the document should not have been considered by the Hearing Officer.

The Rent Board has a strict policy of not considering evidence and other documents that the parties will rely on unless those items were submitted to the Rent Board and served on the opposing party before the hearing. There is no reason to ignore past precedent in this case. It came as a total surprise to Landlord that evidence of construction costs, not contained in Table A, would be used and argued by the Tenant. Or that it could be noticed or used by the Hearing Officer. It is a violation of due process to allow the Quarterly Cost Indexes (1926 = 100) to be used in this case because Landlord was deprived of notice that it would be used.

Had Respondent Tenant and the Hearing Officer complied with the Rent Board rules and the law, Petitioner Landlord would have presented evidence on how Table B was not a table issued by the chief building inspector applicable for the time period for which Petitioner made repairs.

6

**City of Oakland  
Building Services  
Construction Valuation<sup>1</sup>  
For Building Permits<sup>4</sup>  
Effective Aug. 1, 2009**

Community Economic Development  
Detail Administration Building  
250 Frank Ogawa Plaza - 2nd Floor  
Oakland, CA 94612  
510-258-3891

18-09  
7 AM 9:16

Occ.	Description <sup>2</sup>	Construction Type	Level Ground <sup>3</sup>		Hillside Construction		Marshall & Swift 2009 <sup>5</sup> Section pg (Class/type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.83	\$107.82	\$286.79	\$140.29	Section 12 pg 25 (Ck)
	Single Family & Duplex	V	\$144.48	\$75.12	\$187.20	\$97.65	Section 12 pg 25 (Ck)
	Factory/Manufactured home	V	\$43.93	\$22.62	\$56.55	\$29.41	Section 12 pg 25 (Ck/ty)
	Finished Habitable Basement Conversion	V	\$98.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (Bk)
	Convert non-habitable to habitable	V	N/A	\$43.90	N/A	\$22.62	Section 12 pg 25 (Ck/ty)
	Pavilion Walk	V	N/A	\$16.19	N/A	\$21.06	Section 52 pg 2 (6" w/d)
	Foundation Upgrade (LL)	V	\$108.37	N/A	\$136.68	N/A	Section 51 pg 2 (R04/72)
	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	\$39.54	\$20.51	Section 66 pg 2 (Wood/alg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (105sf+1 story)
U1	Garage	V	\$38.42	\$19.88	\$49.96	\$25.57	Section 13 pg 35 (Ck/ty)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 13 pg 35 (Ck/ty)
	Retaining wall (s.f.)	III	\$32.08	N/A	\$42.66	N/A	Section 58 pg 3 (12" w/d, h)
R2	Apartment (>2 units)	I & II	\$174.69	\$90.54	\$227.10	\$118.29	Section 11 pg 18 (Bk)
		III	\$156.91	\$81.59	\$203.98	\$106.67	Section 11 pg 18 (Ck/ty)
		V	\$127.00	\$66.04	\$166.10	\$86.86	Section 11 pg 18 (Ck)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$126.48	\$321.19	\$167.02	Section 16 pg 9 (Bk)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 16 pg 9 (Bk)
		V	\$175.93	\$91.48	\$226.71	\$116.93	Section 16 pg 9 (Bk)
A	Restaurant	I & II	\$221.81	\$115.35	\$289.27	\$149.26	Section 13 pg 14 (A-Bk)
		III	\$174.20	\$90.68	\$226.46	\$117.76	Section 13 pg 14 (Ck)
		V	\$166.80	\$86.74	\$216.84	\$112.78	Section 13 pg 14 (Ck)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$96.18	Section 13 pg 17 (Ck)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.26	Section 15 pg 21 (Bk)
		III	\$162.01	\$84.68	\$216.61	\$113.04	Section 15 pg 21 (Ck)
		V	\$173.02	\$89.67	\$224.93	\$116.26	Section 15 pg 21 (Ck)
B	Medical Office	I & II	\$248.78	\$125.88	\$314.66	\$160.84	Section 15 pg 22 (A/Bk)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (Bk)
		V	\$200.73	\$104.38	\$260.86	\$133.89	Section 15 pg 22 (Ck)
B	Office	I & II	\$165.41	\$86.81	\$215.03	\$111.82	Section 15 pg 17 (Bk)
		III	\$120.77	\$62.80	\$157.00	\$81.54	Section 15 pg 17 (Ck)
		V	\$115.34	\$59.98	\$149.94	\$77.97	Section 15 pg 17 (Ck)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.54	Section 18 pg 14 (A-Bk)
		III	\$181.98	\$94.62	\$236.56	\$123.00	Section 18 pg 14 (Ck)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (Ck)
H	Repair Garage	I & II	\$186.25	\$96.85	\$242.12	\$125.91	Section 14 pg 33 (MLG 423/Ck)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423/Ck)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423/Ck)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.76	Section 15 pg 22 (Bk)
		III	\$152.06	\$78.06	\$197.72	\$102.81	Section 15 pg 22 (Ck)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (Ck)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 26 (A/Bk)
		III	\$117.10	\$60.80	\$152.33	\$78.16	Section 13 pg 26 (Ck)
		V	\$113.19	\$58.88	\$147.15	\$75.83	Section 13 pg 26 (Ck)
B	Industrial plant	I & II	\$167.34	\$81.82	\$204.54	\$106.36	Section 14 pg 15 (Bk)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (Ck)
		V	\$111.90	\$58.20	\$145.81	\$75.66	Section 14 pg 15 (Ck)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 25 (A/Bk)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 25 (Bk)
		V	\$80.79	\$47.21	\$118.03	\$61.37	Section 14 pg 25 (Ck/ty)
B	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/Bk)

<sup>1</sup> Cost per square foot, unless noted otherwise. (LL = linear foot s.f. = square foot) includes 1.3 regional multiplier (see Sec. 99 pg 6 July 2009 Marshall & Swift)

<sup>2</sup> Hillside construction = slope > 30%; multiply by additional 1.3 multiplier

<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.

<sup>4</sup> Separate fees assessed for EPM permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav & Shoring.

<sup>5</sup> Separate fees assessed for EPM permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav & Shoring.

TABLE "A"

2014

# QUARTERLY COST INDEXES (1926 = 100)

## BUILDINGS - EASTERN DISTRICT

BUILDING CLASSES	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010
A - Fireproofed steel frame	3050.4	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0	3000.0
B - Reinforced concrete frame	2653.1	2641.4	2637.7	2610.0	2591.5	2577.3	2548.3	2530.9	2510.8	2507.2	2513.6	2501.0	2481.1	2466.1	2458.1	2458.1	2458.1	2458.1	2458.1	2458.1
C - Masonry bearing walls	2041.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1	2031.1
D - Wood frame	1004.3	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
E - Metal frame and walls	2766.7	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1	2733.1

## BUILDINGS - CENTRAL DISTRICT

BUILDING CLASSES	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010
A - Fireproofed steel frame	2740.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0	2700.0
B - Reinforced concrete frame	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0	2780.0
C - Masonry bearing walls	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3	2150.3
D - Wood frame	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0	2100.0
E - Metal frame and walls	2477.0	2470.0	2465.3	2452.4	2452.1	2450.0	2450.0	2450.0	2450.0	2450.0	2450.0	2450.0	2450.0	2450.0	2450.0	2450.0	2450.0	2450.0	2450.0	2450.0

## BUILDINGS - WESTERN DISTRICT

BUILDING CLASSES	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010
A - Fireproofed steel frame	3033.4	3020.0	3014.1	3004.7	2990.0	2975.0	2955.0	2940.0	2925.0	2910.0	2895.0	2880.0	2865.0	2850.0	2835.0	2820.0	2805.0	2790.0	2775.0	2760.0
B - Reinforced concrete frame	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0
C - Masonry bearing walls	2020.3	2010.0	2005.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0
D - Wood frame	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0	2000.0
E - Metal frame and walls	2700.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0	2680.0

## EQUIPMENT - NATIONAL AVERAGE

INDUSTRY	10/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010
Average of all	1501.7	1500.7	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0	1500.0
Apparel mfg	1801.2	1800.1	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0	1800.0
Automotive	1130.0	1128.6	1127.4	1126.0	1125.0	1124.0	1123.0	1122.0	1121.0	1120.0	1119.0	1118.0	1117.0	1116.0	1115.0	1114.0	1113.0	1112.0	1111.0	1110.0
Bakery	1650.0	1648.5	1647.3	1646.0	1645.0	1644.0	1643.0	1642.0	1641.0	1640.0	1639.0	1638.0	1637.0	1636.0	1635.0	1634.0	1633.0	1632.0	1631.0	1630.0
Bev. & soft	1144.2	1143.5	1142.3	1141.0	1140.0	1139.0	1138.0	1137.0	1136.0	1135.0	1134.0	1133.0	1132.0	1131.0	1130.0	1129.0	1128.0	1127.0	1126.0	1125.0
Chemical	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0
Elect. equip. mfg.	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Food	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0	1600.0
Health care	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Metals	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Plastics	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Textiles	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Transportation	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Wholesale trade	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Retail trade	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Finance	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Insurance	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Real estate	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Utilities	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Government	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Education	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Arts, entertainment, recreation	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Health care	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Food services	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Accommodation	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Information	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Professional, scientific, technical	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Management, scientific, technical	1000.0	1000.0																		

Residential Building Minimum Valuation Data

Approved by Calvin N. Wong Building Official to be effective February 1, 2001

The following building valuation data are based on cost and value reported by "Marshall Valuation Services" published by Marshall and Swift dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.

Calculated Method * (\$/sf)		Hillside construction Based on 20% slope (retaining wall not included)		Segregated Cost Method	
Level ground construction (certain found'n @ \$11.50/sf not included in this column)				Deck (\$/sf of area)	
				Ground level (< 6') \$ 22.44/sf	
				Terrace level \$ 30.29/sf	
Apartment		Apartment		Fence ((\$/sf surface)	
Type I & II	\$146.67	Type I & II	\$190.67	- wood	\$ 4.18/sf
Type III	\$113.27	Type III	\$147.25	- chain link	\$ 2.64/sf
Type V	\$ 92.25	Type V	\$119.93	- masonry	\$10.30/sf
Basement	\$ 35.07	Basement	\$ 58.77	Fireplace	\$6,270/ea
Garage	\$ 31.24	Garage	\$ 50.14	Fire sprinkler	\$ 3.28/sf
Type I Garage	\$ 39.71	Type I Garage	\$ 63.82	Kitchen Appliance	\$ 4982/ea
Custom Residences		Custom Residences		Patio Enclosure -- \$ 22.18/sf	
Type III	\$184.23	Type III	\$239.50	Solarium :\$129.53/sf	
Type V	\$178.35	Type V	\$231.86	Stair	
Basement	\$ 69.63	Basement	\$ 74.02	- prefab	\$149.16/Tread
Garage	\$ 64.78	Garage	\$ 84.21	- wood	\$125.07/Tread
Semi-Custom Residences		Semi-Custom Residences		Wall - non-bearing	
Type III	\$151.14	Type III	\$196.48	- wood (footing extra) \$15.00/sf	
Type V	\$142.67	Type V	\$185.47	Wall - retaining (\$/sf surface)	
Basement	\$ 49.56	Basement	\$ 64.43	- concrete	
Garage	\$ 51.43	Garage	\$ 66.86	< 6' tall \$ 23.10/sf	
Single Family Residences		Single Family and Residences		< 10' tall \$ 17.05/sf	
Type III	\$118.05	Type III	\$153.47	< 20' tall \$ 36.30/sf	
Type V	\$106.99	Type V	\$139.09	- masonry	
Basement	\$ 29.49	Basement	\$ 51.21	< 6' tall \$23.17/sf	
Garage	\$ 33.07	Garage	\$ 52.12	< 10' tall \$31.09/sf	
Starter Home		Starter Home		- wood	
Type V	\$ 76.39	Type V	\$ 99.57	< 6' tall \$ 17.66/sf	
Basement	\$ 24.74	Basement	\$32.17	<10' tall \$22.44/sf	
Garage	\$ 28.11	Garage	\$26.34		

\* Calculator method includes typical built-in appliance and one fireplace only.

~~TABLE "B"~~

TABLE "C"

# COST INDEXES (1926 = 100)

## BUILDINGS - EASTERN DISTRICT

A: Framed steel frame	2006	2006	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989	1988	1987	1986	1985	1984
B: Reinforced concrete frame	2444.7	2401.7	2178.2	1964.2	1800.4	1673.3	1548.6	1424.9	1301.2	1177.5	1053.8	930.1	806.4	682.7	559.0	435.3	311.6	187.9	65.2	42.5	19.8	17.1	14.4
C: Masonry bearing walls	2477.0	2395.4	2134.1	1920.0	1752.3	1625.4	1500.7	1376.0	1251.3	1126.6	1001.9	877.2	752.5	627.8	503.1	378.4	253.7	129.0	102.3	75.6	48.9	22.2	19.5
D: Wood frame	2470.0	2384.3	2154.0	1938.3	1770.6	1643.7	1519.0	1394.3	1269.6	1144.9	1020.2	895.5	770.8	646.1	521.4	396.7	272.0	147.3	120.6	93.9	67.2	40.5	37.8
E: Metal frame and walls	2306.8	2170.2	1988.4	1844.9	1722.5	1600.2	1477.9	1355.6	1233.3	1111.0	988.7	866.4	744.1	621.8	499.5	377.2	254.9	132.6	105.9	79.2	52.5	25.8	23.1

## BUILDINGS - CENTRAL DISTRICT

A: Framed steel frame	2234.8	2177.3	1938.8	1822.7	1706.6	1590.4	1474.2	1358.0	1241.8	1125.6	1009.4	893.2	777.0	660.8	544.6	428.4	312.2	196.0	169.3	142.6	115.9	89.2	86.5
B: Reinforced concrete frame	2256.8	2223.3	1978.8	1848.1	1732.0	1615.8	1500.0	1384.2	1268.4	1152.6	1036.8	921.0	805.2	689.4	573.6	457.8	342.0	226.2	199.5	172.8	146.1	119.4	116.7
C: Masonry bearing walls	2252.8	2242.2	1992.3	1864.1	1748.0	1631.8	1516.0	1400.2	1284.4	1168.6	1052.8	937.0	821.2	705.4	589.6	473.8	358.0	242.2	215.5	188.8	162.1	135.4	132.7
D: Wood frame	2274.1	2453.3	2014.8	1885.4	1769.3	1653.1	1537.3	1421.5	1305.7	1190.0	1074.2	958.4	842.6	726.8	611.0	495.2	379.4	263.6	236.9	210.2	183.5	156.8	154.1
E: Metal frame and walls	2201.9	1988.8	1844.5	1712.0	1595.8	1479.6	1363.8	1248.0	1132.2	1016.4	900.6	784.8	669.0	553.2	437.4	321.6	205.8	190.1	163.4	136.7	110.0	83.3	80.6

## BUILDINGS - WESTERN DISTRICT

A: Framed steel frame	2470.0	2279.7	2091.5	1965.4	1826.2	1697.1	1568.0	1438.9	1309.8	1180.7	1051.6	922.5	793.4	664.3	535.2	406.1	277.0	147.9	121.2	94.5	67.8	41.1	38.4
B: Reinforced concrete frame	2407.9	2311.4	2104.3	1971.3	1832.0	1702.9	1573.8	1444.7	1315.6	1186.5	1057.4	928.3	799.2	670.1	541.0	411.9	282.8	153.7	127.0	100.3	73.6	46.9	44.2
C: Masonry bearing walls	2400.0	2355.0	2124.4	1992.6	1853.3	1724.0	1594.7	1465.4	1336.1	1206.8	1077.5	948.2	819.0	689.7	560.4	431.1	302.0	172.9	146.2	119.5	92.8	66.1	63.4
D: Wood frame	2388.0	2257.1	2120.0	1978.1	1838.9	1709.6	1580.3	1451.0	1321.7	1192.4	1063.1	934.0	804.9	675.8	546.7	417.6	288.5	159.4	132.7	106.0	79.3	52.6	50.0
E: Metal frame and walls	2270.0	2043.7	1934.4	1802.2	1673.0	1543.7	1414.4	1285.1	1155.8	1026.5	897.2	767.9	638.6	509.3	380.0	250.7	121.4	94.7	68.0	41.3	14.6	8.9	6.2

## INDUSTRY

Average of all	1802.3	1844.3	1897.3	1948.8	1999.0	2049.4	2099.6	2149.8	2199.9	2249.9	2299.9	2349.9	2399.9	2449.9	2499.9	2549.9	2599.9	2649.9	2699.9	2749.9	2799.9	2849.9	2899.9
Aluminum ind.	1802.3	1844.3	1897.3	1948.8	1999.0	2049.4	2099.6	2149.8	2199.9	2249.9	2299.9	2349.9	2399.9	2449.9	2499.9	2549.9	2599.9	2649.9	2699.9	2749.9	2799.9	2849.9	2899.9
Automotive	1802.3	1844.3	1897.3	1948.8	1999.0	2049.4	2099.6	2149.8	2199.9	2249.9	2299.9	2349.9	2399.9	2449.9	2499.9	2549.9	2599.9	2649.9	2699.9	2749.9	2799.9	2849.9	2899.9
Chemical	1802.3	1844.3	1897.3	1948.8	1999.0	2049.4	2099.6	2149.8	2199.9	2249.9	2299.9	2349.9	2399.9	2449.9	2499.9	2549.9	2599.9	2649.9	2699.9	2749.9	2799.9	2849.9	2899.9
Food	1802.3	1844.3	1897.3	1948.8	1999.0	2049.4	2099.6	2149.8	2199.9	2249.9	2299.9	2349.9	2399.9	2449.9	2499.9	2549.9	2599.9	2649.9	2699.9	2749.9	2799.9	2849.9	2899.9
Textile	1802.3	1844.3	1897.3	1948.8	1999.0	2049.4	2099.6	2149.8	2199.9	2249.9	2299.9	2349.9	2399.9	2449.9	2499.9	2549.9	2599.9	2649.9	2699.9	2749.9	2799.9	2849.9	2899.9
Other	1802.3	1844.3	1897.3	1948.8	1999.0	2049.4	2099.6	2149.8	2199.9	2249.9	2299.9	2349.9	2399.9	2449.9	2499.9	2549.9	2599.9	2649.9	2699.9	2749.9	2799.9	2849.9	2899.9

TABLE D

TABLE 5A

RENT ADJUSTMENT

510-238-6181

10/14/2009 11:46

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	18-452
INVOICE DATE	April 3, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 203

Date	DESCRIPTION	% Completed	Total Cost	AMOUNT DUE
4/3/14	Installation of new kitchen cabinets and appliances and tile on the floor	6747 → 5,900 16791 → <del>4,000</del>	5,900	\$44,900.00
4/3/14	Installation of new vanity cabinet with sink & tile on shower walls.	6660 → 2,000 6627 →	2,000	\$9,800.00
			SUBTOTAL	21,700.00
				\$21,700.00

PROJ# 1P-452  
 VENDOR \_\_\_\_\_  
 G. CODE \_\_\_\_\_  
 AUTH. *AD*  
 DATE \_\_\_\_\_

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID  
 APR 15 2014  
 CK# 120950



4866

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	65
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

UNIT # 204

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor			\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.			\$10,500.00
			SUBTOTAL	26,000.00
				\$26,000.00
				PAY THIS AMOUNT

PROJ # 1P-452  
 VENDOR # \_\_\_\_\_  
 G. DATE 6619  
 ACT # AD  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher65@ameb.com](mailto:martingallagher65@ameb.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 17 2014

CK#123868

73

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 67-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 304

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6741 → 6,500 6747 → 3,500 6660 → 2,300 6624 → 7,200	\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			SUBTOTAL	26,000.00
				\$26,000.00

PROJ # 18-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AUTH NA  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID  
 JUN 20 2014  
 CK# ~~124052~~ 124052

3921 Harrison 185 of 203

14

000248

74

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 66-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 303

6791 → 6,500

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6747 → 3,500 6660 → 2,300 6624 → 3,200	\$14,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			SUBTOTAL	26,000.00
				\$26,000.00 PAY THIS AMOUNT

PROP # 66-452  
 ADDRESS \_\_\_\_\_  
 CITY \_\_\_\_\_  
 STATE \_\_\_\_\_  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 martingallagher95@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 20 2014

CK# 124052  
9/24/14

**City of Oakland**  
**Building Services**  
**Construction Valuation<sup>1</sup>**  
**For Building Permits<sup>4</sup>**  
**Effective February 5, 2007**

Community Economic Development Agency  
 District Administration Building  
 250 Frank Ogawa Plaza - 2nd Floor  
 Oakland, CA 94612  
 510-238-3441

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction <sup>2</sup>	
			New	Remodel	New	Remodel
R3	Custom Residence	V	\$183.35	\$95.34	\$238.36	\$123.94
	Single Family Residence	V	\$137.19	\$71.34	\$178.35	\$92.74
	Manufactured home	V	\$35.00	\$18.20	\$45.50	\$23.68
	Convert non-hab to hab	V	\$101.11	NA	\$131.44	NA
	Foundation Upgrade (l.f.)	V	\$103.61	NA	\$134.69	NA
	Deck	V	\$26.93	NA	\$36.35	NA
U1	Garage	V	\$36.08	\$18.76	\$46.90	\$24.39
	Carport	V	\$24.65	\$12.82	\$32.05	\$16.66
	Retaining wall (s.f.)	III	\$27.80	NA	\$36.15	NA
R1	Apartment	I & II	\$162.14	\$84.31	\$210.78	\$109.61
		III	\$131.70	\$68.48	\$171.21	\$89.03
		V	\$121.75	\$63.31	\$158.28	\$82.30
S3	Garage	I & II	\$55.53	\$28.88	\$72.19	\$37.54
A	Church/Auditorium	I & II	\$221.65	\$115.26	\$288.15	\$149.84
		III	\$165.64	\$86.13	\$215.33	\$111.97
		V	\$158.36	\$82.35	\$205.87	\$107.05
A	Restaurant	I & II	\$193.43	\$100.58	\$251.46	\$130.76
		III	\$144.62	\$75.20	\$188.01	\$97.76
		V	\$132.44	\$68.87	\$172.17	\$89.53
B	Bank	I & II	\$219.90	\$114.35	\$285.87	\$148.65
		III	\$178.77	\$92.96	\$232.40	\$120.85
		V	\$161.99	\$84.23	\$210.59	\$109.51
B	Market (Retail sales)	I & II	\$122.35	\$63.62	\$159.06	\$82.71
		III	\$91.02	\$47.33	\$118.33	\$61.53
		V	\$87.25	\$45.37	\$113.43	\$58.98
B	Medical Office	I & II	\$249.42	\$129.70	\$324.25	\$168.61
		III	\$204.78	\$106.49	\$268.21	\$138.43
		V	\$200.23	\$104.12	\$260.30	\$135.36
B	Office	I & II	\$158.56	\$82.46	\$206.15	\$107.20
		III	\$114.63	\$59.61	\$149.02	\$77.49
		V	\$112.00	\$58.24	\$145.60	\$75.71
E	School	I & II	\$165.11	\$85.86	\$214.64	\$111.61
		III	\$146.52	\$76.19	\$190.48	\$99.05
		V	\$141.91	\$73.79	\$184.49	\$95.93
H	Repair garage	I & II	\$108.71	\$56.53	\$141.32	\$73.49
		III	\$89.23	\$46.40	\$116.00	\$60.32
		V	\$88.64	\$46.09	\$115.23	\$59.92
I	Care Facilities	I & II	\$153.97	\$80.06	\$200.16	\$104.08
		III	\$130.22	\$67.71	\$169.29	\$88.03
		V	\$125.78	\$65.40	\$163.49	\$85.01
S	Industrial plant	I & II	\$84.49	\$43.93	\$109.84	\$57.12
		III	\$61.00	\$42.12	\$105.30	\$54.76
		V	\$68.03	\$35.38	\$88.44	\$45.99
S	Warehouse	I & II	\$73.35	\$38.14	\$95.36	\$49.58
		III	\$69.30	\$38.04	\$90.09	\$46.85
		V	\$68.50	\$35.82	\$89.05	\$46.31

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot)

<sup>2</sup> Hillside construction = slope > 20%

<sup>3</sup> Separate structures or occupancies valued separately.

<sup>4</sup> Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, etc.

\\Coda-server\building\Permit Counter\Permit FY06\Building valuation

~~TABLE "A"~~

160

TABLE "E"

000250

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2016 AUG 31 PM 2:10

2016 AUG 31 PM 2:09

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		<b>TENANTS' RESPONSE BRIEF</b> <b>APPEAL</b>	
Appellant Name <b>Fernando &amp; Kate Garcia, Tenants</b>		Landlord <input type="checkbox"/>	Tenant <input checked="" type="checkbox"/>
Property Address (Include Unit Number) <b>3921 Harrison Street Oakland CA 94611</b>			
Appellant Mailing Address (For receipt of notices) <b>3921 Harrison Street Apt. 202 Oakland CA 94611</b>		Case Number <b>L14-0065</b>	Date of Decision appealed <b>5-29-2015</b>
Name of Representative (if any) <b>NONE ; Tenants representing self</b>		Representative's Mailing Address (For notices) Appellant's Representative: For CNML Properties, LLP <b>Fried &amp; Williams, LLP, 480 Ninth Street Oakland CA 94607</b>	

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.)

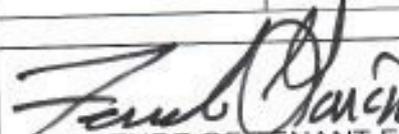
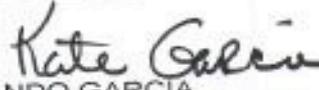
1.  The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board. You must identify the Ordinance section, regulation or prior Board decision(s) and specify the inconsistency.
2.  The decision is inconsistent with decisions issued by other hearing officers. 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.

→ NOT APPLICABLE TO TENANTS' RESPONSE

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 **23** 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 AUG 31, 200 16, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Clifford E. Fried Esq., Fried & Williams LLP
<b>Address</b>	480 Ninth Street
<b>City, State Zip</b>	OAKLAND CA 94607
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

 SIGNATURE OF TENANT FERNANDO GARCIA SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	 AUG 31, 2016 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.

## **Tenants' Arguments to Affirm Hearing Officer's Decision in Case No. L14-0065**

### **Introduction**

Tenants Fernando and Kate Garcia submit this statement and arguments in support of Hearing Officer's Decision, dated May 29, 2015, (the "Decision") in Case No. L14-0065, and to respond to opposing arguments made by Appellant. Tenants reside in apartment unit 202 of the subject building which is located at 3921 Harrison Street, Oakland, CA 94611.

The main issue presented in L14-0065 was whether the subject building should be exempt from the City of Oakland Rent Adjustment Ordinance as being a "substantially rehabilitated building"?

In its appeal, Appellant now raises three issues: (1) whether the admission by the Hearing Officer of new evidence was properly admitted under the doctrine of "Judicial Notice"?; (2) whether the admission of the same new evidence violated the due process requirement and rights of Appellant?; and, (3) whether the Hearing Officer committed an calculation error with respect to four invoices thereby wrongly reducing the total amount of expenses incurred by Appellant in connection with rehabilitation expenditures.

### **Key Questions and Concepts in this Appeal**

This Appeal centers around three questions, which if each is answered in the affirmative would compel the members of the Appeal Board of the Rent Adjustment Program ("RAP") to affirm the Decision rendered by Hearing Officer Stephen Kasdin ("Kasdin") .

Essentially, the five points raised by Appellant's Appeals Brief, dated June 18, 2015 (referred to herein as the "Brief") can be crystallized down to three key questions, they are:

**Q1: Did the Hearing Officer select relevant data and applied it properly in determining the cost basis of new construction in the applicable time period?**

**Q2: Was the evidence used to support the Decision properly admitted into the record and without violation of Appellant's due process rights?**

**Q3: Was there substantial evidence to support the Decision, in spite of a possible error in calculating the total amount of Appellant's rehabilitation expenses?**

## Arguments in Support of the Decision

I. Did the Hearing Officer select relevant data and apply it properly in determining the cost basis of new construction in the applicable time period?

**Tenants' Argument:** The Hearing Officer's Decision in Case No. L14 - 0065 must be affirmed as it is based on common practices in the building industry to set standard construction costs *adjusted* for inflation and is consistent with Hearing Officer's discretion to apply industry best practices consistent with the rules and regulation of the City of Oakland's Rent Control Ordinances

A. Subsections a. and b. of the Oakland (the "City") Municipal Code 8.22.030 ("OMC") contains three (3) requirements that must be met in order for a building to meet the substantial rehabilitation under the Ordinance, these are:

- a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty percent (50%) 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 **[and]** applicable for the time period when the substantial rehabilitation was completed. (*Emphasis added*)

A reasonable interpretation of subsection (B) 2 b. requires the insertion of the conjunction "and" as the requirements in this section are two-fold.

- Average basic cost for new construction shall be set by tables issued by the chief building inspector, **AND**
- The tables must correspond to the applicable time period when the substantial rehabilitation was completed

It is noteworthy to point out that the above quoted subsection (B) 2 b. does not state either the tables must be the "current" nor the "last" table issued by the chief building inspector. Yet, the Appellant is arguing that only the *last* issued table must be used to set the standard of the average basic cost. However, by insisting that the last table issued by the chief building inspector was the only one that could be employed for determining the basic average cost, Appellant is reading only the first part of this section. And, by doing so, the Appellant is unreasonably ignoring and overlooking the second requirement of this section that *table must correspond to the applicable time period when the substantial rehabilitation was completed.*

Furthermore, subsection (B) 2 b. of the Ordinance refers to the "average basic cost of **new** construction" [emphasis added] which Tenants argue unambiguously means the current,

present average market costs, and not the average basic cost of construction in the years 2001, 2007, or 2009 presented in Appellant's Exhibits C, E, and A, respectively. [NOTE: All of Appellant's Brief exhibit copies are attached using the same label markings (i.e., A, B, C, etc.)]

**B. Why Appellant's Evidence is Inapplicable and Irrelevant to the Issue of Applicable Term Period of Completion of Rehabilitation**

First, the applicable time period for the substantial rehabilitation of a building is based upon the completion of the construction project. The evidence submitted by Appellant suggests that the construction was completed sometime in late August 2014. For example, one Appellant's Invoice Exhibit is dated June 20, 2014 (see Appellant's Appeal Brief, Page 16) made to Martin Gallagher Construction, the principal contractor in the rehabilitation construction project.

Second, not one of Appellant's Exhibits pertaining to tables issued by the chief building inspector corresponds to the applicable time period of the construction project, to wit:

**Table A: Table For Construction Valuation, effective August 1, 2009:** This table sets the applicable basic average cost of new construction for type "V" building at \$127.00 square foot. Both sides of stipulated that the building in question is a "wood frame" building as supported by Appellant's witness Martine Gallagher, and are calcified as "Type V" in this table.

Is Appellant's argument that this table square footage cost of \$127 must be used in determining the average basic cost of new construction that occurred FIVE YEARS after its issuance?

**Table E: Table for Construction Valuation, effective February 5, 2007:** This table sets the applicable basic average cost of new construction for type "V" building at \$121.75 square foot. This represents an *increased in the basic average cost of new construction from Exhibit C of 31.9%, equaled to an average annual increase rate of 5.32%.*

**Table C: Table for Construction Valuation, effective February 1, 2001:** This table sets the applicable basic average cost of new construction for type "V" building at \$92.25 square foot.

**Table D: Cost Index (1926 = 100):** Appellant admits that in the past RAP Appeals Board decisions have relied on Cost Index tables (the "Cost Index Tables"). [See Appellant's brief, page 5 where Appellant's attorneys write: "Those [Appeals Board] cases cited by the Tenant's Attorney used a completely different document – one labeled Cost Indexes (1926=100) hereinafter referred to as Table D."]

The Cost Index Table D cannot apply to the current case because it had an expiration date of March 2007, and was subsequently replaced by the issuance of Table E which was effective one month earlier on February 2007. [See Table D's unlabeled footnote which states: "The data included on this page becomes obsolete after March 2007."]

**C. Table B that was relied upon by the Hearing Officer is the proper source of the average basic cost for new construction during the applicable time period**

Appellant opposes the introduction of Table B into evidence.

Tenants argue for its admission and use on the following compelling grounds:

1) As Appellant points out in its Brief (at page 5) RAP hearing officers and their decisions have previously relied on Cost Index Table D, therefore these Cost Index tables have precedential value and should be used to determine the most accurate, average basic cost for new construction.

2) Each and every table exhibit, including the Cost Index tables, is published by one source: Marshall Valuation Service, an affiliate of Marshall & Swift a subsidiary of CoreLogic Inc. [See: <https://www.corelogic.com/solutions/marshall-swift.aspx>].

One clear purpose behind these tables is the determination of applicable, municipal permit fees charged by the City's Building Services department to developers of new construction. However, this purpose is quite different than the use of these tables by RAP, its staff and hearing officers. For example, the Building Services may want to keep fees low and lock-in certain fee rates to encourage development; therefore, it is not surprising that such uses would rely on old, past construction costs in order to keep development fees low to attract further investment in the City.

In contrast, the City's RAP office and staff use these valuation tables for quite a different purpose: to determine whether a building owner / landlord has invested sufficient capital in a rehabilitation construction project to meet the requirement of "substantial capital improvement", in order to be exempt from the City's rent control adjustment Ordinance.

This last point is significant. The standard to grant an exemption to the rent control ordinance should be set high, because it is not comparable to setting a fee schedule for developers. Accordingly "substantial rehabilitation" of a building sought by its owners should not be based on the average basic cost for new construction from yesteryear! Doing so would undermine the very tenant protections that the law was adopted to protect.

3) As explained above the underlying purpose of the "tables" mentioned in subsection (B) 2 b. is to account and adjust for the ever upward movement of commodity prices such as wood, steel, and other construction materials used by the construction industry. Therefore, it is of almost important to obtain current and accurate construction costs (or "values") "applicable for the time period when the substantial rehabilitation was completed". Obviously, the most accurate and up to date construction costs should be determined weekly or monthly, ideally.

Rather than every two, three or six years as evidenced by Appellant's exhibits labeled as Table C (issued in 2001 by the City), Table E (issued in 2007 by the City), or Table A (issued in 2009 by the City). [All references herein to Appellant's Brief meant to refer to the Brief dated June 18, 2015].

4) Two previous RAP Case Decisions establish precedent for use of Cost Index Tables by the Hearing Officer to determine the average basic cost of new construction for the applicable time period. The two cases cited below addressed the issue of whether the building's owner had met the requirements of substantial rehabilitation under OMC section 8.22.030.

**Weinberg vs. Tenant**, L13-0028 (December 3, 2013): In pertinent part, the hearing officer wrote: "...since the construction in this case occurred in the years 1991-1992 and the costs of risen considerably ...For this reason, the Building Services agency [of the City] has also issued a document entitled "Cost Index (1926 = 100)" (Table B)..."

It appears that the Cost Index table referred to as "Table B" in the Weinberg case is not the same table that Appellant mistakenly believes is the same as the current Table D in this matter (L14-0065). Appellant states in its Brief that:

"...The attorney for the tenants cited 3 cases (L13-0028, T13-0196, and T07-0287) to introduce the Table B. However the table used in those 3 cases is not the Table introduced at the hearing [in this matter]...Those cases cited by the Tenant's Attorney used a completely different document – one labeled Cost Indexes (1926=100) hereinafter referred to as Table D..." [Weinberg Decision at pp. 2, 3]

However, Appellant is clearly mistaken because (i) the hearing officer in Weinberg used a cost index table that covered the period of time between 1991 to 2009 (ii) but Table D exhibit to Appellant's Brief expired on March 2007 (see Table D attached to Appellant's Brief). Therefore, Appellant assertion is not supported by the evidence and the facts.

Rather, as stated herein, the cost index tables issued or used by the City's Building Services department have in common a definitive start year (1926) where a baseline [in this case the baseline = 100] is established upon which future inflation growth will be measured from, accordingly all these tables issued from 1926 forward set base year and baseline at: 1926 = 100.

The difference between Table B and Table D in this matter is the breakdown into quarterly versus annual cost indexes; so Tenant's attorney introduced Table B which uses the same base year and baseline (1926=100) breaks down cost index growth by the more accurate quarterly time period as oppose to the annual cost index breakdown of Table D.

**Promes v Fehr**, T13-0196 (December 16, 2013): In relevant part, the hearing officer wrote that in calculating the average basic cost of new construction in 2007, when the actual construction occurred in 2003, "...it would be unfair ...to use the [then] current [valuation] costs...For this reason, the Building Services agency...has also issued ..Cost Indexes (1926 = 100)..." [Promes Decision at p. 6]

**D. Reference Table F, dated May 1, 2015, for guidance only to compare and determine the reasonableness of Hearing Officer's Decision concerning the applicable measure of average basic cost for new construction**

Attached hereto is the current Construction Valuation for Building Permits (herein after referred to as "Table F") dated May 1, 2015. Of course, Table F was not introduced as evidence during the RAP hearing in matter L14-0065 as it was issued 4 days after the end of the hearing. However, as it is instructive, and as it has been issued by the City as verified by an official stamp and signature of an employee in the Building Services Division, which also issued Tables A and C, we ask the Appeal Board members to take official notice and enter Table F into the record before the RAP Appeal Board.

For the sole purpose of illustration only and not for the purpose of submission of new evidence Table F sets the value of new construction for a "V" type (wood frame) apartment building at **\$145.07 per square foot.**

Next, taking the applicable rate for the same type of building from Table A (2009), and comparing it to the 2015 rate, the increased as a percentage of the old rate produced a cost index factor of:

a.  $\$127 - \$145 = \$18$

b.  $\$18 / \$127 = 14.17\%$  [versus the 18% rate produced by the Hearing Officer]

c. Applying the illustrated rate of \$145.00 (rounded) to the square footage of 13,336\*, we obtain the following average basic cost for new construction on May 1, 2015:

$$13,336 * \$145 = \$1,933,720, \text{ and } 50\% \text{ would equal: } \$966,860$$

Using the above number in this case would not result in a different outcome, even if we add-back the disputed invoice amount of \$25,999 to reach Appellant's claimed investment of capital in the amount of \$857,596. That would still leave Appellant short of the 50% requirement by the amount of \$109,264!

\* The square footage for the subject building submitted by Appellants

**E. Conclusion: The use of Table B to determine the average basic cost of new construction is proper and the Hearing Officer acted within his discretion**

The four tables mentioned in appellant's appeal brief concerned the issue of how we shall measure inflation over time for construction costs incurred in new construction within the City. All of these tables were introduced into evidence in the L14-0065 case hearing. These tables are not "issued" by the City, rather they are adopted and republished by the Building Services department to determine fees to be charged to developers. All the data contained in these tables, as well as new Table F (see below), were derived from data generated by Marshall Valuation Services, an affiliate of Marshall & Swift, a Core Logic subsidiary. [See: <https://www.corelogic.com/solutions/marshall-swift.aspx>].

Some of these tables have markings to indicate that it was released through the Building services department, and in fact, one of them was signed in 2001 by the chief building inspector; but the other tables were not.

But other than the data contained in these tables was generated by Marshall & Swift, the only other common variable of these tables is that all of them use the SAME BASE YEAR AND BASELINE: 1925 = 100

Therefore, all of these tables are connected, the data presented in them is consistent as it follows the thread of inflation in the construction industry over time in order to produce accurate and current data to determine average basic cost of new construction.

Therefore, the City's policy requiring that all rental building owners meet rigorous standards set out in the rent adjustment Ordinance. To dissent from and reject the Hearing Officer's Decision in this matter will undermine the protections afforded to renters within the City.

**The Hearing Officer was well within his discretion to use the Cost Index Table B to factor in the rising construction costs, and therefore his Decision must be affirmed in total.**

**II. Was Table B properly admitted into the record and without violation of Appellant's due process rights?**

Appellant's attorney was aware of the existence and use of Cost Index tables by RAP hearing officers in measuring and determining the average basic cost of new construction in the "substantial rehabilitation" cases. Indeed, Appellant's attorney is seasoned in this area of the law and practice.

As stated above, the Cost Index tables provide historical cost (inflation) index data used by the construction industry and municipal agencies such as the City's Building Services department. The data contained in these tables measure national inflation trends that are generally agreed to in the industry, and published by a national, highly respected Marshall Valuation Services.

More importantly, Appellant's attorney refers to the two cases cited above, and demonstrates an understanding of the difference between the two Cost Index tables used in those cases and the one introduced by Tenant's attorney in this case. The attempt by Appellant to distinguish these two tables on the basis that one was labeled "Quarterly" and the other is not, is insufficient ground to dismiss and reject the use of Table B "Quarterly Cost Index (1926=100)" in the Decision. Both of these tables, and all others used, republished, or "issued", whether or not authenticated, are born from and derived from the same national data on inflation as measured and disseminated by Marshall Valuation Services.

And, as the use of these cost index tables is not new in RAP hearing decisions in connection with answering the question of whether a landlord / building owner has meet the substantial rehabilitation of a building to obtain a rent control exemption, Appellant's attorney cannot reasonably claim that a "last minute" introduction of Table B was a surprise and unfair new piece of evidence.

Nor can Appellant's attorney argue reasonably that data of inflation, as captured in Cost Index tables or in the Tables A, C and E (the "Construction Valuation for Building Permits") that they introduced into evidence, cannot be judicially noticed. First, Appellant's attorney was aware of the prior use of Cost Index Tables by RAP hearing officers. Furthermore, it is also fair and reasonable to assume that Appellant's RAP-experienced attorneys were also aware that these tables were from time to time "expired" and had to be replaced with a new index cost table.

Finally, Appellant's attorney had sufficient time to protest the introduction into evidence of Table B, and did so by submitting a "Post Hearing Brief on Building Services Tables" on May 7, 2015. So any claim of procedural due process was invalidated when the Hearing Officer accepted their post-hearing arguments brief that were not countered by the Tenants. In others words, they had a "second bite of the apple" to argue against the admission of Table B. These arguments were, we are sure, carefully and fairly considered by the Hearing Officer, but were ultimately rejected.

**Conclusion: For the above reasons, Appellant's arguments for the rejection of the Hearing Officer's Decision on the ground of violation of due process procedural rights must be rejected and dismissed.**

**III. Was there substantial evidence to support the Decision, in spite of a possible error in calculating the total amount of Appellant's rehabilitation expenses?**

**A. Even accepting Appellant's Expenditure Amount as Correct, Appellant's Claim of Insufficient Evidence is Not Supported**

The RAP Appeals Board should find and accept the use of Table B for determining the average basic cost of new construction should be fair, reasonable, and supported by precedent. Such a finding will uphold the Hearing Officer's conclusion and holding that the average basic cost of new construction for the applicable time period when the rehabilitation was completed is the amount of:

**\$2,148,694, AND 50% of that amount is: \$1,074,347**

Even assuming that Appellant is correct in their rehabilitation expenditures of \$857,596 [See Appellant's Appeal Brief at p. 5], the Hearing Officer had substantial evidence to support his conclusion as Appellant's fell short by the amount of \$216,751.00.

**B. Furthermore, assuming Appellant Building's Square Footage as Correct, Appellant's Claim of Insufficient Evidence is Not Supported**

Appellant's attorney claims that balconies space of the subject building should not be counted as part of the building's square footage. Appellant's Brief argues that balconies square footage should not be added to the building's total square footage "...because they are not living spaces because there is 'no electricity or running water'..." . However, this is a specious argument. In fact, the balconies in the subject building do have electrical connections; many tenants in the building use their balconies as an extension of their living room and kitchen during the summer months where they spend long hours using their grills and eating "out".

But, for the sake of arguendo, let's assume that we accept the smaller square footage of 13,336 claimed by Appellants. And using the square footage costs derived by the Hearing Officer we have the following new amount:

**13,336 X \$149 = \$1,987,064, AND 50% = \$993,532**

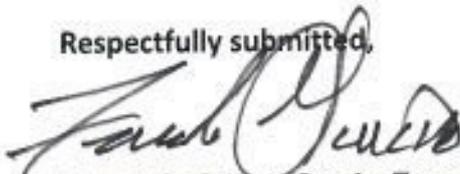
Again, Appellant's fall short of meeting the 50% requirement.

**Conclusion: For the reasons stated above, Appellant's argument of insubstantial evidence must be rejected.**

Conclusion

For all the reasons stated above, the Hearing Officer's Decision in case L14-0065 must be affirmed and Appellant's claims must be rejected in total.

Respectfully submitted,

   
Fernando & Kate Garcia, Tenants

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**LIST OF EXHIBITS TO TENANTS' RESPONSE TO APPELLANT'S APPEALS BRIEF**

1. **Table A: Construction Valuation for Building Permits (August 1, 2009) Page 14**
2. **Table B: Quarterly Cost Indexes (1926=100) (10/2014) Page 15**
3. **Table C: Residential Building Minimum Valuation Data (Feb. 1, 2001) Page 16**
4. **Table D: Cost Indexes (1926=100) (January 2007) Page 17**
5. **Table E: Construction Valuation for Building Permits (Feb. 5, 2007) Page 18**
6. **Table F: (NEW): Construction Valuation for Building Permits (May 1, 2015) Page 19**
7. **Gallagher Construction Invoice (April 4, 2014) Page 20**
8. **Gallagher Construction Invoice (June 13, 2014) Page 21**
9. **Gallagher Construction Invoice (June 13, 2014) Page 22**
10. **Gallagher Construction Invoice (June 13, 2014) Page 23**

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**City of Oakland**  
**Building Services**  
**Construction Valuation<sup>1</sup>**  
**For Building Permits<sup>4</sup>**  
**Effective Aug. 1, 2009**

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

12-18-09

Occ.	Description <sup>2</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swift 3Q 709 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/c)
	Single Family & Duplex	V	\$144.46	\$75.12	\$187.80	\$97.85	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	\$95.42	\$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	\$20.81	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/a800)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (D/a/car)
	Retaining wall (s.f.)	III	\$32.96	NA	\$42.85	NA	Section 55 pg 3 (12"rein.fh)
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 (D/a/M/g)
		V	\$127.00	\$66.04	\$166.10	\$85.85	Section 11 pg 18 (D/g)
<b>Non-Residential Occupancy</b>							
A	Church/Auditorium	I & II	\$247.07	\$128.48	\$321.19	\$167.02	Section 16 pg 9 (B/g)
		III	\$182.01	\$94.85	\$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	\$226.48	\$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	\$223.48	\$116.20	\$290.50	\$151.06	Section 15 pg 21 (B/a)
		III	\$182.01	\$94.85	\$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	\$324.89	\$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	\$135.89	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/a)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (MLG 423C/a)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (MLG 423D/a)
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	\$108.36	Section 14 pg 15 (B/a)
		III	\$134.38	\$69.86	\$174.80	\$90.84	Section 14 pg 15 (C/a)
		V	\$111.93	\$58.20	\$145.51	\$75.68	Section 14 pg 15 (D/a)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.18	\$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 (C/a/M/g)
S	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (A/g)

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot); Includes 1.3 regional multiplier (see Sec. 99 pg 6 July 2009 Marshall & Swift)

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

<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.

<sup>4</sup> Separate structures or occupancies valued separately.

<sup>5</sup> 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" 1/38

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# QUARTERLY COST INDEXES (1926 = 100)

## BUILDINGS - EASTERN DISTRICT

BUILDING CLASSES	18/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
A. Pre-poured steel frame	3950.9	3900.9	3951.0	3925.5	3938.2	3901.8	3905.0	3954.0	3942.5	3921.4	3909.0	3972.1	3978.1	3976.4	3772.7	3766.5	3723.3	3703.5	3680.2	3682.5	3689.5	3738.0	3692.5	3662.2
B. Reinforced concrete frame	3521.1	3541.4	3562.5	3518.9	3501.5	3517.3	3496.9	3554.0	3548.0	3500.0	3495.0	3505.0	3510.0	3510.0	3455.8	3455.5	3423.3	3405.4	3402.4	3402.4	3402.4	3402.4	3402.4	3402.4
C. Masonry bearing walls	3041.1	3042.0	3011.2	3005.1	2994.0	2984.0	2984.0	3015.1	3000.0	2995.0	2995.0	2995.0	2995.0	2995.0	2945.8	2945.5	2913.3	2895.4	2892.4	2892.4	2892.4	2892.4	2892.4	2892.4
D. Wood frame	2914.3	2895.0	2914.0	2899.0	2899.0	2899.0	2899.0	2910.0	2900.0	2895.0	2895.0	2895.0	2895.0	2895.0	2845.8	2845.5	2813.3	2795.4	2792.4	2792.4	2792.4	2792.4	2792.4	2792.4
E. Steel frame and walls	2760.7	2770.3	2775.3	2763.2	2764.4	2759.4	2759.4	2770.0	2760.0	2755.0	2755.0	2755.0	2755.0	2755.0	2705.8	2705.5	2673.3	2655.4	2652.4	2652.4	2652.4	2652.4	2652.4	2652.4

## BUILDINGS - CENTRAL DISTRICT

BUILDING CLASSES	18/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
A. Pre-poured steel frame	3790.8	3797.8	3761.4	3738.5	3729.8	3717.0	3705.1	3750.1	3737.1	3724.1	3711.1	3708.1	3708.1	3708.1	3658.8	3658.5	3626.3	3608.4	3605.4	3605.4	3605.4	3605.4	3605.4	3605.4
B. Reinforced concrete frame	3240.0	3243.5	3214.0	3200.0	3191.0	3182.0	3182.0	3213.1	3200.0	3195.0	3195.0	3195.0	3195.0	3195.0	3145.8	3145.5	3113.3	3095.4	3092.4	3092.4	3092.4	3092.4	3092.4	3092.4
C. Masonry bearing walls	2760.7	2770.3	2775.3	2763.2	2764.4	2759.4	2759.4	2770.0	2760.0	2755.0	2755.0	2755.0	2755.0	2755.0	2705.8	2705.5	2673.3	2655.4	2652.4	2652.4	2652.4	2652.4	2652.4	2652.4
D. Wood frame	2760.7	2770.3	2775.3	2763.2	2764.4	2759.4	2759.4	2770.0	2760.0	2755.0	2755.0	2755.0	2755.0	2755.0	2705.8	2705.5	2673.3	2655.4	2652.4	2652.4	2652.4	2652.4	2652.4	2652.4
E. Steel frame and walls	2477.8	2478.0	2483.3	2480.4	2480.4	2475.4	2475.4	2486.0	2476.0	2471.0	2471.0	2471.0	2471.0	2471.0	2421.8	2421.5	2389.3	2371.4	2368.4	2368.4	2368.4	2368.4	2368.4	2368.4

## BUILDINGS - WESTERN DISTRICT

BUILDING CLASSES	18/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
A. Pre-poured steel frame	4020.4	3932.0	3901.4	3878.7	3908.0	3901.7	3910.2	3911.2	3911.2	3897.0	3897.0	3897.0	3897.0	3897.0	3847.8	3847.5	3815.3	3797.4	3794.4	3794.4	3794.4	3794.4	3794.4	3794.4
B. Reinforced concrete frame	3390.5	3390.0	3379.0	3353.0	3353.0	3353.0	3353.0	3364.1	3350.0	3345.0	3345.0	3345.0	3345.0	3345.0	3295.8	3295.5	3263.3	3245.4	3242.4	3242.4	3242.4	3242.4	3242.4	3242.4
C. Masonry bearing walls	3023.3	3019.0	2988.1	2971.4	2969.0	2969.0	2969.0	2980.1	2966.0	2961.0	2961.0	2961.0	2961.0	2961.0	2911.8	2911.5	2879.3	2861.4	2858.4	2858.4	2858.4	2858.4	2858.4	2858.4
D. Wood frame	2893.3	2878.1	2848.0	2831.0	2828.0	2828.0	2828.0	2839.1	2825.0	2820.0	2820.0	2820.0	2820.0	2820.0	2770.8	2770.5	2738.3	2720.4	2717.4	2717.4	2717.4	2717.4	2717.4	2717.4
E. Steel frame and walls	2718.0	2698.4	2668.0	2651.0	2648.0	2648.0	2648.0	2659.1	2645.0	2640.0	2640.0	2640.0	2640.0	2640.0	2590.8	2590.5	2558.3	2540.4	2537.4	2537.4	2537.4	2537.4	2537.4	2537.4

## EQUIPMENT - NATIONAL AVERAGE

INDUSTRY	18/2014	7/2014	4/2014	1/2014	10/2013	7/2013	4/2013	1/2013	10/2012	7/2012	4/2012	1/2012	10/2011	7/2011	4/2011	1/2011	10/2010	7/2010	4/2010	1/2010	10/2009	7/2009	4/2009	
Average of all	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	
Automotive	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0	1173.0
Chemical	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Food	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Textile	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Transportation	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Metals	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Electronics	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Plastics	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Other	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0

The data included on this page becomes obsolete after update delivery, scheduled for January 2015.

MARSHALL EMMERTON SERVICE  
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PAGE 01/02

RENT ADJUSTMENT

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TABLE "B"

04/29/2015 14:57

510-230-6181

Residential Building Minimum Valuation Data

Approved by Colin N. Wong Building Official to be effective February 1, 2001

The following building valuation data are based on cost and value reported from "Marshall Valuation Services" published by Marshall and Swift dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.

Calculated Method * (\$/sf)		Segregated Cost Method			
Level ground construction (caisson found'n @ \$11.50/sf not included in this column)	Hillside construction Based on 20% slope (retaining wall not included)	Deck (\$/sf of area)			
		Ground level (< 6')	\$ 22.44/sf		
		Terrace level	\$ 30.29/sf		
Apartment	Apartment	Fence ((\$/sf surface)			
Type I & II	\$146.67	Type I & II	\$190.67	-wood	\$ 4.18/sf
Type III	\$113.27	Type III	\$147.25	-chain link	\$ 2.64/sf
Type V	\$ 92.25	Type V	\$119.93	-masonry	\$10.30/sf
Basement	\$ 35.07	Basement	\$ 58.77	Fireplace	\$6,170/ea
Garage	\$ 31.24	Garage	\$ 50.14	Fire sprinkler	\$ 3.28/sf
Type I Garage	\$ 39.71	Type I Garage	\$ 63.82	Kitchen Appliance	\$ 4983/set
Custom Residences		Custom Residences		Patio Enclosure	\$ 21.18/sf
Type III	\$184.23	Type III	\$239.50	Solarium	\$129.53/sf
Type V	\$178.35	Type V	\$231.86	Stair	
Basement	\$ 69.63	Basement	\$ 74.02	-prefab	\$149.16/Tread
Garage	\$ 64.78	Garage	\$ 84.21	-wood	\$125.07/Tread
Semi-Custom Residences		Semi-Custom Residences		Wall - non-bearing	
Type III	\$151.14	Type III	\$196.48	-wood (footing extra)	\$15.00/lf
Type V	\$142.67	Type V	\$185.47	Wall - retaining (\$/sf surface)	
Basement	\$ 49.56	Basement	\$ 64.43	-concrete	
Garage	\$ 51.43	Garage	\$ 66.66	< 6' tall	\$ 23.10/sf
Single Family Residences		Single Family and Residences		< 10' tall	\$ 17.05/sf
Type III	\$118.05	Type III	\$153.47	< 20' tall	\$ 36.30/sf
Type V	\$106.99	Type V	\$139.09	-masonry	
Basement	\$ 29.49	Basement	\$ 51.21	< 6' tall	\$21.17/sf
Garage	\$ 38.07	Garage	\$ 52.12	< 10' tall	\$31.09/sf
Starter Home		Starter Home		-wood	
Type V	\$ 76.39	Type V	\$ 99.57	< 6' tall	\$ 17.66/sf
Basement	\$ 24.74	Basement	\$22.17	<10' tall	\$21.44/sf
Garage	\$ 28.11	Garage	\$26.54		

\* Calculator method includes typical built-in appliance and one fireplace only

~~TABLE "B"~~

TABLE "C"

Page 16

COST INDEXES (1926 = 100)

BUILDINGS - EASTERN DISTRICT

Table with 13 columns (years 2006-2008) and 5 rows (A: Fabricated steel frame, B: Reinforced concrete frame, C: Masonry bearing walls, D: Wood frame, E: Metal frame and walls)

BUILDINGS - CENTRAL DISTRICT

Table with 13 columns (years 2006-2008) and 5 rows (A: Fabricated steel frame, B: Reinforced concrete frame, C: Masonry bearing walls, D: Wood frame, E: Metal frame and walls)

BUILDINGS - WESTERN DISTRICT

Table with 13 columns (years 2006-2008) and 5 rows (A: Fabricated steel frame, B: Reinforced concrete frame, C: Masonry bearing walls, D: Wood frame, E: Metal frame and walls)

INDUSTRY

Large table with 13 columns (years 2006-2008) and 25 rows (A: Average of all, B: Petroleum refin., C: Chemical, D: Textile, E: Paper, F: Food, G: Metal, H: Glass, I: Rubber, J: Plastic, K: Leather, L: Textiles, M: Apparel, N: Furniture, O: Miscellaneous)

RENT ADJUSTMENT

518-236-6181

10/14/2006 11:45

TABLE'D

KARSHALL KILMFAWN SERVICE  
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The data included on this page becomes obsolete after March 2007.

enr.com/resources/cost-indexes

TABLE 5A

City of Oakland  
 Building Services  
 Construction Valuation<sup>1</sup>  
 For Building Permits<sup>4</sup>  
 Effective February 5, 2007

Community Economic Development Agency  
 Dalziel Administration Building  
 250 Frank Ogawa Plaza - 2nd Floor  
 Oakland, CA 94612  
 510-238-3441

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction <sup>2</sup>	
			New	Remodel	New	Remodel
R3	Custom Residence	V	\$183.35	\$95.34	\$238.36	\$123.94
	Single Family Residence	V	\$137.19	\$71.34	\$178.35	\$92.74
	Manufactured home	V	\$35.00	\$18.20	\$45.50	\$23.65
	Convert non-hab to hab	V	\$101.11	NA	\$131.44	NA
	Foundation Upgrade (l.f.)	V	\$103.61	NA	\$134.69	NA
	Deck	V	\$26.93	NA	\$36.35	NA
U1	Garage	V	\$35.08	\$18.76	\$46.90	\$24.39
	Carport	V	\$24.65	\$12.82	\$32.05	\$16.66
	Retaining wall (s.f.)	III	\$27.80	NA	\$36.15	NA
R1	Apartment	I & II	\$162.14	\$84.31	\$210.78	\$109.61
		III	\$131.70	\$68.48	\$171.21	\$89.03
		V	\$121.75	\$63.31	\$158.28	\$82.30
S3	Garage	I & II	\$55.53	\$28.88	\$72.19	\$37.54
A	Church/Auditorium	I & II	\$221.65	\$115.26	\$288.15	\$149.84
		III	\$165.64	\$86.13	\$215.33	\$111.97
		V	\$158.36	\$82.35	\$205.87	\$107.05
A	Restaurant	I & II	\$193.43	\$100.58	\$251.46	\$130.76
		III	\$144.62	\$75.20	\$188.01	\$97.76
		V	\$132.44	\$68.87	\$172.17	\$89.53
B	Bank	I & II	\$219.90	\$114.35	\$285.67	\$148.65
		III	\$178.77	\$92.96	\$232.40	\$120.85
		V	\$161.99	\$84.23	\$210.59	\$109.51
B	Market (Retail sales)	I & II	\$122.35	\$63.62	\$159.06	\$82.71
		III	\$91.02	\$47.33	\$118.33	\$61.53
		V	\$87.25	\$45.37	\$113.43	\$58.98
B	Medical Office	I & II	\$249.42	\$129.70	\$324.25	\$168.61
		III	\$204.78	\$106.49	\$266.21	\$138.43
		V	\$200.23	\$104.12	\$260.30	\$135.36
B	Office	I & II	\$158.58	\$82.46	\$206.15	\$107.20
		III	\$114.63	\$59.61	\$149.02	\$77.49
		V	\$112.00	\$58.24	\$145.60	\$75.71
E	School	I & II	\$165.11	\$85.86	\$214.64	\$111.61
		III	\$146.52	\$76.19	\$190.48	\$99.05
		V	\$141.91	\$73.79	\$184.49	\$95.93
H	Repair garage	I & II	\$108.71	\$56.53	\$141.32	\$73.49
		III	\$89.23	\$46.40	\$116.00	\$60.32
		V	\$88.64	\$46.09	\$115.23	\$59.92
I	Care Facilities	I & II	\$153.97	\$80.06	\$200.16	\$104.06
		III	\$130.22	\$67.71	\$169.29	\$88.03
		V	\$125.76	\$65.40	\$163.49	\$85.01
S	Industrial plant	I & II	\$84.49	\$43.93	\$109.84	\$57.12
		III	\$81.00	\$42.12	\$105.30	\$54.76
		V	\$68.03	\$35.38	\$88.44	\$45.99
S	Warehouse	I & II	\$73.35	\$38.14	\$95.36	\$49.58
		III	\$69.30	\$36.04	\$90.09	\$46.65
		V	\$68.50	\$35.62	\$89.05	\$46.31

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot)

<sup>2</sup> Hillside construction = slope > 20%

<sup>3</sup> Separate structures or occupancies valued separately.

<sup>4</sup> Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, etc.

~~TABLE "A"~~

TABLE "E"

**City of Oakland  
Bureau of Building  
Construction Valuation<sup>1</sup>  
For Building Permits<sup>4</sup>  
Effective May 1, 2015**

Planning and Building Department  
Datzel Administration Building  
256 Frank Ogawa Plaza - 2nd Floor  
Oakland, CA 94612  
510-238-3891

**Building Services Division  
CITY OF OAKLAND, CEQA**

Authorized Signature

*Handwritten signature: John P. Smith*  
copy of the original document on file  
I certify this is a true and correct

Occ.	Description <sup>2</sup>	Construction Type	Level Ground		Hillside Construction <sup>3</sup>		Section pg (Class/Type)
			New	Remodel	New	Remodel	
R3	Single Family Residence	V	\$234.17	\$121.77	\$304.42	\$159.30	Section 12 pg 25 (CN)
	Duplex/Townhouse	V	\$193.89	\$100.72	\$251.79	\$130.93	Section 12 pg 25 (C/v)
	Factory/Manufactured home	V	\$73.06	\$37.98	\$94.98	\$49.39	Section 83 pg 9 (Exc)
	Finished Habitable Basement Conversion	V	\$124.08	\$64.52	\$181.31	\$83.88	Section 12 pg 26 (COS/g)
	Convert non-habitable to habitable	V	N/A	\$48.57	N/A	\$63.14	Section 12 pg 26 (COS/g)
	Partition Walls	V	N/A	\$17.23	N/A	\$22.39	Section 52 pg 2 (B/wall)
	Foundation Upgrade (l.f.)	V	\$107.90	NA	\$140.27	NA	Section 61 pg 2 (R/24x72)
	Patio/Porch Roof	V	\$27.76	\$14.43	\$36.08	\$18.76	Section 68 pg 2 (Wood)
	Ground Level Decks	V	\$33.80	\$17.58	\$43.94	\$22.85	Section 66 pg 2 (100st/avg)
	Elevated Decks & Balconies	V	\$44.14	\$22.95	\$57.38	\$29.84	Section 66 pg 2 (10st/1 story)
U1	Garage	V	\$43.30	\$22.52	\$56.29	\$29.27	Section 12 pg 36 (Class/00)
	Carport	V	\$26.74	\$14.95	\$37.37	\$19.43	Section 12 pg 36 (C/v/Aer)
	Retaining wall (s.f.)	III	\$35.75	NA	\$46.48	NA	Section 55 pg 3 (12'height)
R2	Apartment (>2 units)	I & II	\$181.10	\$89.37	\$248.43	\$129.18	Section 11 pg 18 (Dm/g)
		III	\$149.01	\$77.48	\$193.71	\$100.73	Section 11 pg 18 (Dm/g)
		V	\$146.07	\$75.43	\$188.59	\$96.07	Section 11 pg 18 (D/g)
<b>Non-Residential Occupancy</b>							
A	Church/Auditorium	I & II	\$301.54	\$156.80	\$392.00	\$203.84	Section 15 pg 9 (B/g)
		III	\$220.22	\$114.51	\$286.29	\$148.87	Section 15 pg 9 (B/v)
		V	\$203.15	\$105.84	\$264.10	\$137.33	Section 15 pg 9 (S/g)
A	Restaurant	I & II	\$260.56	\$138.49	\$336.73	\$176.14	Section 13 pg 14 (A-B/g)
		III	\$200.51	\$104.27	\$260.67	\$135.55	Section 13 pg 14 (C/g)
		V	\$188.49	\$98.01	\$245.03	\$127.42	Section 13 pg 14 (D/g)
B	Restaurant <50 occupancy	V	\$144.99	\$75.39	\$188.49	\$98.01	Section 13 pg 17 (C/v)
B	Bank	I & II	\$258.31	\$134.32	\$335.80	\$174.82	Section 15 pg 21 (B/v)
		III	\$206.81	\$107.44	\$268.59	\$139.67	Section 15 pg 21 (C/v)
		V	\$194.87	\$101.33	\$253.33	\$131.73	Section 15 pg 21 (D/v)
B	Medical Office	I & II	\$289.61	\$150.60	\$376.50	\$195.78	Section 15 pg 22 (A/g)
		III	\$281.19	\$146.22	\$365.55	\$190.08	Section 15 pg 22 (B/g)
		V	\$227.88	\$118.50	\$295.24	\$154.04	Section 15 pg 22 (C/g)
B	Office	I & II	\$191.17	\$99.41	\$248.51	\$129.23	Section 15 pg 17 (B/v)
		III	\$137.10	\$71.29	\$178.23	\$92.68	Section 15 pg 17 (C/v)
		V	\$130.01	\$67.81	\$169.02	\$87.89	Section 15 pg 17 (D/v)
E	School	I & II	\$244.37	\$127.07	\$317.69	\$165.20	Section 18 pg 14 (A-B/g)
		III	\$188.85	\$98.20	\$245.51	\$127.66	Section 18 pg 14 (C/g)
		V	\$181.97	\$94.63	\$236.57	\$123.01	Section 18 pg 14 (D/g)
H	Repair Garage	I & II	\$212.03	\$110.26	\$275.84	\$143.33	Section 14 pg 33 (M/G 423C/e)
		III	\$205.70	\$108.96	\$267.41	\$139.05	Section 14 pg 33 (M/G 423C/e)
		V	\$197.84	\$102.93	\$257.38	\$133.81	Section 14 pg 33 (M/G 423D/e)
I	Care Facilities / Institutional	I & II	\$215.02	\$111.81	\$279.53	\$145.35	Section 15 pg 22 (B/v)
		III	\$172.71	\$89.81	\$224.52	\$116.75	Section 15 pg 22 (C/v)
		V	\$165.20	\$85.91	\$214.77	\$111.88	Section 15 pg 22 (D/v)
M	Market (Retail sales)	I & II	\$168.88	\$87.71	\$219.28	\$114.02	Section 13 pg 26 (A/g)
		III	\$134.90	\$70.15	\$175.37	\$91.19	Section 13 pg 26 (C/g)
		V	\$127.88	\$66.50	\$166.25	\$86.45	Section 13 pg 26 (D/g)
S	Industrial plant	I & II	\$180.88	\$94.06	\$235.15	\$122.28	Section 14 pg 15 (B/v)
		III	\$141.69	\$73.68	\$184.19	\$95.78	Section 14 pg 15 (C/v)
		V	\$126.45	\$65.76	\$164.40	\$85.49	Section 14 pg 15 (D/v)
S	Warehouse	I & II	\$112.85	\$58.58	\$148.44	\$76.15	Section 14 pg 26 (A/g)
		III	\$105.50	\$54.86	\$137.14	\$71.31	Section 14 pg 26 (B/g)
		V	\$103.45	\$53.80	\$134.49	\$69.83	Section 14 pg 26 (C/v)
S	Parking Garage	I & II	\$89.44	\$46.51	\$116.27	\$60.46	Section 14 pg 34 (A/g)

<sup>1</sup> Cost per square foot, unless noted otherwise. (l.f. = linear foot; s.f. = square foot); includes 1.3 regional multiplier (see Sec. 99 pg 6 April 2015 Marshall & Swift)

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

<sup>3</sup> Remodel Function of New Construction is a 0.82 multiplier.

<sup>4</sup> Separate structures or occupancies valued separately.

<sup>5</sup> Separate fees assessed by EPM permits, R.O.W. Improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.

**Martin Gallagher Construction Inc.**

**INVOICE**

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 18-452  
 INVOICE DATE April 3, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 203

Date	DESCRIPTION	% Completed	Total Cost	AMOUNT DUE
4/3/14	Installation of new kitchen cabinets and appliances and tile on the floor	6747 → 51900 16791 → <del>24000</del>	51900	\$44,988.00
4/3/14	Installation of new vanity cabinet with sink & tile on shower walls.	6660 → 2000 6627 →	2000	\$9,800.00
			<b>SUBTOTAL</b>	21,700.00
				\$21,700.00

PROD # IP-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AUTH # AP  
 DATE \_\_\_\_\_

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 maringallagher85@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

PAY THIS AMOUNT

THANK YOU FOR YOUR BUSINESS!

PAID  
 APR 15 2014  
 CK# 120986

45

# Martin Gallagher Const. Inc. SUPPLEMENTAL INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

SUPPLEMENTAL INVOICE NUMBER 64-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 203

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6791 → \$2500	\$3,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6660 → \$300 6624 → \$800 6622 → \$700.00	\$700.00
PLEASE REFER TO INVOICE NUMBER 18				
			PROPS 1P-452	
			VENUE	
			GLASS	
			ALUM	
			DATE 6-17-14	
			SUBTOTAL	4,300.00
				\$4,300.00
				PAY THIS AMOUNT

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[maringallagher85@gmail.com](mailto:maringallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID  
 JUN 20 2014  
 1241.52  
 CK# 123937

8366

# Martin Gallagher Construction Inc. INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 65  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 204

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor			\$15,500.00
5/13/14	Installation of new vanity cabinet with sink & tile on shower walls.			\$10,500.00
			SUBTOTAL	26,000.00
				\$26,000.00

PROJ # IP-452  
 VENDOR # \_\_\_\_\_  
 GL CODE 6619  
 AUTH AD  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 17 2014

CK#123868

**Martin Gallagher Construction Inc. INVOICE**

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 67-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 304

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6791 → 6,500 6747 → 3,500 6660 → 2,300 6624 → 7,200	\$16,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			SUBTOTAL	26,000.00
				\$25,000.00 PAY THIS AMOUNT

PROJ # 18-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AUTH NA  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 martingallagher85@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID  
 JUN 20 2014  
 CK# ~~124052~~ 124052

<b>City of Oakland Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2016 NOV 17 PM 4:21	
<b>Tenant's name:</b> Julie E. Amberg		Landlord <input type="checkbox"/>	Tenant <input checked="" type="checkbox"/>
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street, Apt. 302 Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> Julie E. Amberg 3921 Harrison Street, Apt. 302, Oakland, CA 94611		<b>Case Number</b> L14-0065	
		<b>Date of Decision appealed</b> May 29, 2015	
<b>Name of Representative (if any)</b> Stanley Amberg		<b>Representative's Mailing Address (For notices)</b> 11 Carolyn Lane, Chappaqua, NY 10514	

I appeal the decision issued in the case and on the date written above on the following grounds:

(Check the applicable ground(s).  
additional pages to this form.)

Please attach

1.  The decision is inconsistent with decisions of the Board. You must specify the inconsistency.

Not applicable to tenant's response brief.

ns or prior  
ard decision(s) and

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 21. 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 Nov. 17, 2016, 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>	Clifford E. Fried Fried & Williams LLP 1901 Harrison Street, 14th Floor Oakland, CA 94612
<u>Address</u>	
<u>City, State Zip</u>	
<u>Name</u>	
<u>Address</u>	
<u>City, State Zip</u>	

 SIGNATURE of TENANT JULIE E. AMBROSE	<u>Nov. 17, 2016</u> 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.

Not applicable to tenant's response brief.

- 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.

2016 NOV 17 PM 4:22

**RENT ADJUSTMENT PROGRAM CASE L-14-0065  
525, 655 HYDE ST. CNML, PROPERTIES LLC v. TENANTS**

**TENANT AMBERG RESPONSE BRIEF ON APPEAL**

**INTRODUCTION**

This brief is respectfully submitted by Julie E. Amberg who is the tenant, along with her young child, residing in unit 302, 3921 Harrison Street, Oakland, CA 94611. Ms. Amberg has been a tenant in unit 302 since 1996. The building at 3921 Harrison Street is the property that the owner 525, 655 Hyde St., CNML Properties LLC (“Landlord”) seeks to exempt from rent regulation. This brief responds to Landlord’s Appeal filed June 18, 2015 (“Landlord Appeal brief”).

Exempting the entire building at 3921 Harrison Street from rent regulation, and immediately charging all tenants full market-rate rent, will cause extreme hardship on tenants. For example, Tenant Amberg who is submitting this brief is a single parent. It is respectfully requested that the Board take great care before granting the exemption.

The Board may wish to take official notice, as has the Oakland City Council, of the harmful effects of high rent on tenant displacement. A recent Oakland City Council Ordinance warns that:

“WHEREAS, the City of Oakland is experiencing a severe housing supply and affordability crisis; and

“WHEREAS, the housing affordability crisis threatens the public health, safety and/or welfare of our residents; and

“WHEREAS, 60 percent of Oakland residents are renters, who would not be able to locate comparably priced housing within the city if displaced (U.S. Census Bureau, ACS 2014 Table S1101); ...”

Oakland City Council Ordinance No. 13391 (Sept. 20, 2016).

Turning to the Hearing Decision in the present case, the decision is both fair and reasonable. It denied the exemption from rent regulation because the Landlord’s purported rehabilitation expenses were less than fifty percent of the “average basic cost for new construction” *at the time – 2014 – when the rehab work was done.*

The methodology used in the Hearing Decision determined that the “average basic cost” of the property was \$2,148,694 in 2014. This is a fair and reasonable value.

We know this to be true because the current owner of the property bought it on November 14, 2013 for \$2,051,000. (Exhibit 4)<sup>1</sup> Thus, in the real world, the actual value of the property when the owner bought it in 2013 (\$2,051,000), was very close to the value calculated by the Hearing Decision for 2014 (\$2,148,694) when the rehab work was done.

Lest the Board be concerned that denying the owner an exemption from rent regulation in this proceeding would leave the owner empty-handed, we note that in RAP case L15-0073 the same owner has petitioned to recover, as capital improvements, the same expenses that the owner is asserting in this exemption proceeding. L15-0073 is scheduled for hearing on January 12, 2017.<sup>2</sup>

## ARGUMENT

### 1.

#### The Hearing Decision Complied With The Oakland Municipal Code Requirement That The Construction Cost Must Be For The Time Period When The Substantial Rehabilitation Was Completed

Oakland Municipal Code requires that in order for a building owner to remove the building from rent regulation, the owner must spend at least fifty percent of the building’s “average basic cost” and requires that such cost must be determined “*for the time period when the substantial rehabilitation was completed.*”

The Hearing Decision herein complied with that statutory command.

Oakland Municipal Code § 8.22.030(A)(6) exempts “substantially rehabilitated buildings” from rent regulation.

Oakland Municipal Code § 8.22.030(B) states the requirements to obtain a certificate of exemption. They are:

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<sup>1</sup> All of the exhibits identified in this brief were introduced in evidence by Landlord. The numbering of the exhibits was by the Hearing Officer.

<sup>2</sup> For the avoidance of doubt, Tenant Amberg reserves and preserves all rights to assert, in L15-0073, that that case is improper and that Landlord’s purported expenses are not legally-cognizable capital improvements.

“2. Exemptions for Substantially Rehabilitated Buildings.

- 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.*” (Emphasis added)

It is undisputed that the rehab work in the present case was completed in 2014. Thus, 2014 is the proper time period for determining the “average basic cost for new construction.”

A core issue in Landlord’s appeal is whether it was proper for the Hearing Decision to use data from a 2014 table of “Quarterly Cost Indexes (1926 = 100)” in determining the average basic cost. That table is “Table B” in the Hearing Decision. The table bears the printed date “October 2014” in the top right corner and “10/2014” in the bottom right corner.

The Hearing Decision used the 2014 data in the table in order to ensure that the determination of “average basic cost for new construction for a rehabilitation project” complied with the statutory requirement that the cost must be “for the time period when the substantial rehabilitation was completed.”

The methodology used by the Hearing Decision was this. The “average basic cost” was initially determined from data in a table of “Construction Valuation For Building Permits”. The data in that table, however, were for the year 2009.<sup>3</sup>

The Hearing Decision then used data from the table of “Quarterly Cost Indexes (1926 = 100)”, “Table B” in the Hearing Decision, to adjust the cost derived from the 2009 table. The purpose of the adjustment was to recognize that costs had risen from the time of the 2009 table to the 2014 time when the rehab work was completed.

The Hearing Decision specifically recognized that construction costs had risen between 2009 and 2014, saying, at page 4, emphasis added:

“The construction in this case took place in the year 2014. The Tables referenced in this Decision were all issued by the City Building Services agency.

“Table “A” lists square foot construction costs, effective August 1, 2009.

***However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown in the 2009 table.*** The Building Services agency has recognized this fact, and therefore issued a document entitled “Quarterly Cost Indexes (1926 = 100)” (Table “B”).”

---

<sup>3</sup> Landlord does not object to the Hearing Decision’s use of that table.

Using data from the Table B “Quarterly Cost Indexes” table, the Hearing Decision multiplied the initial 2009 construction cost from Table A by 1.18 in order to take into account that construction costs had risen from 2009 to 2014, the year when the rehab work was actually done. In the words of the Hearing Decision, quoted above, “However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown in the 2009 table [Table A].”

***The Hearing Decision thus complied with the statutory requirement that the construction cost must be “for the time period when the substantial rehabilitation was completed.”*** As stated above, it is undisputed that the rehab work was completed in 2014.

In its appeal, Landlord does not object to the way the Hearing Decision used the data in Table B to derive the 1.18 multiplier. Rather, Landlord objects to any use at all of the “Quarterly Cost Indexes” Table B. (Landlord Appeal brief, section 1, pages 2-3 of 4) Landlord bases its objection on its assertions that the table is not on City letterhead, does not have a date when it is to take effect, and was not authenticated as having come from the City of Oakland. Landlord stops just short of saying the table is a forgery and its use is a fraud.

The short, and sufficient, response is that those objections were raised in Landlord’s post-hearing brief to the Hearing Officer, who then specifically held that the “Quarterly Cost Indexes” Table B was “issued by the City Building Services agency.”

Here is the chronology:

On May 7, 2015 – twenty-two days *before* the May 29, 2015 date when *the Hearing Decision* was issued – Landlord filed a five-page brief titled “Post Hearing Brief On Building Services Tables”.<sup>4</sup> In that brief, Landlord challenged the bona fides of the Quarterly Cost Indexes table and argued, “We don’t know where it [the table] came from, or who issued it if anyone, how it is supposed to be used, or whether it was altered in any way before noticed by the Hearing Officer.” (Landlord’s Post Hearing Brief, at page 4)

In response to Landlord’s arguments, the Hearing Decision specifically said the table was issued by the City Building Services agency.

***“The Tables referenced in this Decision were all issued by the City Building Services agency.***

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<sup>4</sup> A copy of that brief is Attachment 1 to this Tenant Amberg Response Brief On Appeal.

“Table “A” lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown in the 2009 table. The *Building Services agency* has recognized this fact, and therefore *issued a document entitled “Quarterly Cost Indexes (1926 = 100)” (Table “B”).*”

Hearing Decision, at page 4, emphasis added.

There is no mystery, no forgery, no fraud. All of that lies in Landlord’s imagination. The Quarterly Cost Indexes table is genuine and was issued by the City of Oakland Building Services agency.

The Hearing Decision in the present case is consistent with at least three prior RAP hearing decisions which used similar cost index tables to adjust the average basic cost of new construction so that the cost would be applicable for the time period when the rehab was completed.<sup>5</sup>

The Hearing Decision in the present case should be sustained.

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<sup>5</sup> In *Young v. Beasley*, T07-0287 (Hearing Decision on remand, June 13, 2008), rehab construction work was completed in 1998. The average basic cost for new construction was initially determined from a 2007 table of construction costs, but the cost was then adjusted by using 1998 inflation data from a table of “Cost Indexes (1926 = 100)”.

In *Weinberg v. Tenant*, L13-0028 (Hearing Decision, Dec. 3, 2013), rehab construction work was in 1991-1992. The average basic cost for new construction was initially determined from a 2009 table of construction costs, but the cost was then adjusted by using 1991 inflation data from a table of “Cost Indexes (1926 = 100)”. When it adjusted the cost, the Hearing Decision said, at pages 2-3:

“Table “A” lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the years 1991-1992 and costs have risen considerably since that time, it would be unfair to an owner if current costs were used. For this reason, the Building Services agency has also issued a document entitled “Cost Indexes (1926 = 100)” (Table B).”

In *Promes v. Fehr*, T13-0196 (Hearing Decision, Dec. 16, 2013), rehab construction work was done in 2003. The average basic cost for new construction was initially determined from a 2007 table of construction costs, but the cost was then adjusted by using data from a 2003 table of “Cost Indexes (1926 = 100)”.

Use of the Cost Indexes tables in those hearing decisions, as well as in the Hearing Decision in the present case, served the statutory purpose of insuring that the “average basic cost for new construction for a rehabilitation project” was the cost “for the time period when the substantial rehabilitation was completed.”

2.

The Hearing Decision Properly  
Included The Living Room Balconies In The Relevant Square Footage

Erroneously equating a building's roof to an apartment's living-room balcony, Landlord argues, "Neither the balconies nor the roof should be added to the square footage." (Appeal brief, section 2, at page 3 of 4).

The Hearing Decision properly excluded the building's roof from the calculation of the building's square footage. Landlord asserts, however, that because the Hearing Decision excluded the roof's square footage, the decision should likewise have excluded the balconies' area.

Landlord is not correct. A building roof is not an apartment balcony.

The Hearing Decision, consistent with prior RAP decisions, did not include the area of the roof in the calculation of the average basic cost of new construction. The roof of 3921 Harrison Street is not used by tenants. It is off limits to tenants.

Quite the opposite is true for the apartments' balconies. The balconies at 3921 Harrison Street are intended to be used by tenants, and they are used by tenants.<sup>6</sup> They are entered through a sliding glass door in the apartment's living room. They function as an extension of the living room. Tenants occupy the balconies. If the balconies were as useless and superfluous to tenants as Landlord implies, they would not have been replaced, and the sliding doors leading to them would have been omitted and replaced by wall with a window in it.

But, the balconies were replaced and so were the sliding glass doors. And, Landlord included the cost of both the balconies and the doors in Landlord's documentation of rehabilitation expenses. The total cost for the balconies and doors was \$224,200. By contrast, the cost of the roof was \$50,000. The cost of just the balconies (\$180,000) was over three times the cost of the roof (\$50,000)<sup>7</sup>

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<sup>6</sup> The Board is invited to take notice of a recent Internet ad for an apartment at 3921 Harrison Street, which is the property in this appeal. The ad lists "Private balcony" as a feature of the apartment. <https://www.laphamcompany.com/node/6314> accessed on November 6, 2016. For the convenience of the Board, a screen capture of the ad is enclosed with this brief.

<sup>7</sup> The invoiced cost of the balconies was \$180,000 (Exhibits 96 and 121)  
The invoiced cost of the sliding glass doors was \$44,200 (Exhibits 60-72, 74, 75)  
The invoiced cost of the new roof was \$50,000 (Exhibit 132)

The Hearing Decision held that “since the owner has included the cost of the balcony work in its documentation, the area of the balconies must be included in the calculation.” (Hearing Decision, at page 4) That is a fair and reasonable conclusion. If the Landlord here wants to reap the benefit of including the large cost of the balcony work as part of Landlord’s rehabilitation expense, in order to remove the building from rent regulation, then Landlord ought to bear the burden of including the area of those same balconies in the building’s square footage.

3.

The Hearing Decision Did Not Miscalculate Expenses

Landlord speculates that the Hearing Decision failed to count one of the four \$26,000 invoices from Gallagher Construction for the remodeling of four units: 203, 204, 303 and 304. “We believe the Hearing Officer failed to count one of the 4 \$26,000 invoices.” (Landlord Appeal brief, section 3, at page 3 of 4)

Landlord is *not* correct, and speculation is no substitute for the proof required of an owner in a substantial rehabilitation proceeding. Oakland Municipal Code § 8.22.030(B)(1)(b) requires that, “For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner.” As will now be shown, Landlord fails to satisfy that burden.

The Gallagher invoices for remodeling those four units are Exhibits 77, 80, 118, 127, and 128.

The Hearing Decision specifically identified the Gallagher invoices that were considered as part of the expenses for work on the building. (Hearing Decision, at page 3) Footnote 4 of the Hearing Decision lists the Exhibit numbers of the Gallagher invoices. The Exhibits listed in footnote 4 are: 18, 19, 28, 29, 43-54, 57-81 (which includes Exhibits 77 and 80), 96-98, 117-129 (which includes Exhibits 118, 127 and 128), 132, 133.

Thus, the Gallagher invoices for remodeling the four units (Exhibits 77, 80, 118, 127, and 128) *are included* in the Exhibits identified in footnote 4, and therefore *were considered* in the Hearing Decision as part of the Landlord’s expenses for work on the building.

By responding to Landlord's argument concerning the Gallagher invoices, Tenant Amberg does not agree or concede that any expense for remodeling in units 203, 204, 303, or 304 is a proper rehabilitation expense under the Oakland Municipal Code.<sup>8</sup>

4.

Landlord Was Not Denied Due Process

Landlord argues the Hearing Decision's use of the Quarterly Cost Indexes table "is a violation of due process" because Landlord was deprived of an opportunity to "rebut or challenge it [the table] or its usage in the hearing or the decision." (Appeal brief, section 4, at page 4 of 4)

Landlord is *not* correct. Landlord was *not* deprived of due process. Landlord was *not* deprived of an opportunity to rebut or challenge use of the Quarterly Cost Indexes table.

Landlord's appeal brief omits a critical fact that destroys Landlord's due process argument.

The critical fact (which Landlord chose not to reveal to the Board) is that on May 7, 2015, *twenty-two days before the Hearing Decision was issued*, Landlord filed a five-page brief

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<sup>8</sup> For the avoidance of doubt, Tenant Amberg reserves and preserves all rights, including but not limited to contending, in this proceeding as well as in RAP Case No. L15-0073 and elsewhere, that:

- Oakland Municipal Code, sections 8.22.020, 8.22.030A.6., 8.22.030B.2. and Rent Adjustment Program Regulations 8.22.20, 8.22.30B.3. require that a rehabilitation capital improvement must primarily benefit all tenants rather than the building owner.
- The Gallagher invoices for remodeling in units 203, 204, 303 and 304 state that the work was: "Installation of new kitchen cabinets and appliances and tile on the floor; installation of new vanity cabinet with sink & tile on shower walls". Only units 203, 204, 303 and 304 received that remodeling.
- Gallagher Construction charged \$26,000 for that remodeling in each of those four units, for a total charge of \$104,000 for remodeling in just those four units.
- No tenants, other than those who would occupy units 203, 204, 303 and 304, benefitted from that \$104,000 remodeling expense.
- Tenant Amberg's unit 302 did not receive any of the remodeling that was given to units 203, 204, 303 and 304.
- Tenant Amberg did not and does not receive any benefit from the remodeling in units 203, 204, 303 and 304.

L14-0065 Tenant Amberg Response Brief

titled "Post Hearing Brief On Building Services Tables".<sup>9</sup> A copy of that brief is Attachment 1 to this Tenant Amberg Response Brief On Appeal.

In Landlord's May 7<sup>th</sup> brief, Landlord had a full opportunity to make, and did make, the same arguments against use of the Cost Indexes Table that Landlord now raises in section 1 of its Appeal brief.

Landlord's May 7<sup>th</sup> brief stated, at page 2:

"Landlord now submits this post hearing brief to address the Quarterly Cost Indexes (1926 = 100) and to further argue why the evidence should not be considered by the Hearing Officer in arriving at a Decision."

Landlord *was heard* in full on the cost-indexes-table issue well before the date of the Hearing Decision. Landlord was not deprived of due process.

**CONCLUSION**

The Hearing Decision complied with the Oakland Municipal Code requirement that construction cost must be for the time period when the substantial rehabilitation was completed.

The Hearing Decision properly included the living room balconies in the relevant square footage.

The Hearing Decision did not miscalculate expenses.

Landlord was not denied due process.

The Hearing Decision in this case should be affirmed.

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RENT ARBITRATION PROGRAM  
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<sup>9</sup> The Hearing Decision was issued on May 29, 2015.

ARBITRATION  
2015 MAY -7 AM 9:46

1 Clifford E. Fried, Esq. SBN 118288  
2 Fried & Williams LLP  
3 480 9<sup>th</sup> Street  
4 Oakland, CA 94607  
5 Telephone: 510-625-0100

6 Attorneys for Landlord  
7 525-655 Hyde St. CNML Props., LLP

Attachment 1 to  
Tenant Amberg Response Brief in L14-0065  
(This Attachment has five pages.)

8 COMMUNITY AND HOUSING DEVELOPMENT AGENCY  
9 RENT ADJUSTMENT PROGRAM  
10 CITY OF OAKLAND

11 525-655 Hyde St. CNML Props., LLP,  
12  
13 Landlord,  
14 v.  
15 Tenants, et al.,  
16  
17 Tenants.

CASE NO: L14-0065  
  
**LANDLORD 525-655 HYDE ST.  
CNML PROPS., LLP's  
POST HEARING BRIEF ON  
BUILDING SERVICES  
TABLES.**  
  
Hearing Date: April 27, 2015  
Time: 10:00 a.m.  
Suite: 5313  
Hearing Officer Stephen Kasdin

18  
19 INTRODUCTION

20 This is a Landlord Petition for a Certificate of Exemption based upon substantial  
21 rehabilitation to a building located at 3921 Harrison Street, Oakland. Prior to the hearing,  
22 Landlord submitted a relevant table issued by the Building Services agency of the City of  
23 Oakland. This table was marked as Landlord's Exhibit 76/203 and was admitted into  
24 evidence at the hearing. Landlord's Exhibit 76/203 is commonly referred to as "Table  
25 'A'" by the the Rent Board. A copy of Table A is attached to this brief.

26 After all testimony concluded at the hearing, and all evidence of the parties was  
27 admitted into evidence, closing arguments were made by the parties. During the closing  
28

1 argument of Ana Baires Mira, attorney for some of the Tenants, reference was made to a  
2 new piece of evidence which the hearing officer took notice of. This new piece of  
3 evidence is entitled "Quarterly Cost Indexes (1926 = 100)." This evidence was provided  
4 to the Hearing Officer but not the Landlord. Objection to the use and introduction of this  
5 new evidence was made at the hearing. A copy of Quarterly Cost Indexes (1926 = 100) is  
6 attached to this brief.

7 Following the hearing, Landlord requested a copy of the Quarterly Cost Indexes  
8 (1926 = 100). Landlord now submits this post hearing brief to address the Quarterly Cost  
9 Indexes (1926 = 100) and to further argue why the evidence should not be considered by  
10 the Hearing Officer in arriving at a Decision.

## 11 ARGUMENTS

### 12 **A. Table A Should Be Used In Calculating Construction Costs In This Case** 13 **and Not the Quarterly Cost Indexes (1926 = 100).**

14 OMC Section 8.22.030.B.2.b. states that "[t]he average basic cost for new construction  
15 *shall* be determined using *tables issued by the chief building inspector* applicable for the time  
16 period when the substantial rehabilitation was completed." [Emphasis added.]

17 The only table issued by the chief building inspector that is in evidence is Table A, which  
18 is Landlord's Exhibit 76/203. This is a Table which has been used by Hearing Officers in prior  
19 Rent Board Decisions involving Certificates of Exemption for Substantial Rehabilitation. Table  
20 A, on its face, is a table issued by the City of Oakland, Building Services, Community Economic  
21 Development Agency. This was the table used in Case Decisions T13-0196 and L13-0028, cited  
22 by Tenants in their closing argument.

23 Case Decisions T13-0196 and L13-0028 also cited Table B. A copy of Table B is  
24 attached to this brief. Table B, unlike the Quarterly Index noticed by the hearing officer in this  
25 case, is a table issued by Calvin N. Wong, Building Official. It would be improper to use the  
26 Quarterly Cost Indexes (1926 = 100) noticed by the hearing officer because that table was  
27 never issued by the City of Oakland.

28

1 When evaluating a construction project and a Petition such as the one filed by Landlord,  
2 everyone should be able to rely on data and calculation *published* by the Building Department of  
3 the City of Oakland. Using a vague index that is unclear as to the date of its application makes no  
4 sense and deprives the parties of their right to know the law regarding substantial rehabilitation.

5 Table A clearly states "Construction Valuation for Building Permits Effective August 1,  
6 2009." No other valuations have been published by the City of Oakland since that time and so it  
7 is the only table that can be relied upon. If the Building Department felt that these numbers and  
8 data weren't proper, it could have easily updated them. But it did replace Table A.

9 We simply don't know what the Quarterly Cost Indexes (1926 = 100) is because no  
10 evidence was submitted to authenticate the document or to lay a foundation showing that the  
11 document is what Tenants say it is. Tenants brought in a witness (David Harlan, Planning and  
12 Building Department of the City of Oakland) to the hearing who possibly could have  
13 authenticated the document and laid the proper foundation. However, Tenants' counsel chose  
14 not to question the witness about the document. Instead, Tenant's counsel chose a strategy which  
15 sprung the document on the Landlord and the Hearing Officer during closing argument, after the  
16 close of evidence and where no cross-examination was possible. For this reason, the Hearing  
17 Officer should consider this brief in arriving at its Decision.

18 **B. Quarterly Cost Indexes (1926 = 100) Should Not Be Considered Because It Was**  
19 **Not Submitted to the Rent Board or Served on Landlord Before the Hearing.**

20 A tenant is required to file a response to an owner's petition within 30 days of service of  
21 the notice by the Rent Adjustment Program that an owner petition was filed. OMC Sec.  
22 8.22.090.A.4. The Landlord and Tenants in this case were ordered to produce all proposed  
23 tangible evidence "not less than seven (7) days prior to the Hearing." See Notice of  
24 Hearing in this case served on all Tenants on November 19, 2015. By not filing the  
25 Quarterly Index and serving a copy on the Landlord, the document must not be considered by the  
26 Hearing Officer.

1 The Rent Board has a strict policy of not considering evidence and other  
2 documents that the parties will rely on unless those items were submitted to the Rent  
3 Board and served on the opposing party before the hearing. There is no reason to ignore  
4 past precedent in this case. It came as a total surprise to Landlord that evidence of  
5 construction costs, not contained in Table A, would be used and argued by the Tenant. Or  
6 that it could be noticed or used by the Hearing Officer. It is a violation of due process to  
7 allow the Quarterly Cost Indexes (1926 = 100) to be used in this case because Landlord  
8 was deprived of notice that it would be used. And it would be a violation of due process  
9 to not allow Landlord to submit this brief because it would be a denial of the Landlord's  
10 right to be heard on the  
11 matter.

12 **C. Notice Cannot Be Taken of The Quarterly Cost Indexes (1926 = 100).**

13 The Hearing Officer Cannot Take Judicial Notice of the Quarterly Cost Indexes  
14 (1926 = 100) because it is not a fact or matter that is commonly agreed upon basic  
15 information. While a Hearing Officer may have the power to take notice of certain  
16 matters, upon proper request, it cannot take judicial notice of documents for which no  
17 foundation has been laid and which no one has personal knowledge of except perhaps for  
18 Tenant's counsel.

19 Judicial notice can be taken of things like the fact that Oakland has a Rent  
20 Adjustment Ordinance, or that May 5, 2015 is a Tuesday, or that Landlord was  
21 represented by legal counsel at the Hearing, or that the Rent Board is located at 250 Frank  
22 Ogawa Plaza, or that Libby Shaff is the Mayor of Oakland. These are factual matters that  
23 are not subject to debate and is basic information that is commonly agreed upon by  
24 reasonable people.

25 The Quarterly Cost Indexes (1926 = 100) is a piece of paper that only Tenant's  
26 counsel is privy to. We don't know where it came from, or who issued it if anyone, how is  
27 supposed to be used, or whether it was altered in any way before noticed by the Hearing Officer.  
28

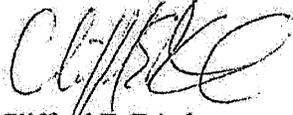
1 There was no witness at the hearing to authenticate the document. It is not the kind of basic  
2 information that reasonable people can agree to and should be disregarded in this case.

3 **CONCLUSION**

4 Table A from the Building Services Agency, and possibly Table B, are the only  
5 Tables that the Rent Board can rely on in issuing a Decision in this case. No one really  
6 knows what the Quarterly Cost Indexes (1926 = 100) is or whether it is in fact a Table  
7 issued by the Chief Building Inspector. Until the a new Table is issued by the Chief  
8 Building Inspector, there is a presumption that Table A is the Table to use for determining  
9 the average basic cost of new construction. The Hearing Officer is not at liberty to adopt a  
10 new Table to use. The Decision in this case must be based on the current rent laws.

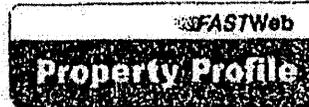
11  
12 Respectfully Submitted on May 7, 2015

13 by FRIED & WILLIAMS LLP

14   
15 Clifford E. Fried

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3921 Harrison St  
Oakland CA 94611



**Property Information**

<b>Owner(s) Property</b>	525 855 Hyde Street Cnml Props 3921 Harrison St Oakland, CA 94611	<b>Parcel #</b>	012-0929-011
<b>Mailing Addr</b>	2350 Broadway St San Francisco, CA 94115	<b>Map Coord</b>	9-D2; 849-J1
<b>Legal Lot Number</b>	7	<b>Census Tract</b>	4040.00
<b>Block</b>	B	<b>County</b>	Alameda
		<b>Owner Phone</b>	
<b>Legal</b>	OFFICIAL RECS 15 PG 44 BLK B PART OF LOT 7.		
<b>Tract Number</b>		<b>Subdivision</b>	Linda Vista Terrace Map 02

**Characteristics**

<b>Use</b>	Multi Family Dwelling	<b>Year Built</b>	1963	<b>Sq. Feet</b>	13336
<b>Zoning</b>		<b>Lot Size</b>	.2583 / 11250	<b># of units</b>	16
<b>Bedrooms</b>	23	<b>Bathrooms</b>	18	<b>Fireplace</b>	
<b>#Rooms</b>	71	<b>Quality</b>	Average	<b>Heating</b>	
<b>Pool/Spa</b>	N	<b>Air</b>		<b>Style</b>	
<b>Stories</b>	4	<b>Improvements</b>		<b>Parking</b>	Garage-20
<b>Flood</b>		<b>Gross Area</b>	13336	<b>Garage Area</b>	
<b>Basement Area</b>					

**Attributes**  
Other

**Property Sale Information**

<b>Sale Date</b>	11/14/2013	<b>\$/Sq. Ft.</b>	\$153.79	<b>2nd Mtg.</b>	
<b>Sale Price</b>	\$2,051,000.00	<b>1st Loan</b>		<b>Prior Sale Amt.</b>	
<b>Doc No.</b>	364187	<b>Loan Type</b>		<b>Prior Sale Dt.</b>	
<b>Doc Type</b>	Grant Deed	<b>Xfer Date</b>	11/19/2013	<b>Prior Doc No.</b>	229176
<b>Seller</b>	Elison Family Lp	<b>Lender</b>		<b>Prior Doc Type</b>	Quit Claim Deed

\*\$/Sq. Ft. is a calculation of Sales Price divided by Sq. Feet

**Tax Information**

<b>Imp Value</b>	\$285,832.00	<b>Exemption</b>	
<b>Land Value</b>	\$255,752.00	<b>Tax Year/Area</b>	2013/17001
<b>Total Value</b>	\$541,584.00	<b>Tax Value</b>	\$541,584.00
<b>Tax Amount</b>	\$12,522.68	<b>Improved</b>	53%

Information compiled from various sources and is deemed reliable but not guaranteed.

4

**Martin Gallagher Construction Inc.**

**INVOICE**

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 18-452  
 INVOICE DATE April 3, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

**UNIT # 203**

Date	DESCRIPTION	% Completed	Total Cost	AMOUNT DUE
4/3/14	Installation of new kitchen cabinets and appliances and tile on the floor	67%	51900 <del>41000</del>	\$44,900.00
4/3/14	Installation of new vanity cabinet with sink & tile on shower walls.	66%	27000 21000	\$9,800.00
			<b>SUBTOTAL</b>	21,700.00
				\$21,700.00
				PAY THIS AMOUNT

PROP # 1P-452  
 VENDOR #  
 GI CODE  
 AMT  
 DATE

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 martingallagher85@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.  
 1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

APR 15 2014

Hearing Officer Exhibit 77

CK# 120986

245

# Martin Gallagher Const. Inc. SUPPLEMENTAL INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

SUPPLEMENTAL INVOICE NUMBER 64-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 203

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6791 - \$2500	\$3,600.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6660 - \$300 6624 - \$800 6627 - \$700.00	\$700.00
PLEASE REFER TO INVOICE NUMBER 18				
			PROJ # 1P-452	
			VENDOR #	
			GL CODE	
			ALIAS	
			DATE 6-17-14	
			SUBTOTAL	4,300.00

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

\$4,300.00  
 PAY THIS AMOUNT

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 20 2014

124652  
 CK# 123437  
 511

266

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER	65
INVOICE DATE	June 13, 2014
OUR ORDER NO.	
YOUR ORDER NO.	
TERMS	Net 30
SALES REP	Martin Gallagher
SHIPPED VIA	
F.O.B.	
PREPAID or COLLECT	

**UNIT # 204**

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor			\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.			\$10,500.00
			<b>SUBTOTAL</b>	<b>26,000.00</b>
				<b>\$26,000.00</b>
				<b>PAY THIS AMOUNT</b>

PROP # 1P-452  
 VENDOR # \_\_\_\_\_  
 GL CODE 6619  
 AUTH AD  
 DATE 6-17-14

**DIRECT ALL INQUIRIES TO:**  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

**MAKE ALL CHECKS PAYABLE TO:**  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 17 2014

CK#123868

118

# Martin Gallagher Construction Inc.

# INVOICE

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 67-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 304

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor.		6791 → 6,500 6747 → 3,500 6660 → 2,300 6624 → 7,200	\$45,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			SUBTOTAL	26,000.00
				\$26,000.00 PAY THIS AMOUNT

PROJ # 18-452  
 VENDOR # \_\_\_\_\_  
 GL CODE \_\_\_\_\_  
 AUTH. AA  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
 martingallagher85@gmail.com

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

THANK YOU FOR YOUR BUSINESS!

PAID

JUN 20 2014

Hearing Officer Exhibit 127

CK# 1911000 127

**Martin Gallagher Construction Inc.**

**INVOICE**

1558 Mizzen Lane  
Half Moon Bay, CA 94019

(415) 246-8539

PROPERTY AT 3921 HARRISON ST

INVOICE NUMBER 66-452  
 INVOICE DATE June 13, 2014  
 OUR ORDER NO.  
 YOUR ORDER NO.  
 TERMS Net 30  
 SALES REP Martin Gallagher  
 SHIPPED VIA  
 F.O.B.  
 PREPAID or COLLECT

UNIT # 303

Date	DESCRIPTION	% Complete	Total Cost	AMOUNT DUE
6/13/14	Installation of new kitchen cabinets and appliances and tile on the floor		6747 → 3,500 6660 → 2,300 6624 → 3,200	\$15,500.00
6/13/14	Installation of new vanity cabinet with sink & tile on shower walls.		6627 →	\$10,500.00
			<b>SUBTOTAL</b>	<b>26,000.00</b>

PROP # 1P-452  
 VENDOR # \_\_\_\_\_  
 EL CODE \_\_\_\_\_  
 AUTH \_\_\_\_\_  
 DATE 6-17-14

DIRECT ALL INQUIRIES TO:  
 Martin Gallagher  
 (415) 246-8539  
[martingallagher85@gmail.com](mailto:martingallagher85@gmail.com)

MAKE ALL CHECKS PAYABLE TO:  
 Martin Gallagher Construction Inc.

1558 Mizzen Lane  
 Half Moon Bay, CA 94019

\$26,000.00  
 PAY THIS  
 AMOUNT

PAID

JUN 20 2014

CK# 124052  
 6/24/14

THANK YOU FOR YOUR BUSINESS!

Hearing Officer Exhibit 128



apartment for rent  
 3921 Harrison St Unit 301, Oakland, CA 94611.

REQUEST MORE INFORMATION

SEND TO FRIEND

CONTACT TYLER OFFICE 510-878-4691

Brand new photos up! Available now!

3921 Harrison, Walk to Pied Ave, Grand Ave, + Rose Garden

For an Appointment to View, Contact:

Contact Tyler Office 510-878-4691

Unit Description:

Unit Description:

- 2bedroom/1bath near the city of Piedmont
- Granite counter tops in kitchen with dishwasher
- Brand new closed loop quality carpeting throughout
- Tons of closet space
- Forced air heat
- Very spacious living room
- Gets good light
- Private balcony
- An absolute must see!
- Modern Construction
- Coin operated laundry on-site
- 16 units in building
- On-site manager
- Well maintained landscaping
- Single intercom entry building



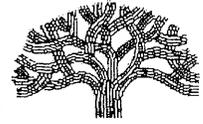
"Private balcony"

UNIT INFO	
Type	: Apartment
Bedrooms	: 2
Bathrooms	: 1
Rent	: \$2,625/month
Deposit	: \$600
Parking	: None
Pets	: Cats Allowed (Extra deposit may be required), No Dogs
Utilities	: Water and Garbage Included
Kitchen	: Electric stove, Dishwasher, Garbage disposal
Laundry	: In Building
Total Units	: 16
Lease Term	: Year

<https://www.laphamcompany.com/node/6314>  
 November 6, 2016  
 Annotation and arrow are added.

RECEIVED  
 CITY OF OAKLAND  
 RENT ARBITRATION PROGRAM  
 2016 NOV 17 PM 4: 21

City of Oakland  
Accela  
City of Oakland  
Oakland, CA 94612



CITY OF OAKLAND

A, SUITE 5313, OAKLAND, CALIFORNIA 94612-2034

Development Agency

(510) 238-3721

FAX (510) 238-6181

TDD (510) 238-3254

61  
Sep 28 2016 02:59 pm Trans#101830

TRANSACTION RECORD

Card Number : \*\*\*\*\*7935  
Card Entry : SWIPED  
Account : VISA  
Trans Type : PURCHASE  
Amount : \$14.60

Auth : 265027  
Seq # : 000044  
Terminal # : 001  
Date : 09/28  
Time : 09:50

REQUEST FOR COPIES

p. Garcia Case #: L14-0065  
Harrison St.  
19, CA  
74 5897

\*\*\*\*\* TRANSACTION APPROVED \*\*\*\*\*

\*\*\* CUSTOMER COPY \*\*\*

Copies of documents are 10 cents each. Copies of CDs are \$11.00 each. Copies of recordings are provided only in the same format as the original. Payment must be submitted with this request. Copies are generally ready in two business days. You will be notified by telephone when the copies are ready to be picked up in our office.

DESCRIPTION OF DOCUMENTS REQUESTED

entire copy of L.L. Documentation L14-0065

Reproduce 146 copies each of original document.

Reproduce 0 copies of CD

Certify the reproduced documents.

Date 9.23.16 Signature \_\_\_\_\_

$146 \times .10 = \$14.60$



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

Housing and Community Development Agency  
Rent Adjustment Program

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

## **ORDER**

**CASE NUMBER: L14-0065, 525 - 625 Hyde St. CNML Properties v. Tenants**

**PROPERTY ADDRESS: 3921 Harrison St., Oakland, CA**

Background: On May 18, 2016, Notice of Hearing of the appeal in this case was mailed to the parties, stating that the hearing would be held on September 8, 2016, at 7:00 P. M. On September 6, 2016, tenant Julie E. Amberg submitted a Request for Postponement. The stated reason for her request is that she has been a victim of mail theft and, additionally, that she is the parent of a first grade student and that "Back to School Night" at her child's school will be held on the evening of the date of the Appeal Hearing. This statement is verified by a notice from her child's school.

Rent Adjustment Ordinance Regulation 8.22.120(C) states that an appeal hearing may only be postponed for "good cause and in the interests of justice," and additionally states that a request for postponement must be made on the earliest possible date, with supporting documentation attached. A party may be granted only one postponement for good cause, unless the party shows "extraordinary circumstances."

The Regulation states that "good cause" includes, but is not limited to:

- "Verified illness of a party, an attorney, or other authorized representative of a party or material witness of the party;
- Verified travel plans scheduled before the receipt of notice of hearing;
- Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute 'good cause.'"

The required standard has been met in this case, and there is good cause for a continuance of the Appeal Hearing.

The request for a continuance of the Hearing is granted. The Hearing on this appeal will be held:

**DATE:** December 8, 2016

**TIME:** 7:00 p.m., or as soon thereafter as the matter may be heard.

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

**ALL PROVISIONS IN THE NOTICE OF APPEAL HEARING ISSUED APRIL 1, 2016  
REMAIN IN EFFECT.**

**Dated: September 7, 2016**



**Connie Taylor  
Program Manager  
Rent Adjustment Program**

**PROOF OF SERVICE**

**Case Number L14-0065**

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 Order 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**

Alexander Michael Taylor  
3921 Harrison St #104  
Oakland, CA 94611

Alexandru Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Alexandru Vasilescu  
3921 Harrison St #301  
Oakland, CA 94611

Andrew Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Angelique Johnson-Martinez  
3921 Harrison St #103  
Oakland, CA 94611

Bianca Penaloza  
3921 Harrison St #204  
Oakland, CA 94611

Cooper Spinelli  
3921 Harrison St #203  
Oakland, CA 94611

Dana Sarvestani  
3921 Harrison St #203  
Oakland, CA 94611

**000300**

Elena Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Elizabeth VanLanen  
3921 Harrison St Penhouse  
Oakland, CA 94611

Fernando Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Jessica Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Jilleun Eglin & Lexie Eglin  
3921 Harrison St #101  
Oakland, CA 94611

Julie Amberg  
3921 Harrison St #302  
Oakland, CA 94611

Kate Flick Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Lisa Romero  
3921 Harrison St #205  
Oakland, CA 94611

Mari Oda  
3921 Harrison St #304  
Oakland, CA 94611

Ria Cruz  
3921 Harrison St #105  
Oakland, CA 94611

Steven Miller  
3921 Harrison St Penhouse  
Oakland, CA 94611

Suzanne Miller  
3921 Harrison St #201  
Oakland, CA 94611

Tadeusz Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Todd McMahan  
3921 Harrison St #304  
Oakland, CA 94611

Tyler Ritter  
3921 Harrison St #303  
Oakland, CA 94611

Zoe Bridges  
3921 Harrison St #301  
Oakland, CA 94611

Zvetlana Butnaru  
3921 Harrison St #104  
Oakland, CA 94611

**Tenant Representative**

Ana Baires Mira  
3022 International Blvd #410  
Oakland, CA 94601

**Owner Representative**

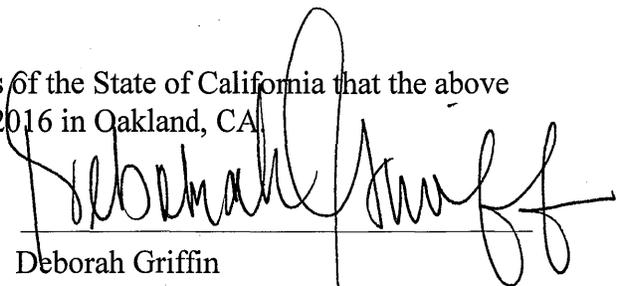
525-655 Hyde Street CNML Tsegab Assefa  
4844 Telegraph Ave  
Oakland, CA 94609

Clifford E. Fried, Esq.  
480 9th St.  
Oakland, CA 94607

Liz Hart  
480 9th St  
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 September 12, 2016 in Oakland, CA

  
Deborah Griffin

000302



- The decision is not supported by substantial evidence; and
- I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.

Specifically, the owner claimed that the Hearing Officer calculated the average cost of new construction using a cost adjustment table that was not properly entered into evidence nor issued from the Chief Building Inspector. The owner also claimed that the building's area only equals 13,336 square feet, because the balconies' area should be excluded from the total. Finally, the owner claimed that the Hearing Decision miscalculated the contractor expenses by \$25,999.

#### Appellee's Response

Appellee argued that the Rent Ordinance requires that the new construction costs be for "the time period when the substantial rehabilitation was completed." O.M.C 8.22.030(B). Thus, the ordinance requires the Rent Program to apply an inflationary adjustment to the basic table of construction costs when the table is not updated to the year when the improvements were completed. Appellee pointed to other Rent Program cases where the table submitted in this case was used.

#### Appeal Decision

After Board discussion and questions to the parties, N. Frigault moved to affirm the Hearing Decision based on there being substantial evidence to support the decision, that any error in considering the document addressing inflation adjustments to be applied to the table used to determine new construction costs for the calculating the exemption submitted after the close of the hearing would not change the result, and that the matter was addressed in post-hearing briefing. T. Singleton seconded.

The Chair ruled that the Board's consideration of the issues pertaining to the use of the inflation table and the inclusion of the balcony area in the building square footage calculation would be divided.

After further discussion, J. Karchmer made a substitute motion to remand the case to the Hearing Officer to determine whether the Hearing Decision appropriately relied upon "Table B" as a method for calculating average construction costs on the grounds of authenticity and to provide the owner with an opportunity to present evidence regarding the propriety of the Table used to calculate the substantial rehabilitation amount. The substitute motion failed on a tie vote.

The Board voted as follows:

Aye: K. Friedman, J. Warner, J. Karchmer

Nay: N. Frigault, T. Singleton, B. Williams  
Abstain: 0

The substitute motion failed.

The main motion by N. Frigault to affirm the hearing officer's decision was not voted on. On that basis was deemed withdrawn and the portion of the decision relating to the use of "Table B", (the new construction inflation adjustment) is affirmed by virtue of there being no affirmative vote to overturn or modify the Hearing Officer's decision.

Motion on Inclusion of Balconies in Building Area

After further discussion, N. Frigault moved to affirm the portion of the Hearing Officer's inclusion of the balconies in the building' area when performing the substantial rehabilitation calculation, on the basis there was no abuse of discretion by the Hearing Officer in including the balconies' area where such space is usable space that expands the tenants' livable area within the building was consistent with past practices and policy of the Rent Board. T. Singleton seconded. The Board voted as follows:

Aye: N. Frigault, B. Williams, T. Singleton, J. Warner, J. Karchmer  
Nay: K. Friedman  
Abstain: 0

The motion carried.

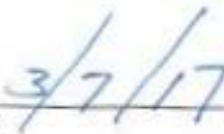
There being The remainder of the petition was affirmed by consensus without further discussion.

**NOTICE TO PARTIES**

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

  
\_\_\_\_\_  
CONNIE TAYLOR  
BOARD DESIGNEE  
CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND  
RELOCATION BOARD

DATE





**FILED**  
ALAMEDA COUNTY

AUG 23 2018

By *[Signature]* SP3

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

525 HYDE STREET, CNML PROPS, LLP,

Petitioner,

v.

CITY OF OAKLAND,

Respondents.

No. RG17-862841

ORDER (1) GRANTING MOTION TO  
AUGMENT THE RECORD AND (2)  
GRANTING PETITION FOR WRIT OF  
MANDATE.

Date: 8/23/18  
Time: 9:00 a.m.  
Dept.: 511

The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record and the petition of the Developer for writ of mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No. L14-0065 for came on for hearing on 8/23/18, in Department 511 of this Court, the Honorable Kimberly Colwell presiding. Counsel appeared on behalf of Petitioner and on behalf of Respondents. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record is GRANTED. The Petition of the Developer for writ of

1 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
2 L14-0065 is GRANTED.

3  
4 OPPORTUNITY FOR POST-HEARING BRIEFING

5 The court's tentative decision issued before the 7/26/18 hearing framed the issues  
6 differently than as presented by the parties and at the hearing the parties indicated that they might  
7 want supplemental briefing depending on the outcome of the motion to augment. The court's  
8 tentative decision issued before the 8/23/18 hearing stated that the court would permit the  
9 opportunity for post-hearing supplemental briefing if any party requested supplemental briefing.  
10 (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1286.) No party requested  
11 supplemental briefing.  
12

13  
14 EVIDENCE

15 The court GRANTS the Developer's request on 5/1/18 for judicial notice of ordinances  
16 (Exhs 1-3) and Hearing Decisions (Exhs 8-12.) The court GRANTS the Developer's request on  
17 5/1/18 for judicial notice of Tables A, B, C, and D (Exhs 4-7), but does augment the evidentiary  
18 record with those documents.  
19

20 The court GRANTS the City's request on 6/1/18 for judicial notice of Hearing Decisions.

21 The court GRANTS the City's request on 6/1/18 to supplement the record with the  
22 transcript of the Rent Board hearing. This was part of the evidence and was apparently omitted  
23 in error.  
24

25 The court DENIES the City's implicit request on 6/1/18 to supplement the record with the  
26 Declaration of David Harlan. Harlan testified before the Hearing officer. (AR 146:17-157:9.)

1 The City has not demonstrated that Harlan's declaration testimony was either improperly  
2 excluded during the administrative process or it could not, in the exercise of reasonable  
3 diligence, have been presented before the administrative decision was made. (CCP 1094.5(e);  
4 *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1144.)  
5

6 The court GRANTS the Developer's request on 6/25/18 for judicial notice of Hearing  
7 Decisions.  
8

#### 9 MOTION TO AUGMENT THE RECORD

10 The City argued that the Developer failed to exhaust administrative remedies because it  
11 failed to argue to the Board that the Hearing Officer failed to properly apply Table A when  
12 calculating the cost of new construction. (City Oppo at 9-10.) At the hearing on 7/26/18, the  
13 Developer handed the court a copy of a brief on appeal allegedly filed with the Rent Board on  
14 5/4/16 that raised the issue at page 4 (the "Appeal Brief"). The City did not concede that the  
15 Appeal Brief was in the administrative record.  
16

17 On 8/10/18, the Developer filed a post-hearing motion under CCP 1094.5(e) to augment  
18 the record with the Appeal Brief. "A court may exercise its discretion to augment an  
19 administrative record if the evidence is relevant and if it was either improperly excluded during  
20 the administrative process or it could not, in the exercise of reasonable diligence, have been  
21 presented before the administrative decision was made." (*Evans v. City of San Jose* (2005) 128  
22 Cal.App.4th 1123, 1144.) This motion to augment does not concern evidence going to the merits  
23 that was presented to the hearing officer, but rather concerns evidence going to the procedural  
24 issue of whether the Developer raised an issue with the Board.  
25  
26

1 The Developer's Notice of Appeal filed 6/18/15 raises the primary issue of whether the  
2 balcony area should be included but not the secondary issue of whether if the balcony is included  
3 it should be treated differently than apartment space. (AR 108.)

4 The Developer's Appeal Brief is file stamped "RECEIVED CITY OF OAKLAND RENT  
5 ARBITRATION PROGRAM 2016 MAY - 4 PM 2:52." The stamp is the same as other  
6 documents filed with the Rent Board. (AR 35, 46, 72, 104.) The City has presented declaration  
7 testimony from City employees Keith Mason and Kelly Rush that the City has no record of  
8 receiving the Appeal Brief. The real parties in interest also present evidence and argue that they  
9 have no record of the Appeal Brief.  
10

11 The transcript of the Board hearing on 12/8/16 indicates that the Board discussed the  
12 primary issue of whether the balcony area should be included but that the Board did not reach the  
13 secondary issue of whether if the balcony is included it should be treated differently than  
14 apartment space.  
15

16 The motion of the Developer to augment the administrative record with the Appeal Brief  
17 is GRANTED. The Appeal Brief is file stamped as received by the Board. This creates a  
18 presumption of filing. (*In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1103 ["a  
19 judgment or appealable order is presumptively filed, for purposes of the 180-day time limit, on  
20 the file-stamped date"].) The City has not presented evidence that on 5/4/16 the Developer used  
21 the City's self-file-stamp procedure to file-stamp the brief but then failed to leave a copy with the  
22 City or that the Developer falsified the file stamp on the Appeal Brief. The Court finds that the  
23 substantial evidence supports a finding that the Developer filed the brief and that the City  
24 inadvertently mis-filed or lost the brief. There is no indication that the City intentionally  
25 withheld the Appeal Brief from the administrative record.  
26

1  
2 **FACTS AND PROCEDURE**

3 The Developer or its predecessor in interest rehabilitated the property located at 3921  
4 Harrison St, Oakland, CA. The Developer spent approximately \$850,000 on the project.

5  
6 The Developer then sought a Certificate of Exemption from the Rent Board so that it  
7 could raise rents at the property. OMC 8.22.030.B.2 states, "In order to obtain an exemption  
8 based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of  
9 the average basic cost for new construction for a rehabilitation project and performed substantial  
10 work on each of the units in the building.

11 The City notified the parties that the hearing would be on 3/20/15 and that they would be  
12 required to submit all evidence 7 days before the hearing date and that if they did not do so it  
13 "may" be excluded. (AR 414-415, 471-473.)

14  
15 On 4/27/15, the Hearing Officer held a hearing. (AR 141-236.) During the presentation  
16 of evidence, Ms. Mira, attorney for tenants, showed Table B, which is Quarterly Cost Indexes to  
17 City Engineering Manager of the Bureau of Building David Harlan. The Hearing officer did not  
18 admit Table B into evidence at that time. (AR 152:13-27.) The submission of evidence  
19 concluded. (AR 225:16-22.)

20 At argument following the presentation of evidence, Ms. Mira argued that Table A, the  
21 City of Oakland Building Services Construction Valuation, effective 8/1/09, should be adjusted  
22 by the Table B, the Quarterly Cost Indexes. (AR 228:8-11; 229:7-13). Ms. Mira presented  
23 Table B and asserted that the Hearing Officer should use it in making calculations. (AR 230:20-  
24 21.) Developer's counsel objected.  
25  
26

1 The Hearing Officer said that he could take official notice of Table B if he was supposed  
2 to use it in his calculations. (AR 230:23-231:27.) The Hearing Officer said that he was unaware  
3 of Table B until the day of the hearing. (AR 236:14-16.)

4  
5 On 5/29/15, the Hearing Officer issued a decision denying Developer's petition for a  
6 Certificate of Exemption from the rent control ordinance. (AR 120-131.)

7 The Developer sought review by the Rent Board. On 12/8/16, the Rent Board held a  
8 hearing. (AR 777-798.) On 3/7/16, the Rent Board issued its written decision. (AR 2-4.)

9  
10 ISSUE CLARIFICATION

11 Petitioner commingles three analytically distinct issues regarding the use of Table B  
12 during the administrative process. The first issue is whether the Board violated its own  
13 procedures when it considered Table B as evidence even though it was not disclosed seven days  
14 before the hearing. The second issue is whether the Board erred as a matter of law by  
15 incorporating Table B into the OMC 8.22.030.B.2.b substantive standard. The third issue is  
16 whether the Board violated due process by failing to adequately disclose the existence of Table B  
17 to Petitioner while Petitioner was planning and executing the rehabilitation project.

18  
19  
20 PROCEDURES - ADMISSION OF TABLE B AS EVIDENCE

21 The arguments on the admission of Table B as evidence presume that it is a document  
22 that is fact evidence. As discussed below, OMC 8.22.030.B.2.b incorporates tables "issued by  
23 the chief building inspector" as the substantive standard. Therefore, if the tables are the  
24 documents described in the OMC, then they are incorporated in, and extensions of, the ordinance  
25 itself. The court must take judicial notice of the law. (Evid Code 451.) Subject to the  
26

1 significant limitation that the court must provide parties the opportunity to present argument on  
2 material issues, the court (or a hearing officer) can consider law even if it is not formally  
3 presented by a party. (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282,  
4 1286.)

5  
6 The Board's letters required the parties to disclose evidence 7 days before the hearing and  
7 cautioned that evidence not disclosed "may" be excluded. As a matter of policy construction,  
8 "may" is discretionary and permitted the Hearing officer to admit evidence that was not disclosed  
9 7 days before the hearing.

10 Assuming that Table B is factual evidence, the court finds that the Board did not violate  
11 its own procedures and abuse its discretion when it considered Table B even though it was not  
12 disclosed seven days before the hearing.

13  
14 At the hearing the Hearing Officer stated that he would not admit Table B as evidence but  
15 would take official notice of Table B. Official notice appears to be equivalent to judicial notice  
16 and judicial notice is a basis for the admission of evidence. Therefore, there is no material  
17 difference between accepting Table B into evidence as submitted by a witness and taking judicial  
18 notice of Table B.

19  
20 **INCORPORATION OF TABLE B INTO ORDINANCE - STATUTORY INTERPRETATION.**

21 OMC 8.22.030.B.2 states:

22  
23 **Exemptions for Substantially Rehabilitated Buildings.**

- 24  
25 a. In order to obtain an exemption based on substantial rehabilitation, an owner  
26 must have spent a minimum of fifty (50) percent of the average basic cost for

1  
2 new construction for a rehabilitation project and performed substantial work on  
3 each of the units in the building.

4 b. The average basic cost for new construction shall be determined using tables  
5 issued by the chief building inspector applicable for the time period when the  
6 substantial rehabilitation was completed.

7  
8 The court exercises its independent judgment in considering statutory construction and other  
9 issues of law. (*Smith v. Santa Rosa Police Dept.* (2002) 97 Cal.App.4th 546, 553-554.)

10 As a matter of statutory construction, the court determines that OMC 8.22.030.B.2.b  
11 requires that the tables must be both (1) issued by the chief building inspector and (2) applicable  
12 for the time period when the substantial rehabilitation was completed.

13 As a matter of determining whether there was a fair hearing the court applies its  
14 independent judgment regarding whether the City complied with the law. The court does not  
15 apply the abuse of discretion standard usually applied to evidence decisions because the statute  
16 clearly defines the substantive standard with reference to the tables. Therefore, referring to an  
17 incorrect table is in the nature of using an incorrect jury instruction rather than making a  
18 discretionary decision on the admission of evidence.

19  
20 Table A is identified as City of Oakland Building Services Construction Valuation,  
21 effective 8/1/09. Table A is issued by the chief building inspector. Table A states that it is  
22 "Effective Aug 1, 2009." This suggests that it is effective until replaced by a new table. When  
23 testifying, City Engineering Manager Harlan was asked if Table A was "the latest table put out by  
24 the City" and he answered "Yes, that's the table we currently use." (AR 146:20-23.) There is no  
25 objection to the use of Table A.  
26

1 Table B is identified as Quarterly Cost Indexes. Table B has a footer that indicates it is  
2 from Marshall Valuation Services. There is no indication that Table B was "issued by the chief  
3 building inspector." When testifying, City Engineering Manager Harlan identified Table B and  
4 referred to it as "this source that we use." (AR 153:27.) The court finds that the Board erred as a  
5 matter of law by incorporating Table B into the ordinance as the substantive standard when it was  
6 not "issued by the chief building inspector."  
7

8 The Petition is GRANTED on the basis that applying its independent judgment the court  
9 finds that OMC 8.22.030.B.2.b requires that a table be "issued by the chief building inspector"  
10 and Table B was not "issued by the chief building inspector."  
11

#### 12 INCORPORATION OF TABLE B INTO ORDINANCE - DUE PROCESS.

13 The Developer made a discernable argument before the Hearing Officer (AR 235-236)  
14 and at the Rent Board (AR 784-785) and in this court (Reply at 5) that the Board violated due  
15 process by failing to adequately disclose the existence of Table B to Petitioner when Petitioner  
16 was planning and executing the rehabilitation project. The court exercises its independent  
17 judgment in considering issues of adequate notice or due process. (*Tafti v. County of Tulare*  
18 (2011) 198 Cal.App.4th 891, 896.)  
19

20 A statute, or ordinance, must be sufficiently clear to give a person fair warning of the  
21 conduct prohibited and they must provide a standard or guide against which conduct can be  
22 uniformly judged by courts and administrative agencies. (*Morrison v. State Board of Education*  
23 (1969) 1 Cal.3d 214, 230-231; *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308-  
24 309.) Similarly, an ordinance must be sufficiently clear to give a person adequate notice of the  
25 requirements for obtaining a government benefit, or a Certificate of Exemption.  
26

1 A statute "will be upheld if its terms may be made reasonably certain by reference to other  
2 definable sources." (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1180; *Personal*  
3 *Watercraft Coalition v. Board of Supervisors* (2002) 100 Cal.App.4th 129, 138-139.)

4 Making an "on its face" analysis, the Ordinance could reasonably refer to and incorporate "tables  
5 issued by the Chief Building Inspector."  
6

7 Making an "as applied" analysis, it is much less clear whether Table B is an "other  
8 definable source." When testifying, City Engineering Manager Harlan was asked if Table A was  
9 "the latest table put out by the City" and he answered "Yes, that's the table we currently use."  
10 (AR 146:20-23.) City Engineering Manager Harlan also identified Table B and referred to it as  
11 "this source that we use." (AR 153:27.) The Hearing Officer stated that he was unaware of  
12 Table B until the day of the hearing. (AR 236:14-16.)  
13

14 The Developer did not present evidence, but argued that it was unaware of Table B until  
15 the hearing on 4/27/15. Before the Hearing Officer, the Developer's counsel argued that the  
16 Building Department did not make Table B available to the public. (AR 235:19-236:1.) Before  
17 the Board, the Developer's counsel argued that the Developer assumed that the relevant time  
18 period was "set forth in the most recent table that's issued by the Building Services Department.  
19 That's Exhibit A" and that the Developer "relied on this Table A and be believed that when his  
20 project was completed it would be exempt." (AR 784:17-23.)  
21

22 The City and the tenants presented no evidence that Table B was an "other definable  
23 source" that was disclosed to the public as relevant to the ordinance. The court has denied the  
24 City's request to supplement the record with the declaration of Harlan. That noted, the  
25 declaration states that the City distributes Table B to persons "who request the table" and "that  
26 the City distributes [the Table] upon request." (Harlan Dec., paras 6 and 7.)

1 The court finds that the Developer did not waive this argument even though it failed to  
2 clearly present this argument to the Hearing Officer and to the Board. The Tenant's  
3 Representative, Ms. Mira, did not disclose Table B as evidence seven days before the hearing or  
4 otherwise put the Developer on notice that she would rely on Table B. The Hearing officer was  
5 unaware of Table B. The record suggests that the Developer costed out the project and prepared  
6 for the Hearing Officer hearing on the reasonable assumption that Table A was the standard  
7 against which the evidence of expense would be measured.  
8

9 The Petition is GRANTED on the basis that applying its independent judgment the court  
10 finds that on the facts of this case that Table B was not an "other definable source" and that the  
11 Ordinance therefore did not give the Developer fair warning that Table A was not the standard  
12 against which the evidence of expense would be measured and that it would be modified by  
13 Table B.  
14

15  
16 **\$26,000 IN INVOICES.**

17 The Developer argues that the Hearing Officer and Board erred in excluding \$26,000 in  
18 invoices. The City acknowledges that the Hearing Officer and Board appear to have made a  
19 calculation error. (City Oppo at 9:8-15.) This error did not affect the Board's decision. The  
20 apparent \$26,000 calculation error does not affect the court's decision on the petition.  
21

22 **INCLUSION OF DECK SPACE.**

23  
24 There is substantial evidence to support the Board's fact finding that the property space  
25 included both the apartment space and the deck and balcony space.  
26

1  
2 SEPARATE TREATMENT OF APARTMENT SPACE AND DECK/BALCONY SPACE

3 County records state the property was 13,337 sqft. (AR 247.) The Developer  
4 rehabilitated the balconies, which are an additional 1,002 sqft.  
5

6 Table A differentiates among different "Descriptions" of construction. Table A included  
7 "Apartment space" at \$127 sqft, "Elevated Decks and Balconies" space at \$41.16 sqft, and many  
8 other descriptions of space. The Hearing Officer and the Board both decided to treat both the  
9 13,337 sqft interior space and the 1,002 sqft deck/balcony space as "Apartment space." (AR 004,  
10 123.)

11 Petitioner argues that the Board erred as a matter of law by treating the deck/balcony  
12 space as "Apartment space" and should have treated it as "Elevated Decks and Balconies" space.  
13 (Opening brief at 4:21-26; 6:26-27; 7:29-8:7.)

14  
15 Petitioner has not waived this argument. At the hearing before the Hearing Officer,  
16 Petitioner argued that the calculations should exclude the deck space. (AR 3.) In the briefing to  
17 the Board, Petitioner accepted that the Hearing Officer used the deck space, but argued that the  
18 Hearing Officer should have calculated "R3 Elevated Decks and Balconies" space at \$41.16 sqft.  
19 (Brief filed with Board on 5/4/16 at page 4.) At argument before the Board, petitioner raised the  
20 primary issue of whether the balcony area should be included but did not reach the secondary  
21 issue of whether if the balcony is included whether it should be treated differently than apartment  
22 space. (AR 004, 792:3-11; 795:3-11; 796:5-798:12.)

23  
24 This is an issue of statutory construction because OMC 8.22.030.B.2.b incorporates tables  
25 be "issued by the chief building inspector."  
26

1 As a matter of statutory construction, the City must apply Table A to projects or parts of  
2 projects based on whether the Description reasonably describes the physical structure to be  
3 constructed. The Descriptions in Table A are defined by the cost of construction rather than the  
4 potential use of the structure. The court takes judicial notice that the City of Oakland Planning  
5 and Building website states, "The cost of building permits is based upon the construction  
6 valuation of the project. Valuation includes all labor and structural materials, and all lighting,  
7 heating, ventilation, water supply, plumbing, electrical, fire sprinklers, elevator equipment."  
8 (<http://www2.oaklandnet.com/government/o/PBN/OurServices/permits/index.htm>) Consistent  
9 with this purpose, the Rent Board should apply schedule A to projects and parts of projects based  
10 on whether the Description reasonably describes the physical structure to be constructed.  
11

12 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on  
13 the potential use of the balconies rather than the cost of building or rehabilitating the balconies.  
14 The Board's decision states "there was no abuse of discretion by the Hearing Officer in including  
15 the balconies' area where such space is useable space that expands the tenants' livable area."  
16 (AR 004.) (See also AR 797:10-11.)

17 This was legal error because the Table A analysis concerns the cost of constructing the  
18 project or part of the project, not the potential use of the constructed property. Although the Rent  
19 Board in other contexts might be focused on whether rental space is usable, liveable, and  
20 habitable, in the context of OMC 8.22.030.B.2.b and Table A, the Rent Board must focus on the  
21 cost of construction. Even if OMC 8.22.030.B.2.b and Table A did concern usable, liveable, or  
22 habitable space, the BMC elsewhere defines "habitable space" and "habitable rooms" in a way  
23 that suggests they do not include exterior balconies and decks. (OMC 15.20.030 [Building and  
24 Construction Code]; 17.09.040 [Planning Code].)  
25  
26

1  
2 As a matter of statutory construction, the City must give effect to all the "Description"  
3 categories in Table A. If a general "Description" and a specific "Description" both apply to a  
4 construction project or to a part of a construction project, then the City must give effect to the  
5 specific "Description." (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310;  
6 *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 477-0478.)

7 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by treating both  
8 the 13,337 sqft and the 1,002 sqft as Apartment space. Although an apartment might have a  
9 balcony or deck, Table A has a separate specific line item for "Elevated Decks and Balconies."  
10 Where Table A sets out a specific Description that applies to a project or a part of a project, the  
11 Board must give effect to the specific Description.

12 The Board stated that the Hearing Officer did not abuse his discretion by including the  
13 balconies in the "Apartment" space. (AR 004.) (See also AR 797:1-9.) The Hearing Officer  
14 makes factual findings about whether a project or a part of a project fits within a certain  
15 Description. The Hearing Officer does not, however, have the discretion to characterize a project  
16 or a part of a project based on improper criteria. The Hearing Officer and the Board misapplied  
17 the law by focusing on the potential use of the balconies rather than their cost of construction and  
18 by not giving effect to the specific Description for "Elevated Decks and Balconies."  
19

20  
21 CONCLUSION

22 The Petition of 525-655 Hyde St Commercial Properties (the "Developer") for writ of  
23 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
24 L14-0065 is GRANTED.  
25  
26

1  
2 Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to  
3 reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or  
4 control in any way the discretion legally vested in the respondent Board. If permitted by its  
5 procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If  
6 permitted by its procedures, the Rent Board may reconsider either the entire matter or only the  
7 issues implicated by this order. The court expressly does not direct the Rent Board to grant the  
8 petition for a Certificate of Exemption.

9 At the hearing on 8/23/18, counsel for the Developer asked that the court order the Rent  
10 Board to expedite further proceedings given that the Developer filed the petition for certificate of  
11 exemption on 11/10/14 (AR 558-761) and the matter has been pending for almost four years.  
12 Counsel for the City did not object to that request. The court encourages the Rent Board to  
13 promptly reconsider this matter consistent with the procedures in OMC 8.22.120 and Rent  
14 Adjustment Program Regulations 8.22.110 and 8.22.120.

15  
16 The court directs the Developer to prepare and submit to the court both a proposed  
17 judgment and a proposed writ. (CRC 3.1312.)

18  
19 Dated: August 23, 2018

20   
21 Kimberly Colwell  
22 Judge of the Superior Court  
23  
24  
25  
26

000320

EXHIBIT B

000321

2018 NOV 13 PM 4:30

**CITY OF OAKLAND  
HOUSING AND COMMUNITY DEVELOPMENT  
RENT ADJUSTMENT PROGRAM**

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**RENT ADJUSTMENT PROGRAM CASE L-14-0065  
525, 655 HYDE ST. CNML, PROPERTIES LLC v. TENANTS**

**REQUEST FOR STAY OF PROCEEDINGS**

On March 7, 2017 this Board affirmed the Hearing Officer's May 29, 2015 decision in Case No. L14-0065. On June 5, 2017 the property owner 525, 655 Hyde St., CNML, Properties LLL filed a petition for a writ of administrative mandate in the Superior Court for the State of California, County of Alameda., in Case RG17-862841.

On August 23, 2018, the Court in that case issued an Order granting the petition for mandate. However, the Order expressly did **not** direct the HRRRB to grant the petition for a certificate of exemption. The Order remanded the case back to the HRRRB for reconsideration. The Order expressly did **not** limit or control the HRRRB's discretion (1) to direct the Hearing Officer to conduct a further hearing, or (2) to reconsider the entire matter.

The Order stated:

"Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption."

The court has not yet issued a judgment or writ.

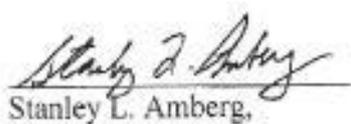
Tenants Julie Amberg, Kate Garcia, Fernando Garcia, Mari Oda and Todd McMahon are Tenant parties in RAP Case No. L14-0065 and are Real Parties In Interest in Case RG-17-862841. They respectfully request that the HRRRB **stay all proceedings in Rent Adjustment Program Case No L14-0065 until 60 days after the entry of a final judgment in Case No. RG-17-862841 from which no appeal or further review has been taken or can be taken.**

The request is in the interest of justice. It will provide those Tenants and Real Parties In Interest a reasonable time (1) to decide whether to appeal the judgment in Case RG-17-862841, and/or (2) to communicate with the HRRRB with respect to the nature and extent of further proceedings at the HRRRB and/or at a Hearing Officer.

2018 NOV 13 PM 4:30

Respectfully submitted,

Date: November 13, 2018



Stanley L. Amberg,  
Representative for  
Tenants-Real Parties In Interest

PROOF OF SERVICE

I, Stanley L. Amberg, declare that I am at least 18 years of age, and that on or before the date below, a copy of this Request For Stay Of Proceedings was served on the following, in the manner described:

By First Class Mail, United States Postal Service, postage prepaid, in envelopes addressed to: Fried & Williams LLP, Att'n Clifford E. Fried, Esq., 1901 Harrison Street, Oakland, CA 94612, Attorneys for 525, 655 HYDE ST. CNML, PROPERTIES LLC; and by First Class Mail, United States Postal Service to Jamilah Jefferson, Esq., Senior Deputy City Attorney, Litigation Division, Oakland City Attorney, City Hall, 6<sup>th</sup> Floor, 1 Frank H. Ogawa Plaza, Oakland, CA 94612; Attorney for City of Oakland's Department of Housing and Community Development Rent Adjustment Program.

I declare under penalty of perjury under the laws of the State of California that the foregoing Proof of Service is true and correct, and this declaration was executed on November 13, 2018 at Chappaqua, New York.



000323

1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street  
4 Oakland, CA 94612  
5 Phone: (510) 625-0100  
6 Email: cfried@friedwilliams.com

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

9  
10 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ALAMEDA

12 525-655 HYDE ST. CNML PROPS., LLP,

13 Petitioner,

14 vs.

15 CITY OF OAKLAND'S DEPARTMENT OF  
16 HOUSING AND COMMUNITY  
17 DEVELOPMENT RENT ADJUSTMENT  
18 PROGRAM, and DOES 1 THROUGH 25,

19 Respondents.

20 Jilleun Eglin,  
21 Lexie Eglin,  
22 Angelique Johnson-Martinez,  
23 Suzanne Miller,  
24 Fernando Garcia,  
25 Kate Flick Garois,  
26 Bianca Penaloza,  
27 David Preciado,  
28 Julie Amberg,  
29 Tyler Ritter,  
30 Marie Oda,  
31 Todd McMahon,  
32 Andrew Simkin,  
33 Jessica Simkin,  
34 and DOES 26 THROUGH 40,

35 Real Parties in Interest.

Case No.: RG17-862841

~~(PROPOSED)~~ WRIT OF  
ADMINISTRATIVE MANDAMUS

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WRIT OF MANDAMUS

To: CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM AND ITS  
ATTORNEY OF RECORD:

**YOU ARE HEREBY COMMANDED** immediately upon receipt of this writ to:

1. Set aside and vacate the Rent Adjustment Program Appeal Decision in Case No. L14-0065.
2. Reconsider the Appeal Decision in Case No: L14-0065 in light of the court's opinions, Order and Judgment.

The Court will retain jurisdiction over Respondent proceedings by way of a return to this peremptory writ of mandamus until the Court has determined that Respondent has complied with the following order:



Chad Finka, Clerk

By [Signature], Deputy Clerk

ORDER

LET THE WRIT OF MANDAMUS ISSUE.

Date: 12/12/18

[Signature]  
JEFFREY S. BRAND,  
Judge of the Alameda Superior Court

**PROOF OF SERVICE BY FIRST-CLASS MAIL**

I declare that I am a resident of or employed in the County of Alameda, State of California. I am over the age of eighteen years and am not a party this action. My residence or business address is 1901 Harrison Street, 14th Floor, Oakland, CA 94612.

On the date below, I served the attached, concerning the action known as *(525-655 HYDE ST. CNML v. CITY OF OAKLAND'S DEPARTMENT OF HOUSING*, Alameda County Superior Court case no. RG17862841:

**NOTICE OF ENTRY OF JUDGMENT AND ISSUANCE OF WRIT**

on the parties herein in said action, by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelope was addressed, sealed and placed for collection and mailing, following this business' ordinary business practices, from Oakland, California, as follows:

SEE ATTACHMENT

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this declaration was executed on December 13, 2018, at Oakland, California.

\_\_\_\_\_  
Fabienne Lopez

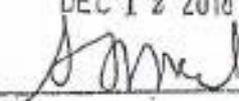
Name	Address	
Oakland City Attorney Deputy City Attorney Richard Illgen	City Hall, 6th Floor 1 Frank Ogawa Plaza Oakland, California 94612	
Suzanne Miller	3921 Harrison St., #201, Oakland, CA 94611	
Fernando Garcia	3921 Harrison Street, #202 Oakland, CA 94611	
Kate Flick Garcia	3921 Harrison Street, #202 Oakland, CA 94611	
Julie E. Amberg	3921 Harrison Street, #302 Oakland, CA 94611	
Todd McMahon	3921 Harrison Street, #304 Oakland, CA 94611	
Mari Oda	3921 Harrison Street, #304 Oakland, CA 94611	
Andrew Simkin	3921 Harrison St., #305, Oakland, CA 94611	
Jessica Simkin	3921 Harrison St., #305, Oakland, CA 94611	

1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street  
4 Oakland, CA 94612  
5 Phone: (510) 625-0100  
6 Email: cfried@friedwilliams.com

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

**FILED**  
ALAMEDA COUNTY

DEC 12 2018

By 

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IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

525-655 HYDE ST. CNML PROPS., LLP,

Petitioner,

vs.

CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 THROUGH 25,

Respondents.

Case No.: RG17-862841

**[PROPOSED] JUDGMENT  
GRANTING WRIT OF  
ADMINISTRATIVE MANDAMUS**

Jilleun Eglin,  
Lexie Eglin,  
Angelique Johnson-Martinez,  
Suzanne Miller,  
Fernando Garcia,  
Kate Flick Garcia,  
Bianca Penaloza,  
David Preciado,  
Julie Amberg,  
Tyler Ritter,  
Marie Oda,  
Todd McMahon,  
Andrew Simkin,  
Jessica Simkin,  
and DOES 26 THROUGH 40,

Real Parties in Interest.

1 The Motion for Judgment on the Writ of Administrative Mandamus of Petitioners  
2 Rockridge Real Estate, LLC & Reinke, LLC ("Petitioners") came on for hearing on July  
3 26, 2018 and August 23, 2018 in Department 511 before the Honorable Kimberly Colwell.  
4 Clifford E. Fried, of Fried & Williams LLP appeared on behalf of Petitioners. Jamilah A.  
5 Jefferson, of the City of Oakland's City Attorney's Office, appeared on behalf of  
6 Respondent City of Oakland's Department of Housing and Community Development  
7 Rent Adjustment Program. Real Parties in Interest were present in the courtroom. The  
8 matter was argued and taken under submission. After considering the pleadings,  
9 Administrative Record, all moving and opposition papers, arguments of counsel, and file  
10 in this matter, the court entered an Order granting Petitioners' motion to augment the  
11 record and then granted Petitioners' petition and motion for writ of mandate directing the  
12 City of Oakland's Department of Housing and Community Development Rent Adjustment  
13 Program to vacate the Appeal Decision in Case No. L14-0065 ("Order"). A copy of said  
14 Order is attached hereto as Exhibit A and incorporated herein by reference as though set  
15 forth in full. Accordingly,

16 IT IS ADJUDGED AND DECREED THAT,

17 1. Petitioners shall have judgment against Respondent City of Oakland's  
18 Department of Housing and Community Development Rent Adjustment Program, for a  
19 writ of administrative mandamus setting aside and vacating the Rent Adjustment Program  
20 Appeal Decision in Case No. L14-0065.

21 2. Respondent shall reconsider the Appeal Decision <sup>IN ITS ENTIRETY</sup> in Case No. L14-0065 in  
22 light of the court's opinions, Order and this Judgment.

23 3. A writ of administrative mandamus shall issue under seal of this Court in  
24 the form attached hereto as Exhibit B.

25 4. Petitioners shall recover costs of suit as the prevailing party in this action.



1 Clifford E. Fried, Esq., SBN 118288  
2 Jonathan Madison, Esq., SBN 311553  
3 Fried & Williams LLP  
4 1901 Harrison Street, 14<sup>th</sup> Floor  
5 Oakland, CA 94612  
6 (510) 625-0100

7 Attorneys for Petitioner,  
8 525-655 HYDE ST. CNML PROPS., LLC

9 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION

12 525-655 HYDE ST. CNML PROPS., LLC,

13 Petitioner,

14 vs.

15 CITY OF OAKLAND'S DEPARTMENT OF  
16 HOUSING AND COMMUNITY  
17 DEVELOPMENT RENT ADJUSTMENT  
18 PROGRAM, and DOES 1 THROUGH 25,

19 Respondents.

20 Jilleun Eglin, Lexie Eglin, Angelique  
21 Johnson-Martinez, Suzanne Miller,  
22 Fernando Garcia, Kate Flick Garcia,  
23 Bianca Penaloza, David Preciado, Julie  
24 Amberg, Tyler Ritter, Marie Oda, Todd  
25 McMahon, Andrew Simkin, Jessica  
26 Simkin, ET. AL., and DOES 26 THROUGH  
27 40,

28 Real Parties in Interest.

Case No.: RG17862841

**NOTICE OF ENTRY OF JUDGMENT  
AND ISSUANCE OF WRIT**

TO RESPONDENT CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM AND ITS  
ATTORNEYS OF RECORD:

1  
2 PLEASE TAKE NOTICE that on December 12, 2018 the Honorable Jeffrey S.  
3 Brand, Judge of the Superior Court, entered a Judgment Granting Writ of Administrative  
4 Mandamus in this action. The Court Clerk also issued the Writ of Administrative  
5 Mandamus. A copy of the court's judgment and the Writ of Administrative Mandamus,  
6 entered on December 12, 2018, are attached hereto and is fully incorporated herein.

7 Dated: December 13, 2018

Fried & Williams LLP

8  
9 

10 Jonathan Madison, Esq.  
11 Attorneys for Petitioner,  
12 525-655 HYDE ST. CNML PROPS., LLC  
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CITY OF OAKLAND  
HOUSING AND COMMUNITY DEVELOPMENT  
RENT ADJUSTMENT PROGRAM

HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

RENT ADJUSTMENT PROGRAM

**CASE L-14-0065**

525, 655 HYDE ST. CNML, PROPERTIES LLC v. TENANTS

**REQUEST FOR STAY OF PROCEEDINGS**

On March 7, 2017 this Board affirmed the Hearing Officer's May 29, 2015 decision in Case No. L14-0065. On June 5, 2017 the property owner 525, 655 Hyde St., CNML, Properties L.L.L. filed a petition for a writ of administrative mandate in the Superior Court for the State of California, County of Alameda, in Case RG17-862841.

On August 23, 2018, the Court in that case issued an Order granting the petition for mandate. However, the Order expressly did **not** direct the HRRRB to grant the petition for a certificate of exemption. The Order remanded the case back to the HRRRB for reconsideration. The Order expressly did **not** limit or control the HRRRB's discretion (1) to direct the Hearing Officer to conduct a further hearing, or (2) to reconsider the entire matter.

The Order stated:

"Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption."

On December 12, 2018 the court issued a Judgment which incorporated by reference the August 23, 2018 Order, quoted above.

On February 7, 2019, tenants Julie Amberg, Fernando Garcia and Todd McMahon filed **notices of appeal of the Judgment**. Their appeals are docketed as **Case Number A156463** in the California Court of Appeal, 1<sup>st</sup> Appellate District. A copy of the Docket (Register of Actions) in that appeal is attached. Their appeals stay enforcement of the Judgment.

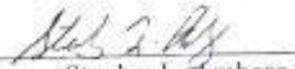
Tenants Julie Amberg, Kate Garcia, Fernando Garcia, Mari Oda and Todd McMahon are Tenant parties in RAP Case No. L14-0065 and are Real Parties In Interest in Case RG-17-862841. They respectfully **request** that the HRRRB and the Rent Adjustment Program **stay all**

proceedings in Rent Adjustment Program Case No L14-0065 until 60 days after the entry of a final judgment in Case No. RG-17-862841 and Appeal Case No. A156463 from which no further appeal or further review has been taken or can be taken.

The request is in the interest of justice. It will provide those Tenants and Real Parties In Interest a reasonable time to communicate with the HRRRB and/or the Rent Adjustment Program with respect to the nature and extent of further proceedings at the HRRRB and/or at a Hearing Officer.

Respectfully submitted,

Date: May 13, 2019



Stanley L. Amberg,  
Representative for  
Tenants-Real Parties In Interest

#### PROOF OF SERVICE

I, Stanley L. Amberg, declare that I am at least 18 years of age, and that on or before the date below, a copy of this Request For Stay Of Proceedings was served on the following, in the manner described:

By First Class Mail, United States Postal Service, postage prepaid, in envelopes addressed to:

Fried & Williams LLP, Att'n Clifford E. Fried, Esq., 1901 Harrison Street, Oakland, CA 94612, Attorneys for 525, 655 HYDE ST. CNML, PROPERTIES LLC; and

Ray McFadden, Mandana Properties, 4200 Park Blvd., #130, Oakland, CA 94602.

I declare under penalty of perjury under the laws of the State of California that the foregoing Proof of Service is true and correct, and this declaration was executed on May 13, 2019 at Oakland, CA.



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## Appellate Courts Case Information

1st Appellate District

Change court ▾

Court data last updated: 05/11/2019 10:27 AM

### Docket (Register of Actions)

525-655 Hyde Street CNML Props., LLP v. City of Oakland's Department of Housing and Community Development Rent Adjustment Program  
Division 1  
Case Number A156463

Date	Description	Notes
02/14/2019	Notice of appeal lodged/received.	Filed 02/07/19 by Real Party in Interests Julie Amberg, Todd McMahon, & Fernando Garcia appealing judgment from 12/12/18
02/14/2019	Notified parties of local rules and procedures.	
02/14/2019	Filing fee.	Check # 482, Julie E. Amberg
02/14/2019	Filing fee.	Check # 356, Todd McMahon
02/14/2019	Default notice sent-appellant notified per rule 8.100(c).	
02/21/2019	Appellant's notice designating record on appeal filed in trial court on:	Filed 02/14/19. **ALL APPELLANTS** Designating CT without RT Designating Administrative record.
02/22/2019	Civil case information statement filed.	Real Party in Interest and Appellant: Julie Amberg Pro Per
02/22/2019	Civil case information statement filed.	Real Party in Interest and Appellant: Todd McMahon Pro Per
02/25/2019	Civil case information statement filed.	Real Party in Interest and Appellant: Fernando Garcia Pro Per
02/25/2019	Application for waiver of filing fee filed.	
02/27/2019	Order waiving filing fee.	
03/04/2019	Filed.	Letter from appellant regarding fee waiver
03/06/2019	Order waiving filing fee.	Modified
03/12/2019	Record on appeal filed.	C-4 and 4 Vols of Administrative Record(Kept with CT)

[https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc\\_id=2278666...](https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=2278666...) 5/11/2019

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04/19/2019 Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019 Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019 Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019 Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)
	***Partial grant of 60 days to 6/21/19. Further extensions are not contemplated.***
04/19/2019 Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)
	***Partial grant of 60 days to 6/21/19. Further extensions are not contemplated.***
04/19/2019 Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)
	***Partial grant of 60 days to 6/21/19. Further extensions are not contemplated.***
04/22/2019 Application for waiver of filing fee filed	(change in circumstance)
04/23/2019 Order waiving filing fee	Modified
04/26/2019 Mail returned and re-sent.	enotice of 4/19/19 to J. Amberg bounced back; corrected email in docket and re-sent

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[https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc\\_id=2278666...](https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=2278666...) 5/11/2019

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# Appellate Courts Case Information

1st Appellate District

Change court 

Court data last updated: 05/11/2019 10:27 AM

## Case Summary

Trial Court Case:	RG17862841
Court of Appeal Case:	<b>A155463</b>
Division:	1
Case Caption:	525-655 Hyde Street CNML Props., LLP v. City of Oakland's Department of Housing and Community Development Rent Adjustment Program
Case Type:	CV
Filing Date:	02/07/2019
Completion Date:	
Oral Argument Date/Time:	

### Cross Referenced Cases:

No Cross Referenced Cases Found

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1 Clifford E. Fried, Esq., SBN 118288  
Jonathan Madison, Esq., SBN 311553  
2 Fried & Williams LLP  
1901 Harrison Street, 14<sup>th</sup> Floor  
3 Oakland, CA 94612  
Tel: (510) 625-0100  
4 Fax: (510) 550-3621  
jmadison@friedwilliams.com  
5

6 Attorneys for Petitioner.  
Rockridge Real Estate, LLC & Reinke, LLC

7  
8 COMMUNITY AND HOUSING DEVELOPMENT AGENCY  
9 RENT ADJUSTMENT PROGRAM  
10 CITY OF OAKLAND

11 525-655 Hyde St. CNML Props., LLP,

12 Petitioner,

13 vs.

14 City of Oakland's Department of Housing and  
Community Development, et al.,

15 Respondents.

Case No.: RG17-862841  
RAP Case No.: L14-0065

**OPPOSITION TO REQUEST FOR  
STAY OF PROCEEDINGS**

16 AND REAL PARTIES IN INTEREST  
17  
18

19  
20 **INTRODUCTION AND STATEMENT OF FACTS**

21 On December 18, 2018, the Hon. Judge Jeffrey Brand entered a judgment granting  
22 Petitioner's Motion for Judgment on the Writ of Administrative Mandamus. Attached as  
23 Exhibit "A" is a copy of the Court's judgment and the writ issued by the Court clerk. The  
24 Judgment sets aside and vacates the Rent Adjustment Program's ("RAP") appeal decision  
25 in case no. L14-0065. The Judgment further orders the RAP to reconsider the appeal  
26 decision in its entirety. The Court has reserved and retained jurisdiction over this action  
27 until the RAP files a return showing it has complied with the Writ of Mandamus.  
28

1 On May 13, 2019, Real Parties in Interest Julie Amberg, Kalle Garcia and  
2 Garcia, Mari Oda and Todd McMahon, filed a request for the RAP to stay all proceedings  
3 in this matter. Attached hereto as Exhibit "B" is a true and correct copy of the Request for  
4 Stay of Proceedings. The RAP cannot and should not stay any proceedings in this matter  
5 because the RAP does not have the procedure nor the power to stay proceedings in this  
6 matter, particularly when a Court order requires the RAP to reconsider the appeal decision  
7 in its entirety. Secondly, if the RAP grants the request and stays proceedings in this matter,  
8 the City of Oakland would be held in contempt of court for violating a Court's Judgment  
9 and Writ of Mandamus. As such, granting the request filed by the Real Parties in Interest  
10 would place the City of Oakland at great risk.

11  
12 **ARGUMENT**

13 **A. THE RAP HAS NO PROCEDURE OR AUTHORITY TO STAY**  
14 **PROCEEDINGS, PARTICULARLY WHEN A COURT'S**  
15 **JUDGMENT REQUIRES THE RAP TO RECONSIDER THE CASE.**

16 The RAP has no procedures in place by which to stay proceedings, especially when  
17 a Court's judgment requires the RAP to reconsider those proceedings. More importantly,  
18 a superior court's judgment preempts the RAP's authority. The RAP does not have the  
19 power to directly contradict a Court Judgment and Writ of Administrative Mandamus.  
20 Regardless of whether the Real Parties in Interest have filed notices of appeal, the RAP has  
21 been ordered by the Court to hear and reconsider this matter without delay. The Alameda  
22 County Superior Court has also retained jurisdiction over this matter, which should make  
23 it clear that the RAP does not have authority to stay proceedings. As such, the RAP should  
24 not grant the request for stay of proceedings filed by the Real Parties in Interest.

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**B. THE CITY OF OAKLAND IS AT RISK OF BEING IN CONTEMPT OF COURT IF THE RAP GRANTS THE REQUEST FOR STAY OF PROCEEDINGS FILED BY THE REAL PARTIES IN INTEREST.**

If the RAP were to grant the request for stay of proceedings filed by the Real Parties in Interest, this would place the City of Oakland at risk of being in contempt of court for violating the Judgment and Writ of Administrative Mandamus dated December 18, 2018. Since the RAP's authority is preempted by the superior court, it cannot and should not stay proceedings in this matter. The Court's Judgment and Writ of Administrative Mandamus clearly direct the RAP to proceed in reconsidering this case. The RAP is required to act pursuant to the Judgment and Writ of Administrative Mandamus. As such, the RAP should not grant the request for stay of proceedings.

**CONCLUSION**

The RAP does not have the procedures in place nor the power to stay proceedings in this matter. Further, if the RAP grants the request and stays proceedings in this matter, the City of Oakland would be in contempt of court for violating a Court's Judgment and Writ of Mandamus. As such, the RAP cannot and should not stay any proceedings in this matter.

Date: May 22, 2019

Fried & Williams LLP



Jonathan Madison  
Attorneys for Petitioner  
Rockridge Real Estate, LLC & Reinke, LLC

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EXHIBIT A

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1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street  
4 Oakland, CA 94612  
5 Phone: (510) 625-0100  
6 Email: cfried@friedwilliams.com

**FILED**  
ALAMEDA COUNTY

DEC 12 2018

By *[Signature]*

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

9  
10 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ALAMEDA

12 525-655 HYDE ST. CNML PROPS., LLP,

Case No.: RG17-862841

13 Petitioner,

**[PROPOSED] JUDGMENT  
GRANTING WRIT OF  
ADMINISTRATIVE MANDAMUS**

14 vs.

15 CITY OF OAKLAND'S DEPARTMENT OF  
16 HOUSING AND COMMUNITY  
17 DEVELOPMENT RENT ADJUSTMENT  
18 PROGRAM, and DOES 1 THROUGH 25,

19 Respondents.

20 Jilleun Eglin,  
21 Lexie Eglin,  
22 Angelique Johnson-Martinez,  
23 Suzanne Miller,  
24 Fernando Garcia,  
25 Kate Flick Garola,  
26 Bianca Penaloza,  
27 David Preciado,  
28 Julie Amberg,  
Tyler Ritter,  
Marie Oda,  
Todd McMahan,  
Andrew Simkin,  
Jessica Simkin,  
and DOES 26 THROUGH 40,

Real Parties in Interest.

JUDGMENT GRANTING MOTION FOR JUDGMENT ON THE WRIT OF ADMINISTRATIVE MANDAMUS

2019 MAY 22 PM 1:22

1 The Motion for Judgment on the Writ of Administrative Mandamus of Petitioners  
2 Rockridge Real Estate, LLC & Reinke, LLC ("Petitioners") came on for hearing on July  
3 26, 2018 and August 23, 2018 in Department 511 before the Honorable Kimberly Colwell.  
4 Clifford E. Fried, of Fried & Williams LLP appeared on behalf of Petitioners. Jamilah A.  
5 Jefferson, of the City of Oakland's City Attorney's Office, appeared on behalf of  
6 Respondent City of Oakland's Department of Housing and Community Development  
7 Rent Adjustment Program. Real Parties in Interest were present in the courtroom. The  
8 matter was argued and taken under submission. After considering the pleadings,  
9 Administrative Record, all moving and opposition papers, arguments of counsel, and file  
10 in this matter, the court entered an Order granting Petitioners' motion to augment the  
11 record and then granted Petitioners' petition and motion for writ of mandate directing the  
12 City of Oakland's Department of Housing and Community Development Rent Adjustment  
13 Program to vacate the Appeal Decision in Case No. L14-0065 ("Order"). A copy of said  
14 Order is attached hereto as **Exhibit A** and incorporated herein by reference as though set  
15 forth in full. Accordingly,

16 IT IS ADJUDGED AND DECREED THAT,

17 1. Petitioners shall have judgment against Respondent City of Oakland's  
18 Department of Housing and Community Development Rent Adjustment Program, for a  
19 writ of administrative mandamus setting aside and vacating the Rent Adjustment Program  
20 Appeal Decision in Case No. L14-0065.

21 2. Respondent shall reconsider the Appeal Decision <sup>IN ITS ENTIRETY</sup> in Case No. L14-0065 in  
22 light of the court's opinions, Order and this Judgment.

23 3. A writ of administrative mandamus shall issue under seal of this Court in  
24 the form attached hereto as **Exhibit B**.

25 4. Petitioners shall recover costs of suit as the prevailing party in this action.

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RENT ARBITRATION PROGRAM  
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1 5. Petitioner may seek, pursuant to an appropriate noticed motion, an award of  
2 its attorneys' fees, and this Court reserves and retains jurisdiction to determine the amount  
3 of such fees, if any.

4 This Court shall reserve and retain Jurisdiction over this action until such time as  
5 Respondent City of Oakland's Department of Housing and Community Development  
6 Rent Adjustment Program files a return evidencing that it has complied with the attached  
7 Writ of Mandamus.

8  
9 Date: 12/12/18

10   
11 JEFFREY S. BRAND,  
12 Judge of the Alameda Superior Court

13  
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CITY OF OAKLAND  
RENT ARBITRATION PROGRAM  
2019 MAY 22 PM 1:22



FILED  
ALAMEDA COUNTY

AUG 23 2018

By *[Signature]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

525 HYDE STREET, CNML PROPS, LLP,

Petitioner,

v.

CITY OF OAKLAND,

Respondents.

No. RG17-862841

ORDER (1) GRANTING MOTION TO  
AUGMENT THE RECORD AND (2)  
GRANTING PETITION FOR WRIT OF  
MANDATE.

Date: 8/23/18  
Time: 9:00 a.m.  
Dept.: 511

The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record and the petition of the Developer for writ of mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No. L14-0065 for came on for hearing on 8/23/18, in Department 511 of this Court, the Honorable Kimberly Colwell presiding. Counsel appeared on behalf of Petitioner and on behalf of Respondents. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record is GRANTED. The Petition of the Developer for writ of

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1 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.

2 L14-0065 is GRANTED.

3  
4 OPPORTUNITY FOR POST-HEARING BRIEFING

5 The court's tentative decision issued before the 7/26/18 hearing framed the issues  
6 differently than as presented by the parties and at the hearing the parties indicated that they might  
7 want supplemental briefing depending on the outcome of the motion to augment. The court's  
8 tentative decision issued before the 8/23/18 hearing stated that the court would permit the  
9 opportunity for post-hearing supplemental briefing if any party requested supplemental briefing.  
10 (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1286.) No party requested  
11 supplemental briefing.  
12  
13

14 EVIDENCE

15 The court GRANTS the Developer's request on 5/1/18 for judicial notice of ordinances  
16 (Exhs 1-3) and Hearing Decisions (Exhs 8-12.) The court GRANTS the Developer's request on  
17 5/1/18 for judicial notice of Tables A, B, C, and D (Exhs 4-7), but does augment the evidentiary  
18 record with those documents.  
19

20 The court GRANTS the City's request on 6/1/18 for judicial notice of Hearing Decisions.

21 The court GRANTS the City's request on 6/1/18 to supplement the record with the  
22 transcript of the Rent Board hearing. This was part of the evidence and was apparently omitted  
23 in error.  
24

25 The court DENIES the City's implicit request on 6/1/18 to supplement the record with the  
26 Declaration of David Harlan. Harlan testified before the Hearing officer. (AR 146:17-157:9)

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1 The City has not demonstrated that Harlan's declaration testimony was either improperly  
2 excluded during the administrative process or it could not, in the exercise of reasonable  
3 diligence, have been presented before the administrative decision was made. (CCP 1094.5(e);  
4 *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1144.)  
5

6 The court GRANTS the Developer's request on 6/25/18 for judicial notice of Hearing  
7 Decisions.  
8

9 MOTION TO AUGMENT THE RECORD

10 The City argued that the Developer failed to exhaust administrative remedies because it  
11 failed to argue to the Board that the Hearing Officer failed to properly apply Table A when  
12 calculating the cost of new construction. (City Oppo at 9-10.) At the hearing on 7/26/18, the  
13 Developer handed the court a copy of a brief on appeal allegedly filed with the Rent Board on  
14 5/4/16 that raised the issue at page 4 (the "Appeal Brief"). The City did not concede that the  
15 Appeal Brief was in the administrative record.  
16

17 On 8/10/18, the Developer filed a post-hearing motion under CCP 1094.5(e) to augment  
18 the record with the Appeal Brief. "A court may exercise its discretion to augment an  
19 administrative record if the evidence is relevant and if it was either improperly excluded during  
20 the administrative process or it could not, in the exercise of reasonable diligence, have been  
21 presented before the administrative decision was made." (*Evans v. City of San Jose* (2005) 128  
22 Cal.App.4th 1123, 1144.) This motion to augment does not concern evidence going to the merits  
23 that was presented to the hearing officer, but rather concerns evidence going to the procedural  
24 issue of whether the Developer raised an issue with the Board.  
25  
26

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1 The Developer's Notice of Appeal filed 6/18/15 raises the primary issue of whether the  
2 balcony area should be included but not the secondary issue of whether if the balcony is included  
3 it should be treated differently than apartment space. (AR 108.)

4 The Developer's Appeal Brief is file stamped "RECEIVED CITY OF OAKLAND RENT  
5 ARBITRATION PROGRAM 2016 MAY - 4 PM 2:52." The stamp is the same as other  
6 documents filed with the Rent Board. (AR 35, 46, 72, 104.) The City has presented declaration  
7 testimony from City employees Keith Mason and Kelly Rush that the City has no record of  
8 receiving the Appeal Brief. The real parties in interest also present evidence and argue that they  
9 have no record of the Appeal Brief.

10 The transcript of the Board hearing on 12/8/16 indicates that the Board discussed the  
11 primary issue of whether the balcony area should be included but that the Board did not reach the  
12 secondary issue of whether if the balcony is included it should be treated differently than  
13 apartment space.

14 The motion of the Developer to augment the administrative record with the Appeal Brief  
15 is GRANTED. The Appeal Brief is file stamped as received by the Board. This creates a  
16 presumption of filing. (*In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1103 ["a  
17 judgment or appealable order is presumptively filed, for purposes of the 180-day time limit, on  
18 the file-stamped date"].) The City has not presented evidence that on 5/4/16 the Developer used  
19 the City's self-file-stamp procedure to file-stamp the brief but then failed to leave a copy with the  
20 City or that the Developer falsified the file stamp on the Appeal Brief. The Court finds that the  
21 substantial evidence supports a finding that the Developer filed the brief and that the City  
22 inadvertently mis-filed or lost the brief. There is no indication that the City intentionally  
23 withheld the Appeal Brief from the administrative record.

1  
2 FACTS AND PROCEDURE

3 The Developer or its predecessor in interest rehabilitated the property located at 3921  
4 Harrison St, Oakland, CA. The Developer spent approximately \$850,000 on the project.

5 The Developer then sought a Certificate of Exemption from the Rent Board so that it  
6 could raise rents at the property. OMC 8.22.030.B.2 states, "In order to obtain an exemption  
7 based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of  
8 the average basic cost for new construction for a rehabilitation project and performed substantial  
9 work on each of the units in the building.  
10

11 The City notified the parties that the hearing would be on 3/20/15 and that they would be  
12 required to submit all evidence 7 days before the hearing date and that if they did not do so it  
13 "may" be excluded. (AR 414-415, 471-473.)

14 On 4/27/15, the Hearing Officer held a hearing. (AR 141-236.) During the presentation  
15 of evidence, Ms. Mira, attorney for tenants, showed Table B, which is Quarterly Cost Indexes to  
16 City Engineering Manager of the Bureau of Building David Harlan. The Hearing officer did not  
17 admit Table B into evidence at that time. (AR 152:13-27.) The submission of evidence  
18 concluded. (AR 225:16-22.)  
19

20 At argument following the presentation of evidence, Ms. Mira argued that Table A, the  
21 City of Oakland Building Services Construction Valuation, effective 8/1/09, should be adjusted  
22 by the Table B, the Quarterly Cost Indexes. (AR 228:8-11; 229:7-13). Ms. Mira presented  
23 Table B and asserted that the Hearing Officer should use it in making calculations. (AR 230:20-  
24 21.) Developer's counsel objected.  
25  
26

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1 The Hearing Officer said that he could take official notice of Table B if he was supposed  
2 to use it in his calculations. (AR 230:23-231:27.) The Hearing Officer said that he was unaware  
3 of Table B until the day of the hearing. (AR 236:14-16.)

4 On 5/29/15, the Hearing Officer issued a decision denying Developer's petition for a  
5 Certificate of Exemption from the rent control ordinance. (AR 120-131.)

6 The Developer sought review by the Rent Board. On 12/8/16, the Rent Board held a  
7 hearing. (AR 777-798.) On 3/7/16, the Rent Board issued its written decision. (AR 2-4.)  
8

9  
10 **ISSUE CLARIFICATION**

11 Petitioner commingles three analytically distinct issues regarding the use of Table B  
12 during the administrative process. The first issue is whether the Board violated its own  
13 procedures when it considered Table B as evidence even though it was not disclosed seven days  
14 before the hearing. The second issue is whether the Board erred as a matter of law by  
15 incorporating Table B into the OMC 8.22.030.B.2.b substantive standard. The third issue is  
16 whether the Board violated due process by failing to adequately disclose the existence of Table B  
17 to Petitioner while Petitioner was planning and executing the rehabilitation project.  
18

19  
20 **PROCEDURES – ADMISSION OF TABLE B AS EVIDENCE**

21 The arguments on the admission of Table B as evidence presume that it is a document  
22 that is fact evidence. As discussed below, OMC 8.22.030.B.2.b incorporates tables "issued by  
23 the chief building inspector" as the substantive standard. Therefore, if the tables are the  
24 documents described in the OMC, then they are incorporated in, and extensions of, the ordinance  
25 itself. The court must take judicial notice of the law. (Evid Code 451.) Subject to the  
26

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1 significant limitation that the court must provide parties the opportunity to present argument on  
2 material issues, the court (or a hearing officer) can consider law even if it is not formally  
3 presented by a party. (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282,  
4 1286.)

5 The Board's letters required the parties to disclose evidence 7 days before the hearing and  
6 cautioned that evidence not disclosed "may" be excluded. As a matter of policy construction,  
7 "may" is discretionary and permitted the Hearing officer to admit evidence that was not disclosed  
8 7 days before the hearing.

9 Assuming that Table B is factual evidence, the court finds that the Board did not violate  
10 its own procedures and abuse its discretion when it considered Table B even though it was not  
11 disclosed seven days before the hearing.

12 At the hearing the Hearing Officer stated that he would not admit Table B as evidence but  
13 would take official notice of Table B. Official notice appears to be equivalent to judicial notice  
14 and judicial notice is a basis for the admission of evidence. Therefore, there is no material  
15 difference between accepting Table B into evidence as submitted by a witness and taking judicial  
16 notice of Table B.

17  
18  
19  
20 **INCORPORATION OF TABLE B INTO ORDINANCE - STATUTORY INTERPRETATION.**

21 OMC 8.22.030.B.2 states:

22  
23 **Exemptions for Substantially Rehabilitated Buildings.**

- 24  
25 a. In order to obtain an exemption based on substantial rehabilitation, an owner  
26 must have spent a minimum of fifty (50) percent of the average basic cost for

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1 new construction for a rehabilitation project and performed substantial work on  
2 each of the units in the building.

- 3  
4 b. The average basic cost for new construction shall be determined using tables  
5 issued by the chief building inspector applicable for the time period when the  
6 substantial rehabilitation was completed.

7 The court exercises its independent judgment in considering statutory construction and other  
8 issues of law. (*Smith v. Santa Rosa Police Dept.* (2002) 97 Cal.App.4th 546, 553-554.)

9 As a matter of statutory construction, the court determines that OMC 8.22.030.B.2.b  
10 requires that the tables must be both (1) issued by the chief building inspector and (2) applicable  
11 for the time period when the substantial rehabilitation was completed.  
12

13 As a matter of determining whether there was a fair hearing the court applies its  
14 independent judgment regarding whether the City complied with the law. The court does not  
15 apply the abuse of discretion standard usually applied to evidence decisions because the statute  
16 clearly defines the substantive standard with reference to the tables. Therefore, referring to an  
17 incorrect table is in the nature of using an incorrect jury instruction rather than making a  
18 discretionary decision on the admission of evidence.  
19

20 Table A is identified as City of Oakland Building Services Construction Valuation,  
21 effective 8/1/09. Table A is issued by the chief building inspector. Table A states that it is  
22 "Effective Aug 1, 2009." This suggests that it is effective until replaced by a new table. When  
23 testifying, City Engineering Manager Harlan was asked if Table A was "the latest table put out by  
24 the City" and he answered "Yes, that's the table we currently use." (AR 146:20-23.) There is no  
25 objection to the use of Table A.  
26

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1 Table B is identified as Quarterly Cost Indexes. Table B has a footer that indicates it is  
2 from Marshall Valuation Services. There is no indication that Table B was "issued by the chief  
3 building inspector." When testifying, City Engineering Manager Harlan identified Table B and  
4 referred to it as "this source that we use." (AR 153:27.) The court finds that the Board erred as a  
5 matter of law by incorporating Table B into the ordinance as the substantive standard when it was  
6 not "issued by the chief building inspector."  
7

8 The Petition is GRANTED on the basis that applying its independent judgment the court  
9 finds that OMC 8.22.030.B.2.b requires that a table be "issued by the chief building inspector"  
10 and Table B was not "issued by the chief building inspector."  
11

#### 12 INCORPORATION OF TABLE B INTO ORDINANCE - DUE PROCESS.

13 The Developer made a discernable argument before the Hearing Officer (AR 235-236)  
14 and at the Rent Board (AR 784-785) and in this court (Reply at 5) that the Board violated due  
15 process by failing to adequately disclose the existence of Table B to Petitioner when Petitioner  
16 was planning and executing the rehabilitation project. The court exercises its independent  
17 judgment in considering issues of adequate notice or due process. (*Tafti v. County of Tulare*  
18 (2011) 198 Cal.App.4th 891, 896.)  
19

20 A statute, or ordinance, must be sufficiently clear to give a person fair warning of the  
21 conduct prohibited and they must provide a standard or guide against which conduct can be  
22 uniformly judged by courts and administrative agencies. (*Morrison v. State Board of Education*  
23 (1969) 1 Cal.3d 214, 230-231; *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308-  
24 309.) Similarly, an ordinance must be sufficiently clear to give a person adequate notice of the  
25 requirements for obtaining a government benefit, or a Certificate of Exemption.  
26

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1 A statute "will be upheld if its terms may be made reasonably certain by reference to other  
2 definable sources." (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1180; *Personal*  
3 *Watercraft Coalition v. Board of Supervisors* (2002) 100 Cal.App.4th 129, 138-139.)  
4 Making an "on its face" analysis, the Ordinance could reasonably refer to and incorporate "tables  
5 issued by the Chief Building Inspector."  
6

7 Making an "as applied" analysis, it is much less clear whether Table B is an "other  
8 definable source." When testifying, City Engineering Manager Harlan was asked if Table A was  
9 "the latest table put out by the City" and he answered "Yes, that's the table we currently use."  
10 (AR 146:20-23.) City Engineering Manager Harlan also identified Table B and referred to it as  
11 "this source that we use." (AR 153:27.) The Hearing Officer stated that he was unaware of  
12 Table B until the day of the hearing. (AR 236:14-16.)  
13

14 The Developer did not present evidence, but argued that it was unaware of Table B until  
15 the hearing on 4/27/15. Before the Hearing Officer, the Developer's counsel argued that the  
16 Building Department did not make Table B available to the public. (AR 235:19-236:1.) Before  
17 the Board, the Developer's counsel argued that the Developer assumed that the relevant time  
18 period was "set forth in the most recent table that's issued by the Building Services Department.  
19 That's Exhibit A" and that the Developer "relied on this Table A and be believed that when his  
20 project was completed it would be exempt." (AR 784:17-23.)  
21

22 The City and the tenants presented no evidence that Table B was an "other definable  
23 source" that was disclosed to the public as relevant to the ordinance. The court has denied the  
24 City's request to supplement the record with the declaration of Harlan. That noted, the  
25 declaration states that the City distributes Table B to persons "who request the table" and "that  
26 the City distributes [the Table] upon request." (Harlan Dec., paras 6 and 7.)

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1 The court finds that the Developer did not waive this argument even though it failed to  
2 clearly present this argument to the Hearing Officer and to the Board. The Tenant's  
3 Representative, Ms. Mira, did not disclose Table B as evidence seven days before the hearing or  
4 otherwise put the Developer on notice that she would rely on Table B. The Hearing officer was  
5 unaware of Table B. The record suggests that the Developer costed out the project and prepared  
6 for the Hearing Officer hearing on the reasonable assumption that Table A was the standard  
7 against which the evidence of expense would be measured.  
8

9 The Petition is GRANTED on the basis that applying its independent judgment the court  
10 finds that on the facts of this case that Table B was not an "other definable source" and that the  
11 Ordinance therefore did not give the Developer fair warning that Table A was not the standard  
12 against which the evidence of expense would be measured and that it would be modified by  
13 Table B.  
14

15  
16 \$26,000 IN INVOICES.

17 The Developer argues that the Hearing Officer and Board erred in excluding \$26,000 in  
18 invoices. The City acknowledges that the Hearing Officer and Board appear to have made a  
19 calculation error. (City Oppo at 9:8-15.) This error did not affect the Board's decision. The  
20 apparent \$26,000 calculation error does not affect the court's decision on the petition.  
21

22 INCLUSION OF DECK SPACE.

23  
24 There is substantial evidence to support the Board's fact finding that the property space  
25 included both the apartment space and the deck and balcony space.  
26

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1  
2 SEPARATE TREATMENT OF APARTMENT SPACE AND DECK/BALCONY SPACE

3 County records state the property was 13,337 sqft. (AR 247.) The Developer  
4 rehabilitated the balconies, which are an additional 1,002 sqft.

5 Table A differentiates among different "Descriptions" of construction. Table A included  
6 "Apartment space" at \$127 sqft, "Elevated Decks and Balconies" space at \$41.16 sqft, and many  
7 other descriptions of space. The Hearing Officer and the Board both decided to treat both the  
8 13,337 sqft interior space and the 1,002 sqft deck/balcony space as "Apartment space." (AR 004,  
9 123.)  
10

11 Petitioner argues that the Board erred as a matter of law by treating the deck/balcony  
12 space as "Apartment space" and should have treated it as "Elevated Decks and Balconies" space.  
13 (Opening brief at 4:21-26; 6:26-27; 7:29-8:7.)

14 Petitioner has not waived this argument. At the hearing before the Hearing Officer,  
15 Petitioner argued that the calculations should exclude the deck space. (AR 3.) In the briefing to  
16 the Board, Petitioner accepted that the Hearing Officer used the deck space, but argued that the  
17 Hearing Officer should have calculated "R3 Elevated Decks and Balconies" space at \$41.16 sqft.  
18 (Brief filed with Board on 5/4/16 at page 4.) At argument before the Board, petitioner raised the  
19 primary issue of whether the balcony area should be included but did not reach the secondary  
20 issue of whether if the balcony is included whether it should be treated differently than apartment  
21 space. (AR 004, 792:3-11; 795:3-11; 796:5-798:12.)  
22

23 This is an issue of statutory construction because OMC 8.22.030.B.2.b incorporates tables  
24 be "issued by the chief building inspector."  
25  
26

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1 As a matter of statutory construction, the City must apply Table A to projects or parts of  
2 projects based on whether the Description reasonably describes the physical structure to be  
3 constructed. The Descriptions in Table A are defined by the cost of construction rather than the  
4 potential use of the structure. The court takes judicial notice that the City of Oakland Planning  
5 and Building website states, "The cost of building permits is based upon the construction  
6 valuation of the project. Valuation includes all labor and structural materials, and all lighting,  
7 heating, ventilation, water supply, plumbing, electrical, fire sprinklers, elevator equipment."  
8 (<http://www2.oaklandnet.com/government/o/PBN/OurServices/permits/index.htm>) Consistent  
9 with this purpose, the Rent Board should apply schedule A to projects and parts of projects based  
10 on whether the Description reasonably describes the physical structure to be constructed.  
11

12 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on  
13 the potential use of the balconies rather than the cost of building or rehabilitating the balconies.  
14 The Board's decision states "there was no abuse of discretion by the Hearing Officer in including  
15 the balconies' area where such space is useable space that expands the tenants' livable area."  
16 (AR 004.) (See also AR 797:10-11.)  
17

18 This was legal error because the Table A analysis concerns the cost of constructing the  
19 project or part of the project, not the potential use of the constructed property. Although the Rent  
20 Board in other contexts might be focused on whether rental space is usable, liveable, and  
21 habitable, in the context of OMC 8.22.030.B.2.b and Table A, the Rent Board must focus on the  
22 cost of construction. Even if OMC 8.22.030.B.2.b and Table A did concern usable, liveable, or  
23 habitable space, the BMC elsewhere defines "habitable space" and "habitable rooms" in a way  
24 that suggests they do not include exterior balconies and decks. (OMC 15.20.030 [Building and  
25 Construction Code]; 17.09.040 [Planning Code].)  
26

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1 As a matter of statutory construction, the City must give effect to all the "Description"  
2 categories in Table A. If a general "Description" and a specific "Description" both apply to a  
3 construction project or to a part of a construction project, then the City must give effect to the  
4 specific "Description." (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310;  
5 *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 477-0478.)

6 The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by treating both  
7 the 13,337 sqft and the 1,002 sqft as Apartment space. Although an apartment might have a  
8 balcony or deck, Table A has a separate specific line item for "Elevated Decks and Balconies."  
9 Where Table A sets out a specific Description that applies to a project or a part of a project, the  
10 Board must give effect to the specific Description.

11 The Board stated that the Hearing Officer did not abuse his discretion by including the  
12 balconies in the "Apartment" space. (AR 004.) (See also AR 797:1-9.) The Hearing Officer  
13 makes factual findings about whether a project or a part of a project fits within a certain  
14 Description. The Hearing Officer does not, however, have the discretion to characterize a project  
15 or a part of a project based on improper criteria. The Hearing Officer and the Board misapplied  
16 the law by focusing on the potential use of the balconies rather than their cost of construction and  
17 by not giving effect to the specific Description for "Elevated Decks and Balconies."  
18  
19  
20

21 CONCLUSION

22 The Petition of 525-655 Hyde St Commercial Properties (the "Developer") for writ of  
23 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
24 L14-0065 is GRANTED.  
25  
26

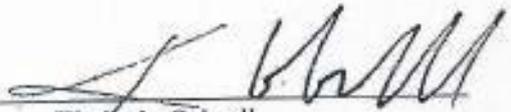
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1 Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to  
2 reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or  
3 control in any way the discretion legally vested in the respondent Board. If permitted by its  
4 procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If  
5 permitted by its procedures, the Rent Board may reconsider either the entire matter or only the  
6 issues implicated by this order. The court expressly does not direct the Rent Board to grant the  
7 petition for a Certificate of Exemption.  
8

9 At the hearing on 8/23/18, counsel for the Developer asked that the court order the Rent  
10 Board to expedite further proceedings given that the Developer filed the petition for certificate of  
11 exemption on 11/10/14 (AR 558-761) and the matter has been pending for almost four years.  
12 Counsel for the City did not object to that request. The court encourages the Rent Board to  
13 promptly reconsider this matter consistent with the procedures in OMC 8.22.120 and Rent  
14 Adjustment Program Regulations 8.22.110 and 8.22.120.  
15

16 The court directs the Developer to prepare and submit to the court both a proposed  
17 judgment and a proposed writ. (CRC 3.1312.)  
18

19 Dated: August 23, 2018  
20

  
21 Kimberly Colwell  
22 Judge of the Superior Court  
23  
24  
25  
26

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

Case Number: RG17862841

Case Name: 525 Hyde Street, CNML Props, LLP vs. City of Oakland

- 1) Order 1) Granting Motion to Augment the Record and 2) Granting Petition for Writ of Mandate

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing Order 1) Granting Motion to Augment the Record and 2) Granting Petition for Writ of Mandate was mailed first class, postage prepaid, in a sealed envelope, addressed as shown below by placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

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

8/24/2018

Executive Officer/Clerk of the Superior Court  
By M. Scott Sanchez, Deputy Clerk

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(53)

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8 Rockridge Real Estate, LLC & Reinke, LLC

9  
10 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ALAMEDA

12 525-655 HYDE ST. CNML PROPS., LLP,  
13  
14 Petitioner,

15 vs.

16 CITY OF OAKLAND'S DEPARTMENT OF  
17 HOUSING AND COMMUNITY  
18 DEVELOPMENT RENT ADJUSTMENT  
19 PROGRAM, and DOES 1 THROUGH 25,

20 Respondents.

21 Jilleun Eglin,  
22 Lexie Eglin,  
23 Angelique Johnson-Martinez,  
24 Suzanne Miller,  
25 Fernando Garcia,  
26 Kate Flick Garcia,  
27 Bianca Penaloza,  
28 David Preciado,  
Julie Amberg,  
Tyler Ritter,  
Marie Oda,  
Todd McMahon,  
Andrew Simkin,  
Jessica Simkin,  
and DOES 26 THROUGH 40,

Real Parties in Interest.

Case No.: RG17-862841

[PROPOSED] WRIT OF  
ADMINISTRATIVE MANDAMUS

WRIT OF ADMINISTRATIVE MANDAMUS

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WRIT OF MANDAMUS

To: CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM AND ITS  
ATTORNEY OF RECORD:

**YOU ARE HEREBY COMMANDED** immediately upon receipt of this writ to:

1. Set aside and vacate the Rent Adjustment Program Appeal Decision in  
Case No. L14-0065.

2. Reconsider the Appeal Decision in Case No: L14-0065 in light of the court's  
opinions, Order and Judgment.

The Court will retain jurisdiction over Respondent proceedings by way of a return to this  
peremptory writ of mandamus until the Court has determined that Respondent has  
complied with the following order:



Chad Fiske, Clerk

By [Signature], Deputy Clerk

ORDER

LET THE WRIT OF MANDAMUS ISSUE.

Date: 12/2/18

[Signature]  
JEFFREY S. BRAND,  
Judge of the Alameda Superior Court

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EXHIBIT B

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HOUSING AND COMMUNITY DEVELOPMENT  
RENT ADJUSTMENT PROGRAM

2019 MAY 13 AM 11:15

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD**

**RENT ADJUSTMENT PROGRAM**

**CASE L-14-0065**

**525, 655 HYDE ST. CNML, PROPERTIES LLC v. TENANTS**

**REQUEST FOR STAY OF PROCEEDINGS**

On March 7, 2017 this Board affirmed the Hearing Officer's May 29, 2015 decision in Case No. L14-0065. On June 5, 2017 the property owner 525, 655 Hyde St., CNML, Properties LLL filed a petition for a writ of administrative mandate in the Superior Court for the State of California, County of Alameda, in Case RG17-862841.

On August 23, 2018, the Court in that case issued an Order granting the petition for mandate. However, the Order expressly did **not** direct the HRRRB to grant the petition for a certificate of exemption. The Order remanded the case back to the HRRRB for reconsideration. The Order expressly did **not** limit or control the HRRRB's discretion (1) to direct the Hearing Officer to conduct a further hearing, or (2) to reconsider the entire matter.

The Order stated:

"Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption."

On December 12, 2018 the court issued a Judgment which incorporated by reference the August 23, 2018 Order, quoted above.

On February 7, 2019, tenants Julie Amberg, Fernando Garcia and Todd McMahon filed **notices of appeal of the Judgment**. Their appeals are docketed as **Case Number A156463** in the California Court of Appeal, 1<sup>st</sup> Appellate District. A copy of the Docket (Register of Actions) in that appeal is attached. Their appeals stay enforcement of the Judgment.

Tenants Julie Amberg, Kate Garcia, Fernando Garcia, Mari Oda and Todd McMahon are Tenant parties in RAP Case No. L14-0065 and are Real Parties In Interest in Case RG-17-862841. They respectfully **request** that the HRRRB and the Rent Adjustment Program **stay all**

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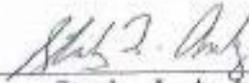
proceedings in Rent Adjustment Program Case No L14-0065 until 60 days of a final judgment in Case No. RG-17-862841 and Appeal Case No. A156463 from which no further appeal or further review has been taken or can be taken.

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The request is in the interest of justice. It will provide those Tenants and Real Parties In Interest a reasonable time to communicate with the HRRRB and/or the Rent Adjustment Program with respect to the nature and extent of further proceedings at the HRRRB and/or at a Hearing Officer.

Respectfully submitted,

Date: May 13, 2019



Stanley L. Amberg,  
Representative for  
Tenants-Real Parties In Interest

PROOF OF SERVICE

I, Stanley L. Amberg, declare that I am at least 18 years of age, and that on or before the date below, a copy of this Request For Stay Of Proceedings was served on the following, in the manner described:

By First Class Mail, United States Postal Service, postage prepaid, in envelopes addressed to:

Fried & Williams LLP, Att'n Clifford E. Fried, Esq., 1901 Harrison Street, Oakland, CA 94612, Attorneys for 525, 655 HYDE ST. CNML, PROPERTIES LLC; and

Ray McFadden, Mandana Properties, 4200 Park Blvd., #130, Oakland, CA 94602.

I declare under penalty of perjury under the laws of the State of California that the foregoing Proof of Service is true and correct, and this declaration was executed on May 13, 2019 at Oakland, CA.



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## Appellate Courts Case Information

1st Appellate District

Change court 

Court data last updated: 05/11/2019 10:27 AM

## Docket (Register of Actions)

525-655 Hyde Street CNML Props., LLP v. City of Oakland's Department of Housing and Community Development Rent Adjustment Program  
Division 1  
Case Number A156463

Date	Description	Notes
02/14/2019	Notice of appeal lodged/received.	Filed 02/07/19 by Real Party in Interests Julie Amberg, Todd McMahon, & Fernando Garcia appealing judgment from 12/12/18.
02/14/2019	Notified parties of local rules and procedures.	
02/14/2019	Filing fee.	Check # 482, Julie E. Amberg
02/14/2019	Filing fee.	Check # 356, Todd McMahon
02/14/2019	Default notice sent-appellant notified per rule 8.100(c).	
02/21/2019	Appellant's notice designating record on appeal filed in trial court on:	Filed 02/14/19. **ALL APPELLANTS** Designating CT without RT. Designating Administrative record.
02/22/2019	Civil case information statement filed.	Real Party in Interest and Appellant: Julie Amberg Pro Per
02/22/2019	Civil case information statement filed.	Real Party in Interest and Appellant: Todd McMahon Pro Per
02/25/2019	Civil case information statement filed.	Real Party in Interest and Appellant: Fernando Garcia Pro Per
02/25/2019	Application for waiver of filing fee filed.	
02/27/2019	Order waiving filing fee.	
03/04/2019	Filed.	Letter from appellant regarding fee waiver
03/06/2019	Order waiving filing fee.	Modified
03/12/2019	Record on appeal filed.	C-4 and 4 Vols of Administrative Record(Kept with CT)

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04/19/2019 Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019 Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019 Requested - extension of time.	Appellant's opening brief. Requested for 07/22/2019 By 91 Day(s)
04/19/2019 Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)  ***Partial grant of 60 days to 6/21/19. Further extensions are not contemplated.***
04/19/2019 Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)  ***Partial grant of 60 days to 6/21/19. Further extensions are not contemplated.***
04/19/2019 Granted - extension of time.	Appellant's opening brief. Due on 06/21/2019 By 60 Day(s)  ***Partial grant of 60 days to 6/21/19. Further extensions are not contemplated.***
04/22/2019 Application for waiver of filing fee filed.	(change in circumstance)
04/23/2019 Order waiving filing fee.	Modified
04/26/2019 Mail returned and re-sent.	enotice of 4/19/19 to J. Amberg bounced back; corrected email in docket and re-sent

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[https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc\\_id=2278666...](https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=1&doc_id=2278666...) 5/11/2019

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# Appellate Courts Case Information

1st Appellate District

Change court 

Court data last updated: 05/11/2019 10:27 AM

## Case Summary

Trial Court Case:	RG17882841
Court of Appeal Case:	A156463
Division:	1
Case Caption:	525-655 Hyde Street CNML Props., LLP v. City of Oakland's Department of Housing and Community Development Rent Adjustment Program
Case Type:	CV
Filing Date:	02/07/2019
Completion Date:	
Oral Argument Date/Time:	

### Cross Referenced Cases:

No Cross Referenced Cases Found

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Housing and Community Development Department  
Rent Adjustment Program

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

### ORDER RE HEARINGS

**Case No./Name: L14-0065, 525,655 Hyde St, CNML Properties LLC. v. Tenants  
T18-0328, Amberg v. Rockridge Real Estate  
T19-0081, 0082, 0083, 0107, 0110, 0119, Garcia et al. v. Rockridge  
Real Estate**

**Property Address: 3921 Harrison Street, Oakland, CA**

Background: The Rent Adjustment Program received a request for a postponement of hearings on June 25, 2019, regarding T19-0081 et al., and case number T18-0328 on the grounds that the issues are substantially similar in these cases. There also is a pending case L14-0065, remanded to the hearing officer by the Rent Board.

The Board affirmed the Hearing Decision in L14-0065. On June 5, 2017, the owner filed a petition for writ of administrative mandate in the Superior Court, Alameda County in RG17-862841. The Court remanded the case back to the Rent Board for reconsideration of the issue of an owner exemption from the Rent Ordinance.

The tenants have appealed the Superior Court judgment in case RG17-862841 to the California Court of Appeal, A156463 and request a stay of the remand hearing in L14-0065 pending a final decision by the Court of appeals.

The Rent Ordinance Regulation 8.22.10(A) sets forth the "Good Cause" requirement for postponement of a hearing. Section 8.22.110(A) states that a postponement request shall be made at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.

**GOOD CAUSE APPEARING**, the Hearing scheduled for June 25, 2019, is cancelled, and the remand hearing in L14-0065 is stayed pending a final decision by the Court of Appeals in A156463.

**DATE: May 29, 2019**

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

**PROOF OF SERVICE**

**Case Numbers L14-0065, T18-0328, and  
T19 -0081, -0082, -0083, -0107, -0110, -0119**

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

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

**Documents Included**

Order Re Hearings

**Owners**

Nathaniel Reinke, Rockridge Real Estate, LLC  
1373 Clay St #11  
San Francisco, CA 94109

Ray McFadden, Mandana Properties  
4200 Park Blvd #130  
Oakland, CA 94602

**Owner Representatives**

525-655 Hyde Street CNML Tsegab Assefa  
4844 Telegraph Ave  
Oakland, CA 94609

Clifford E. Fried, Esq., Fried & Williams LLP  
1901 Harrison St, 14<sup>th</sup> Floor  
Oakland, CA 94612

**Tenant Representatives**

Ana Mira  
3022 International Blvd #410  
Oakland, CA 94601

Liz Hart  
480 9th St  
Oakland, CA 94607

Stanley Amberg  
11 Carolyn Lane  
Chappaqua, NY 10514

**Tenants**

Alexander Taylor  
3921 Harrison St #104  
Oakland, CA 94611

Alexandru Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Alexandru Vasilescu  
3921 Harrison St #301  
Oakland, CA 94611

**000370**

Andrew Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Angelique Johnson-Martinez  
3921 Harrison St #103  
Oakland, CA 94611

Bianca Penaloza  
3921 Harrison St #204  
Oakland, CA 94611

Cooper Spinelli  
3921 Harrison St #203  
Oakland, CA 94611

Dana Sarvestani  
3921 Harrison St #203  
Oakland, CA 94611

Elena Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Elizabeth VanLanen  
3921 Harrison St Penhouse  
Oakland, CA 94611

Fernando Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Jessica Simkin  
3921 Harrison St #305  
Oakland, CA 94611

Jilleun Eglin & Lexie Eglin  
3921 Harrison St #101  
Oakland, CA 94611

Julie Amberg  
3921 Harrison St #302  
Oakland, CA 94611

Kate Garcia  
3921 Harrison St #202  
Oakland, CA 94611

Lisa Romero  
3921 Harrison St #205  
Oakland, CA 94611

Mari Oda  
3921 Harrison St #304  
Oakland, CA 94611

Ria Cruz  
3921 Harrison St #105  
Oakland, CA 94611

Steven Miller  
3921 Harrison St Penhouse  
Oakland, CA 94611

Suzanne Miller  
3921 Harrison St #201  
Oakland, CA 94611

Tadeusz Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

Todd McMahon  
3921 Harrison St #304  
Oakland, CA 94611

Tyler Ritter  
3921 Harrison St #303  
Oakland, CA 94611

Zoe Bridges  
3921 Harrison St #301  
Oakland, CA 94611

Zvetlana Butnaru  
3921 Harrison St #104  
Oakland, CA 94611

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 04, 2019** in Oakland, CA.

  
\_\_\_\_\_  
Claudette Campos  
Oakland Rent Adjustment Program

000372

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

525-655 HYDE STREET CNML  
PROPS., LLP et al.,

Petitioners and Respondents,

v.

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

Respondent.

JULIE AMBERG et al.,

Real Parties in Interest and  
Appellants.

A156463

(Alameda County  
Super. Ct. No.  
RG17862841)

Real parties in interest, three residents of an Oakland apartment building (Tenants), appeal from an adverse judgment in this administrative mandamus proceeding filed by the owner of the building (Owner). Owner, after making substantial repairs and improvements to the building, filed a “Petition for Exemption” from Oakland’s Rent Adjustment Ordinance, pursuant to its “substantial rehabilitation” provisions. Following a hearing, at which Owner and numerous tenants represented by counsel submitted evidence, the hearing officer found the dollar amount of qualifying repairs

and improvements insufficient to meet the exemption requirement. Owner appealed to the Oakland Housing, Residential, Rent and Relocation Board (Board), which upheld the decision.

Owner then filed a writ petition, which the trial court granted, concluding the hearing officer and Board had made several legal errors. The court remanded the matter for reconsideration in accordance with its rulings.<sup>1</sup>

Tenants challenge one of these rulings, as well as an order augmenting the administrative record.<sup>2</sup> We affirm.

### **DISCUSSION<sup>3</sup>**

#### ***Mootness***

We first address Tenants' claim that the case has been rendered moot by Oakland's elimination of the substantial rehabilitation exemption.

The pertinent circumstances are as follows:

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<sup>1</sup> The remand order states:

“Consistent with Code of Civil Procedure [section] 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.”

<sup>2</sup> Although the City of Oakland appeared in the trial court and urged that the Board's decision be upheld, the city did not appeal from the trial court's judgment and has not appeared, as amicus or otherwise, in this appeal.

<sup>3</sup> We discuss the relevant facts and procedural background in connection with our discussion of the issues on appeal.

Owner filed for a substantial rehabilitation exemption on November 10, 2014.

Three years later, on November 28, 2017, the city enacted a 180-day moratorium on such exemptions, which it extended for another 180 days so staff could complete a report with options and recommendations. (Oak. Ord. No. 13523.<sup>4</sup>)

The staff report, dated August 14, 2018, discussed three options—a three-year moratorium allowing further study and analysis, restricting the exemption to vacant and uninhabitable units, and eliminating the exemption. The report observed that most rent control jurisdictions no longer have such exemptions and provide other means for owners to recoup capital improvement costs, which Oakland also allows.

Following a public hearing on September 17, the city council extended the moratorium an additional 180 days and voted to eliminate the exemption.

On March 21, 2019, the city council adopted ordinance No. 13523, eliminating the exemption. (Oak. Ord. No. 13523.) The ordinance amended Municipal Code section 8.22.030 to read in pertinent part:

“A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter. . . : [¶] . . . [¶]

“6. Substantially rehabilitated buildings. This exemption shall apply only to buildings where the rental property owner submitted an application for a certification of exemption to the Rent Adjustment Program prior to October 20, 2017, and which have been issued a certificate of exemption from the Rent Adjustment Program.” (Oak. Ord. No. 13523, § 1, A(6), underscoring omitted.)

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<sup>4</sup> We take judicial notice of the city’s legislative actions and the staff reports prepared in connection therewith. (Evid. Code, § 452.)

There is no dispute Owner filed its application long before October 20, 2017. Tenants assert that not only must an application have been filed by that date, but such application also must have been granted by that date.

The plain language of the ordinance does not support Tenants' reading. (See *L.G. v. M.B.* (2018) 25 Cal.App.5th 211, 227 [it is a "general principle that the plain language of a statute is controlling"].) As a grammatical matter, the October 20, 2017 date pertains only to the application for a substantial rehabilitation exemption. Moreover, the ordinance easily could have stated that both an application for such an exemption must have been filed *and* a certificate of exemption must have been obtained, by October 20, 2017. It does not, however, so state. (See *The Internat. Brotherhood of Boilermakers, etc. v. NASSCO Holdings Inc.* (2017) 17 Cal.App.5th 1105, 1117 [although legislature could have defined key term of statute to include certain employment action, it did not do so, and court would not read statute as though it included such definition].)

The most plausible reading of the plain language, then, is that the city council established a cut-off date for exemption applications, thus allowing timely filed applications to be processed, but barring any further applications and ensuing exemptions.

Tenants also point out Owner's application was denied by the hearing officer and the Board. But there is no suggestion in either the ordinance or staff reports that a timely applicant receiving an adverse ruling from a hearing officer would be barred from pursuing either the administrative appeal expressly provided for by the Rent Adjustment Ordinance or foreclosed from seeking judicial review of a Board decision.

We therefore conclude, since Owner filed an application for a substantial rehabilitation exemption well before the October 2017 deadline, the instant proceeding is not moot.

### ***Order Augmenting Administrative Record***

We next address Tenants' challenge to the trial court's order augmenting the administrative record to include Owner's "Brief on Appeal" submitted to the Board in support of its administrative appeal. We review the court's order for substantial evidence.<sup>5</sup> (See *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 197–201 (*Consolidated Irrigation*) [affirming order augmenting record, as substantial evidence supported trial court's finding that memoranda not included in record had, in fact, been submitted to local governing agency].)

The motion to augment was made in response to assertions by the City and the Tenants in their opposition to the writ petition, that Owner had forfeited an issue—specifically, that the hearing officer had erred in using one construction cost figure (\$127) for both interior living space and balcony

---

<sup>5</sup> "A substantial evidence inquiry examines the record in the light most favorable to the judgment and upholds it if the record contains reasonable, credible evidence of solid value upon which a reasonable trier of fact *could* have relied in reaching the conclusion in question. Once such evidence is found, the substantial evidence test is satisfied. (See *People v. Johnson* (1980) 26 Cal.3d 557, 578. . . .) Even when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the standard is sufficient to uphold the finding." (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.) A trial court's "conclusions of law" in connection with a motion to augment "are subject to independent review on appeal." (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 65 (*Madera*), disapproved on another ground in *Neighbors for Smart Rail v. Exposition Metro Line Authority* (2013) 57 Cal.4th 439, 457.) However, as we explain, we are not dealing here with an issue of law, but with a challenged finding of fact.

space, rather than a lower figure for balcony space (\$41.16)—because it had not raised the issue before the Board. At the hearing on the writ petition, Owner provided the trial court with a file endorsed copy of its “Brief on Appeal,” wherein Owner had raised the exact issue the City and the Tenants claimed was forfeited. The City declined to concede the brief was in the record.

Owner therefore filed a post-hearing motion to augment the record. This was supported by a detailed declaration of the attorney who had prepared the administrative appeal brief and had extensive experience with Board filing requirements. He explained that he had instructed his staff to file the brief, on staff’s return to his office he/she confirmed the brief had been filed, and counsel was handed and retained in his possession a “blue ink” file-endorsed copy of the brief. Counsel acknowledged he had reviewed the administrative record after it was prepared. But he had not noticed the omission of the brief then, or later when he prepared the memoranda in support of the writ petition as he had had no occasion to refer to it. He also recounted this was not the first time he had experienced a situation where a filed document had been misplaced by the Board. He further stated that, at the time, Board rules did not require service of such briefs on real parties.

The City opposed the motion to augment, submitting declarations of two city employees that the city had no record of receiving the brief. Real parties also maintained they had no copy of the brief.

After considering all the evidence before it, the trial court granted the motion, pointing out the copy of the brief provided with the motion was “file stamped ‘RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 MA- 4 PM 2:52.’” The court also observed neither the City, nor real parties, had provided any evidence that Owner had “used the City’s

self-file-stamp procedure” but then failed to leave a copy for the Board or had deliberately falsified the file stamp. The court ruled “substantial evidence” supported “a finding that the [Owner] filed the brief and that the City inadvertently mis-filed or lost the brief.” It further found there was “no indication that the City intentionally withheld the Appeal Brief from the administrative record.”

On this record, the trial court’s augmentation order is amply supported.

Citing to *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, Tenants claim the trial court erred “as a matter of law” in granting the motion. Tenants misperceive the distinction between augmenting a record with *evidence not presented* during the administrative proceedings and augmenting a record to ensure it is complete and includes all materials that were presented *during* the administrative proceedings. (See *Consolidated Irrigation, supra*, 204 Cal.App.4th at p. 198 [pointing out the “importance of distinguishing between documents that belong in the record of proceedings versus documents that might be admissible as extra-record evidence”]; see generally California Practice Guide-Administrative Law, “Pretrial and Trial of Mandamus Cases, § 20:195 (The Rutter Group 2020) [“If petitioner contends the record certified by the agency is incomplete, the appropriate remedy is a motion to augment the record.”].)

*Western States* does, indeed, place constraints on extra-record evidence pertaining to the merits of the matters before the administrative tribunal that is proffered after-the-fact during judicial review. But the case has no bearing on a motion to augment of the sort made here—to correct the administrative record to include a document that the trial court found, on substantial evidence, was submitted to the Board but was inadvertently not

included in the administrative record. (See *Consolidated Irrigation, supra*, 204 Cal.App.4th at pp. 198–199.)

As for Tenants’ assertion that Owner did not show reasonable diligence in seeking to augment the record, we must presume the trial court found otherwise as there is substantial evidence to support such a finding. (See *Madera, supra*, 199 Cal.App.4th at pp. 65–66 [in connection with rulings on motions to augment, appellate court applies traditional presumptions on appeal, including that trial court made all requisite findings where substantial evidence supports such implied findings].) Moreover, “it is within the province of the trial court, sitting as the trier of fact, to decide factual questions such as reasonable diligence and the persuasiveness of the evidence presented,” and we “will not not second-guess the implied finding[] made by the trial court.” (*Id.* at pp. 71–72.)

Tenants further maintain their “due process” rights were impinged by the augmentation order. But they provide no specifics. As the trial court pointed out, augmentation was not sought to bolster any merits argument. Rather, it was sought solely to rebut a claim of forfeiture. We fail to see how the trial court’s proceeding to the merits of the issue, otherwise fully briefed by the parties and based on evidence indisputably in the record, prejudiced Tenants in any respect.

Finally, Tenants spend considerable time rearguing the evidence, urging that the declarations of city staff should have been given controlling weight and the declaration of Owner’s counsel should have been viewed with skepticism and discounted. However, even where a factual matter is tried on declarations and affidavits, credibility and weight are matters for the trial court, not the Court of Appeal. (See *Consolidated Irrigation Dist., supra*, 204 Cal.App.4th at p. 198 [“Appellate courts routinely apply the substantial

evidence standard to findings of fact made by a trial court based on affidavits and declarations without any oral testimony.”]; *Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514–515 [“we do not evaluate the credibility of the witnesses or otherwise reweigh the evidence”; rather, “ ‘we defer to the trier of fact on issues of credibility’ ”].)

We therefore conclude there is no merit to Tenants’ challenge to the augmentation order.

Tenants have not challenged the merits of the trial court’s ruling on the issue found not to have been forfeited—namely, its ruling that the hearing officer, and in turn the Board, erred in using a single construction cost number, \$127, for the entirety of the square footage. Accordingly, we do not consider this issue further, and the trial court’s ruling on this issue is controlling on remand.

### ***The Hearing Officer’s Use of “Table B”***

The requirements for a substantial rehabilitation exemption were set forth in former Oakland Municipal Code section 8.22.030, which read in pertinent part:

“Exemptions for Substantially Rehabilitated Buildings.

“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 and performed substantial work on each of the units in the building.

“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. . . .”

(Former Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(a)–(b).)

These requirements gave rise to the principle issue before us—whether a document the parties and the hearing officer referred to as “Table B” was a “table[] issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.”<sup>6</sup> (Former Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(b).)

This document is entitled “‘Quarterly Cost Indexes (1926=100).’” We discuss its specific attributes in subsequent paragraphs. At this point, we recount the record of its appearance in the administrative proceedings:

The parties were notified that they were required to disclose evidence seven days prior to the administrative hearing and cautioned that any evidence not disclosed could be excluded. Neither party disclosed Table B.

At the hearing, the Tenants called as their witness, David Harlan, an Engineering Manager with the city. Before counsel asked any questions, the hearing officer inquired about another document, which the parties and hearing officer referred to as “Table A” and is entitled “City of Oakland Building Services Construction Valuation For Building Permits Effective Aug. 1, 2009.” (Boldface & fns. omitted.)

The hearing officer (HO) began:

“[HO]: . . . [L]et me ask you first, and then Ms. Mira [(the Tenants’ counsel)] will be able to ask you questions, is the latest table put out by the City of Oakland [the] Construction Valuation dated August 1, 2009 [Table A]?”

“Harlan: Yes, that’s the table that we currently use.

“[HO]: Okay. Let me turn it over to Ms. Mira. . . .”

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<sup>6</sup> Solely for ease of reference, we continue to refer to this document, and others, by the labels given them by the parties, the hearing officer, and the trial court.

Counsel proceeded to ask Harlan a number of questions about applying for a building permit, including describing the scope of work and the value of the job, and the calculation of permit fees. The hearing officer finally asked counsel not to belabor points that had “nothing to do with the essential question that we’re looking to have answered,” namely whether Owner had made sufficient expenditures to qualify for the substantial rehabilitation exemption.

Counsel then asked Harlan how someone would figure out how much it would cost to build a residential structure, such as the small apartment building in question. This engendered the following colloquy:

“Mira: . . . How would I figure how much that would cost me?

“Harlan: For permit fees?

“Mira: Just the whole job, complete job, how much would it cost me for a 16-unit building with a square footage of 13,336? . . .

“Harlan: So the City doesn’t play a role in that. I mean I can hazard a guess but—

“Mira: Mm-hmm.

“Harlan: —it’s not our—it’s not the City’s role to help people identify how to pay for something or how much it’s going to cost to build something. [¶] . . . [¶]

“[HO]: . . . [S]o you said it’s not the City’s role to determine—

“Harlan: Yeah.

“[HO]: —how much it would cost to build the building.

“Harlan: Yeah, that’s right. Yeah, that’s a relationship between the owner and the contractor. . . .”

Counsel then asked Harlan to “describe” Table A (the document entitled “City of Oakland Building Services Construction Valuation For

Building Permits Effective Aug. 1, 2009,” boldface & fns. omitted). Harlan replied, “It’s a valuation table used by staff to help assign permit valuations for the purpose of calculating the permit fee.” He agreed with counsel that was “just for the permit fee” and “not for how much actual construction would cost.”

Counsel again asked Harlan how “would you figure out what the actual construction costs are.” Harlan again replied that was “between the property owner and their licensed contractor.” Counsel then asked if there were “industry standards.” Harlan said, “[y]es,” and added “that’s where these numbers [on Table A<sup>7</sup>] c[o]me from.”

At this point, counsel, for the first time, mentioned Table B (the document entitled “Quarterly Cost Indexes (1926=100)”), stating she was not presenting it as evidence but “to help the expert get to [the] point.” She asked Harlan what the document was. He responded: “This is an index that just shows the variation in pricing for certain regions over a period of time. Generally, the trend is upward, but maybe it goes down sometimes.”

Owner’s counsel objected on grounds the document had not been disclosed. Mira repeated she was not asking to put it into evidence but was “just asking him if he knows what it is and if he can describe it.” Counsel again objected, and the hearing officer ruled it could be used only to refresh Harlan’s recollection.

Harlan proceeded to answer: “I’ve seen these indexes before and I don’t know if I’ve calculated anything off of them. . . . I’ve looked at this before and

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<sup>7</sup> It is clear Harlan was referring to Table A, as he was referring to “exhibit 138,” which was a copy of Table A. In addition, tenants’ counsel had not yet mentioned Table B.

you can pick out the indices for different years for the same region and come up with a differential.” This led to the following colloquy:

“Mira: So I guess what I’m trying to get to is, if I were to have built a building in . . . 2009, is it fair to say that that same cost in 2009 wouldn’t be the same cost in 2014?”

“[Counsel for Owner]: Objection. I don’t think this witness has been qualified to talk about costs. . . . [¶] . . . [¶]”

“[HO]: Well, let me ask you this: Are you generally familiar with the trends of construction costs either up or down in the past six years in the City of Oakland?”

“Harlan: No. I really can’t say—it’s fluctuated is my understanding. So I’m sure it held flat for awhile and then it went down, maybe it went up.”

“[HO]: Do you know—this is really the ultimate question: Do you know whether it would cost more to build the building [in question] today than it would in 2009?”

“Harlan: I couldn’t speak to that.”

Tenants’ counsel then asked Harlan, “does inflation play a role in construction costs.” Another objection by Owner was overruled, and Harlan answered: “Well, I can speak to how it affects the cost indices in this source that we use, Marshall Swift. So it plays a role in—there’s materials and labor are the big components of these indices and so inflation plays a role in both of those to varying levels of degrees depending on what the description of work is, whether steel costs more. Everything is down to like bags of concrete and how many pounds of steel and how many hours it takes to do something and this thing [referring to Exhibit 138, which is Table A] is a summary of a binder that’s about this thick.”

Counsel then asked, as a “hypothetical,” whether it would cost more to remove stucco with asbestos underlying it, than without. Harlan replied: “I would think so.” When the hearing officer asked, “how much more,” Harlan could not provide a percentage “because there’s probably different concentrations . . . that might trigger a certain type of abatement . . . I’m not sure.” Counsel then asked a hypothetical about the cost of re-tiling a bathroom. Harlan answered: “I’d have to check with one of the counter staff people.” Counsel then asked about a “range” of costs for installing windows. Harlan again testified: “I’d have to check with one of our inspectors.” The hearing officer eventually interjected: “Look, I mean he has no control over the inspectors and let me tell you, I mean re-tiling a bathroom, I mean there are very expensive tiles; there are cheap tiles. I don’t see how this would be at all helpful.” Harlan then volunteered: “Well, I can say that generally, we would ask the applicant to tell us what their cost is for those types of small projects. Those are small projects and we would usually rely on that—on what they’ve presented to us.

With that, counsel stated she had no further questions for Harlan. Owner’s counsel asked no questions.

Table B (the document entitled “Quarterly Cost Indexes (1926=100)”) was not mentioned again until closing summation, when tenants’ counsel argued: “So the second reason why the exemption should be denied is because the City of Oakland, the Rent Adjustment Program, actually uses the cost indexes to adjust the cost for when the actual construction happened,” and cited to three hearing decisions.<sup>8</sup> She continued, “I believe that in this case it would be unfair to use a 2009 building cost [(Table A)] when the

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<sup>8</sup> These were *Weinberg v. Tenant*, *Promes v. Fehr*, and *Young v. Beasley*, which we discuss in subsequent paragraphs.

[rehabilitation] construction happened in 2014 and 2013.” Counsel acknowledged “Mr. Harlan couldn’t testify to that,” but asserted “it’s common knowledge that inflation affects things.” “So,” counsel went on, “based on how calculations have been done in these previous cases, new construction based on the cost indexes for 2009 and for 2014, new construction has increased by 1.1.%.”

The hearing officer expressed some difficulty in following counsel. Counsel then referred the hearing officer to Table B, stating “you don’t use . . . [the] valuation chart [(Table A),] but I’m sure you’re familiar with these, the quarterly indexes [(Table B)].” Counsel proceeded with a detailed, step by step argument as to how the hearing officer should use Table B to calculate a 2014 comparative cost number.

When Owner objected that Table B was not in evidence, the hearing officer now stated he would take “official notice of the documents that I’m supposed to use to do the computation.” When Owner again objected, the hearing officer stated, “I think I could always use the Building Department tables.” He then told Owner’s representative, “So if you would like, I won’t allow this into evidence, if you object because it wasn’t submitted seven days before but I will take judicial notice of it.” At this point, Owner’s representative said “Sure,” and the hearing officer said he would give her an opportunity to look at the document.

Counsel for the tenants then turned to the receipts, invoices, and other documents evidencing expenditures and argued they did not add up to 50 percent of the comparative 2014 construction cost determined, according to counsel, by adjusting the Table A numbers with a ratio derived from Table B.

At the outset of Owner's summation, the hearing officer asked Owner's representative (Hart) to address the "new quarterly cost indexes" and the "propriety of using [them]." She responded:

"Hart: Well, I think that there is a standard that's been adopted by the Rent Board and used, not only for the convenience but also so that you're not going to have people running to the Building Department who don't actually know what they're looking for and asking the Building Department to tell them these calculations. In fact, I have another case where they went directly to the building department and there's an email trail and they weren't given that, they were given the Table A.

"[HO]: Well, what does that have to do with the propriety of my using this in my decision?

"Hart: I'm saying that there's a standard of evidence that the Board has adopted historically and that I could appreciate that this would seem more current[,] but at the same time I think it's not necessarily information that's generally available or that the Building Department, who is the source of this department [*sic*], provides in terms of these calculations."

Hart then asked for leave to file a post-hearing brief on the issue, since "it wasn't brought up earlier" and "was only brought up here in summary and now you're going to be using it as a—to bolster her evidence." The hearing officer responded, "I'm using it because this is what I'm supposed—one of the documents I'm supposed to be using," adding "I hadn't known about it before

today but anyway I'm going to use it.”<sup>9</sup> Without a definitive response on the briefing request, the hearing officer closed “the record.”

A week later, Owner filed a post-hearing brief. Owner first pointed out that then operative Oakland Municipal Code section 8.22.030 specified, “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” (Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(b), italics added), and maintained that while Table A was such a table, Table B was not. To illustrate and reinforce this point, Owner attached copies of not only what the parties had referred to as Tables A and B, but also a document Owner referred to as “Table C,” entitled “Residential Building Minimum Valuation Data,” effective February 1, 2001, and bearing the official signature of a city building official. Owner went on to assert “no evidence” had been presented to either authenticate or lay a foundation that the document being referred to as Table B (entitled “Quarterly Cost Indexes (1926=100)”) was a table “issued by the chief building inspector.” Further, because Tenants had not provided this document prior to the hearing, and because the tenants’ counsel, while examining Harlan, stated several times she was not seeking to introduce the document into evidence, Owner had been deprived of the opportunity both to cross-examine Harlan and present additional evidence on the issue. Finally, Owner asserted taking “notice” of the document during closing summation

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<sup>9</sup> The hearing officer did not explain why he concluded Table B was a document he was “supposed to be using.” But presumably it was in light of the three hearing decisions to which the tenants’ counsel had referred. There is no indication in the record that the hearing officer read these decisions, or that the Owner’s representative or attorney had been able to review them.

had been improper, as the document was being used for its evidentiary value and it did not constitute a “fact or matter that is commonly agreed upon.”

A little more than two weeks later, the hearing officer issued his decision. Under a sub-heading entitled “Building Services Evaluation Tables,” (underscoring omitted) the decision stated:

“The tenant requested the attendance of the City Building Services supervisor to testify with regard to how the City determines the present cost of new construction for the issuance of building permits. David Harlan, the Engineering Manager of the Bureau of Building appeared and testified at the Hearing. Mr. Harlan testified that his duties include oversight of all permit issuance, records management, and plan checking. He further testified that the City currently uses the table that was effective on August 1, 2009. A copy of this document is attached as Table ‘A.’ Official Notice is taken of two other documents issued by the City Building Services agency: ‘Quarterly Cost Indexes (1926=100),’ a copy of which is attached as Table ‘B,’ and ‘Residential Building Minimum Evaluation Data,’ a copy of which is attached as Table ‘C.’” (Fn. Omitted.)

Under a sub-heading entitled, “The Calculation,” (underscoring omitted) the decision stated in pertinent part:

“. . . The Tables referenced in this Decision were all issued by the City Building Services agency.

“Table ‘A’ lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown on the 2009 Table. The Building Services agency has recognized this fact, and therefore issued a document entitled ‘Quarterly Cost Indexes (1926=100)’ (Table ‘B’).

“These tables are used as follows: (1) On Table ‘B,’ determine the number for the year of construction, geographical district, and type of construction; (2) Divide this number by the number in the same category for the year 2009. The resulting fraction 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 hearing officer alternatively ruled that even if the “square footage cost on the 2009 Table were used,” the expenditures still did not meet the 50 percent requirement. He arrived at this conclusion based on a total square footage of 14,338, a number that included the square footage of the balconies. He then used a single construction cost number for the entire square footage, thus equating the cost of reconstructing the balconies with that of reconstructing interior living spaces.

Owner timely filed an administrative appeal raising, among other issues, the hearing officer’s evidentiary use of Table B, and his total square footage number and use of a single per square foot construction cost number. In support, Owner attached several documents to its appeal notice, including an additional document Owner referred to as “Table E,” entitled “City of Oakland Building Services Construction Valuation For Building Permits Effective February 5, 2007.” (Fn. omitted.)

The Board affirmed on the ground “any error in considering the document addressing inflation adjustments to be applied to the table . . . would not change the result.”

Owner timely filed an administrative writ proceeding. The trial court granted the petition.

The court (Judge Kimberly Colwell) first ruled the document the parties and the hearing officer referred to as Table B was not a table “issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” It further ruled that even if the language of the ordinance allowed its use, the city had not made the document readily accessible to the public and thus the document could not be used to essentially sandbag owners who had made substantial property

improvements. The court (Judge Jeffery Brand) reaffirmed these rulings in the course of denying a motion for reconsideration.

We agree that the document referred to as Table B is not a table “issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” This is illustrated by a comparison of the documents Owner attached to its post-administrative hearing brief and referred to as Tables A, B and C, and which the hearing officer, in turn, attached to his decision, as well as the document referred to as Table E, which Owner attached to its administrative appeal notice.

Table A bears the following heading:

“City of Oakland	Community Economic Development Agency
“Building Services	Dalziel Administration Building
“Construction Valuation	250 Frank Ogawa Plaza–2nd Floor
“For Building Permits	Oakland, CA 94612
“Effective Aug. 1, 2009	510-238-3891.” (Fns. omitted.)

At the bottom of the document there is a website address for direct access to the document: \\Ceda=servers\ Building Permit Counter\COUNTER FORMS\Forms 2009\_2010(Building valuation) Aug 1 2009. Thus, this document bears all the indicia of a city document and, specifically, of a table “issued by the chief building inspector.” And Harlan confirmed, “Yes, that’s the table that we currently use.”

Notably, Table A also includes a footnote, footnote 1, in its heading, following “Construction Valuation.” This footnote states: “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).” Other footnotes to column headings also provide for specific adjustments. For example, footnote 2 states: “Hillside construction=slope >20%; multiply by

additional 1.3 multiplier.” Footnote 3 states: “Remodel Function of New Construction is a 0.52 multiplier.” In addition, Table A includes a column on its far right side entitled “Marshall & Swift 3Q 7’09 [¶] Section pg (Class/Type).” Below that is a column of several dozen references, such as “Section 12 pg 25 (C/e).” It is therefore apparent the building services department, indeed, makes use of data from private sources, such as Marshall & Swift. But, as Table A also reflects, the department goes on to determine and specify exactly what multipliers are to be used for city purposes.

Table E bears a heading nearly the identical to that of Table A, but specifying an earlier effective date:

“City of Oakland	Community Economic Development Agency
“Building Services	Dalziel Administration Building
“Construction Valuation	250 Frank Ogawa Plaza–2nd Floor
“For Building Permits	Oakland, CA 94612
“Effective February 5, 2007	510-238-3891.” (Fns. omitted.)

It also bears, at the foot of the document, a website address for direct access to the document: \\Ceda-server3\building\Permit Counter\Permit FY06\ (Building valuation). Thus, like Table A, Table E bears all the indicia of a table “issued by the chief building inspector.”

Although Table E also has footnotes, none make reference to any multiplier. Nor does Table E contain an additional column of references to Marshall & Swift.

Table C is similarly entitled “City of Oakland Residential Building Minimum Valuation Data.” Immediately below the heading, the document is expressly “Approved by” a signature by Calvin N. Wong, “Building Official,” and specifically states it was “effective February 1, 2001.” It also bears, at

the foot of the document, a web address for direct access to the document: “CARR\My documents\Forms\valuation-residential.” Thus, Table C again bears all the indicia of a table “issued by the chief building inspector.”

Table C also includes a prefatory paragraph similar to footnote one in Table A, stating: “The following building valuation data are based on cost and value reported in ‘Marshal Valuation Services’ published by Marshall and Swift and dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.” This again reflects that the building services department does use data from private sources, such as Marshall & Swift, but also determines and specifies exactly what multiplier is appropriate and is to be used for city purposes.

In contrast to Tables A (effective 2009), E (effective 2007) and C (effective 2001), Table B bears the caption “Quarterly Cost Indexes (1926=100)” and states in the upper right hand corner it is “Section 98 Page 7,” followed by the date “October 2014.” The footer states: “Marshall Valuation Service,” (capitalization omitted) followed by a disclaimer that the “the data included on this page becomes obsolete after update delivery, scheduled for January 2015.” (Italics omitted.) Below that is a copyright symbol, identifying “2014 CoreLogic,® Inc. and its licensors, all rights reserved.” Plainly, this is not a city document.

Tenants maintain the language of the rent adjustment ordinance—“tables issued by the chief building inspector”—should be read to mean any document that can be characterized as a “table” and is “used” by the building department. Not only would such a construction be a departure from the plain language of the ordinance (see *MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083 [words of a statute are generally to be given “ ‘a plain and commonsense meaning’ ”]),

such a construction would embrace any number of outside resources, an untenable reading given the specific language of the ordinance. (*Ibid.* [courts are to “ “interpret legislation reasonably and . . . attempt to give effect to the apparent purpose of the statute” ’ ”].)

It is also understandable why the City specified that the comparative construction cost number was to be “determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” This provided a standard measure for construction costs that was easily applied. It also avoided the problem to which Harlan testified, that the exact cost of construction is ultimately a matter between the owner/developer and the contractor(s)/supplier(s), and not something in which the building services department gets involved. Rather, for its purposes, the department uses its own construction valuation table, which it periodically updates and which often, but not always, reflects the use of data from privately published sources.

Tenants claim it makes no sense and would be unfair to use Table A, effective August 1, 2009, to determine a 2014 comparative building cost number. As we have discussed, the record reflects that the building services department regularly updated its construction valuation table—in 2001, 2007, and 2009. It is not our role to effectively rewrite a local rent control ordinance because the department assertedly failed to update its 2009 table sooner than it did.<sup>10</sup> (See *In re I.A.* (2019) 40 Cal.App.5th 19, 23 [appellate court may not “ “rewrite the clear language of [a] statute to broaden the

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<sup>10</sup> We note that attached to a declaration by Harlan—submitted by the City in opposition to the writ petition but excluded by the trial court under section 1094.5, subdivision (e)—is another table identical in format to Table A, but with an effective date of May 1, 2015. Tenants have not challenged the trial court’s evidentiary ruling excluding the declaration.

statute’s application” ’ ’]; *L.G. v. M.B.*, *supra*, 25 Cal.App.5th at p. 227 [“court may not disregard the plain language of a statute just because the consequences of a literal interpretation are ‘troubling’ or because the court believes that a different approach would be better”].)

Further, Tenants have simply assumed, without any *evidentiary* basis, that using Table A would yield an unfairly skewed comparative construction cost number. Their witness, Harlan, refused to offer any such opinion, and no other *evidence* was presented on the issue. We also observe that since the department’s construction valuation table is a revenue generating publication, as it determines building permit fees, it is equally reasonable to assume the department had, and continues to have, every incentive to ensure the version of the table in use is reasonably current and, at the time, had concluded no update was warranted.

Finally, Tenants refer to five administrative hearing decisions, copies of which were provided to the trial court by the City, in which varying versions of the Marshall & Swift quarterly indices were used. As we have recounted, during summation in the administrative hearing, the tenants’ attorney referred to three of these decisions.

On appeal, Tenants characterize these hearing decisions as an administrative interpretation of what constitutes a “table[] issued by the chief building inspector” that should be given deference.

Four of these hearing decisions were issued by a single hearing officer. In each, the hearing officer used a city construction valuation table (e.g., Tables A, E, C) that was *not* in effect for the period during which the rehabilitation work was done, but was in effect during a *later* period of time.<sup>11</sup>

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<sup>11</sup> In *Young v. Beasley* (a decision dated June 13, 2008), the construction work was done between 1998 and 2000, but the hearing officer

Stating this was “unfair” to the owner because costs had increased, the hearing officer then used varying versions of the Marshall & Swift quarterly cost indices to adjust the construction costs set forth in the more recent tables downward. What is immediately clear is that the hearing officer used the incorrect construction valuation table to begin with—as the ordinance required use of the table “issued by the chief building inspector *applicable for the time period when the substantial rehabilitation was completed,*” not a version of the table applicable during a later time period. The record before us does not reflect why this occurred. Nor does it indicate whether, given the use of plainly inapplicable valuation tables, the parties agreed to using indices to adjust the cost number derived from these inapplicable tables downward.

The remaining decision is one by the hearing officer who decided the instant administrative matter, issued a little over two weeks after he issued his decision in this matter. In short, the hearing officer reemployed, almost verbatim, the approach he had used only weeks earlier here.

Accordingly, these hearing decisions carry little weight as an interpretative matter. “‘How much weight to accord an agency’s construction is “situational,” and greater weight may be appropriate when an agency has a “‘comparative interpretive advantage over the courts,’ ” as when “‘the legal

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used the version of the department’s valuation table dated February 5, 2007. In *Weinberg v. Tenant* (a decision dated December 3, 2013), the construction work was done in 1991-1992, but the hearing officer used the version of the department’s valuation table dated August 1, 2009. In *Promes v. Fehr* (a decision dated December 16, 2013), the construction work was done between 2003-2004, but the hearing officer used the version of the department’s valuation table dated February 1, 2007. In *Cordaro v. Tenants* (a decision dated July 18, 2017), the construction work was done in 2010, but the hearing officer used a version of the department’s valuation table dated February 1, 2017.

text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.’ ” ’ ” ( *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 911 (*Boling*.) The ordinance language at issue here is not technical, obscure, or complex. Furthermore, the four decisions by the one hearing officer all involved a set of circumstances unlike that here, and in the absence of the records in those matters, we are at a loss as to why the hearing officer used versions of the City’s construction valuation table that were *not in effect* at the time of the reconstruction work but were in effect for a later time period. We likewise have no way of knowing what the hearing officer and the parties may have discussed in terms of adjusting the cost numbers using Marshall & Swift indices. The fifth decision, by the same hearing officer who presided here, barely two weeks after his decision in this case, likewise is of scant interpretative significance.

In any case, the interpretation of a local ordinance is a question of law, ultimately committed to the courts. (*Boling, supra*, 5 Cal.5th at p. 911.) And for the reasons we have discussed, we agree with the trial court that the privately published Marshall & Swift quarterly cost indices are not “tables issued by the chief building inspector,” and that the hearing officer erred in using what has been referred to as Table B for evidentiary purposes to determine the comparative building cost.<sup>12</sup>

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<sup>12</sup> We therefore need not, and do not, consider the trial court’s additional ruling that even if the ordinance did permit utilization of such document, its use, on this record, impinged on the Owner’s due process rights. That said, the manner in which tenants’ counsel deployed and then argued the evidentiary value of Table B was improper. Likewise, the hearing officer’s about-face from its prior ruling, allowing use of Table B only to refresh Harlan’s recollection, and belated acceptance of Table B for

In their appellant’s opening brief, Tenants made no follow-up argument that even if the trial court’s ruling as to Table B was correct, reversal is nevertheless required because even if Table A were used to determine the comparative construction cost (and even if different square footage costs were used for the interior and balcony spaces), Owner’s rehabilitation costs did not meet the 50 percent requirement. However, in their reply brief, Tenants devoted four pages to advancing this argument. It is well-established that an appellate court generally will not consider arguments raised for the first time in a reply brief, and we decline to do so here. (See *WorldMark, The Club v. Wyndham Resort Development Corp.* (2010) 187 Cal.App.4th 1017, 1030, fn. 7 [“Arguments raised for the first time in the reply brief are untimely and may be disregarded.”])

Indeed, Tenants have not, in advancing this new argument in support of reversal, been candid about the record. This new argument turns on the total amount Owner spent on rehabilitation costs. As the following procedural recitation reflects, it is apparent to us that the trial court viewed the cost issue that had been raised by Owner as having been resolved by a concession by the City.

In its administrative appeal, Owner asserted the hearing officer had made a “calculation error”—specifically, that the total amount paid to the principal contractor (Martin Gallagher Construction, Inc.) set forth in the hearing officer’s decision was off by \$26,000, and that the correct amount paid to the contractor, as shown by invoices and proofs of payment, was \$857,596, rather than \$831,597 as stated in the decision. The Board did not address the issue, since it upheld the decision on another ground.

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evidentiary use during summation after evidence was concluded, is also of significant concern.

Owner continued to raise the asserted \$26,000 calculation error in the trial court.

In their opposition to the writ petition, Tenants included a half-page argument that the hearing officer had “considered” the invoices pertaining to that contractor’s work, pointing out the hearing officer’s decision “listed” the pertinent exhibits. Tenants did not respond, however, to the Owner’s point—that the amounts set forth in those exhibits did not add up to the number in the hearing officer’s decision, and that that number was short by \$26,000.<sup>13</sup>

The City, however, did address the Owner’s claim of a computational error and conceded “the invoices that the hearing officer used to reach this amount actually total \$857,597—as Hyde Street argues. (Tab 26 AR 122 (footnote 4).)”

The trial court, under a separate heading entitled “\$26,000 IN INVOICES,” then stated in its decision: “The City acknowledges that the Hearing Officer and Board appear to have made a calculation error.” It observed “[t]his error did not affect the Board’s decision.” Likewise, “[t]he apparent \$26,000 calculation error does not affect the court’s decision on the petition.”

It would have made no sense for the trial court to have spent many pages addressing the merits of the principle issues—the use of Table B and

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<sup>13</sup> This is basically the same argument they have belatedly advanced in their reply brief—that the hearing officer identified the pertinent invoices and thus “considered” them. They then baldly assert he “found (correctly)” total expenditures of \$850,441 and point out half of this amount is less than 50 percent of the Table A comparative cost number. They never, however, address the real issue—that the hearing officer made a mistake in adding up these invoices. Rather, they quibble over the Owner’s use of the word “disallowed,” claiming the contractor’s work was not “disallowed,” pointing out, again, that the hearing officer identified and thus “considered” the pertinent invoices.

the use of a single construction cost number for the entire square footage—and to have issued a remand order, if this was all simply an academic exercise, as Tenants now belatedly claim, because the total rehabilitation costs do not meet the statutory requirement even assuming use of Table A and use of different cost numbers for the interior and balcony square footages.

Appellant Garcia then moved for “reconsideration.” In his 20-page, supporting memorandum, he addressed the following: the trial court’s ruling that the hearing officer had improperly used Table B, the court’s grant of the motion to augment the administrative record with the missing “Brief on Appeal” , and the ruling that the hearing officer, and Board, had improperly applied a single construction cost number to the entire square footage (i.e., both interior spaces and balconies). The memorandum concluded with an assertion that if the trial court persisted in its rulings, it would “cause the court to be disqualified” under Code of Civil Procedure section 170.1. Notably, the motion for reconsideration also did not advance the claim that even if the challenged rulings were all accepted as correct, no writ should issue because Owner’s total rehabilitation costs still did not meet the exemption requirement.

As Owner pointed out in opposition, the motion for reconsideration did not comply with statutory requirements, as Garcia was merely taking issue with the merits of the trial court’s decision and rearguing the case. (Code Civ. Proc., § 1008; *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255 [motion for reconsideration must be “ ‘based upon new or different facts, circumstances, or law” ’ ”].)

The trial court denied the motion for reconsideration as procedurally improper (no “new law or fact”), and further ruled that even if the court reconsidered the issues, it would reach the same conclusions.

In sum, in light of the above, and in light of the trial court’s broad remand order, it seems apparent to us that the trial court viewed the computational error issue as having been resolved by the City’s concession and thus of no consequence to its order remanding the matter for reconsideration in light of its rulings.<sup>14</sup>

### **DISPOSITION**

The trial court’s judgment is **AFFIRMED**.

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<sup>14</sup> We note that in the “Statement of the Facts” (some capitalization omitted) in its respondent’s brief, Owner discussed the evidence supporting its exemption petition and stated the hearing officer “understated the amount spent by the owner,” specifically the amount paid to Martin Gallagher Construction Inc., by \$26,000. (Italics & boldface omitted.) Given our recitation above, this statement is understandable. Owner made no further mention of the point and devoted the “Argument” section of its respondent’s brief to addressing the Table B ruling and augmentation order challenged by Tenants.

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Banke, J.

We concur:

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Margulies, Acting P.J.

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Sanchez, J.

A156463, Hyde Street CNML Props., LLP et al. v. City of Oakland's  
Department of Housing and Community Development Rent Adjustment  
Program

# CITY OF OAKLAND



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

Department of Housing and Community Development  
Rent Adjustment Program

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

## HEARING DECISION

### RECONSIDERATION OF BOARD APPEAL DECISION AFTER COURT JUDGMENT

**CASE NUMBER:** L14-0065  
**CASE NAME:** 525, 655 Hyde Street CNML Properties, LLC v. Tenants  
**PROPERTY ADDRESS:** 3921 Harrison St., Oakland, CA

## PROCEDURAL BACKGROUND

A Hearing Decision in this case was issued on May 29, 2015, denying the owner's petition for a Certificate of Exemption based on substantial rehabilitation. The owner appealed.

An Appeal Hearing was held on December 8, 2016. The Housing, Residential, Rent and Relocation Board (the Board) affirmed the Hearing Decision, and separately affirmed the portion of the Hearing Decision that included the decks and balconies in the "building area" when performing the substantial rehabilitation calculation. The Appeal Decision in L14-0065 was issued on March 7, 2017. The owner filed a Petition for Writ of Administrative Mandamus in the Alameda County Superior Court (Case No. RG17-862841) challenging the Board's Appeal Decision.

On December 12, 2018, the Superior Court entered a Judgment Granting the Writ of Administrative Mandamus, setting aside and vacating the Appeal Decision and the Hearing Decision in L14-0065. The Superior Court ordered the City of Oakland Rent Adjustment Program to **"reconsider the Appeal Decision L14-0065 in its entirety in light of the Court's Opinions, Order and this Judgment."** (Emphasis added.)

The tenants filed a motion for reconsideration. The motion was denied. The tenants appealed the Superior Court's Judgment and, on February 26, 2021, the Court of Appeals issued an Opinion affirming the Superior Court's Judgment of December 12, 2018.

The original Hearing Officer retired and this case was re-assigned to a different Hearing Officer. This Hearing Decision is issued based on the case record and in

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conformity with the Superior Court's Opinions, Order, and Judgment of December 12, 2018.

### SUMMARY OF DECISION

The Owner's Petition is granted. The subject property is exempt from the Rent Adjustment Ordinance as substantially rehabilitated.

### EVIDENCE

#### Background

On November 14, 2014, the owner filed a Petition for Certificate of Exemption on the ground of substantial rehabilitation. The subject property is a residential building consisting of a total of sixteen (16) residential units and the current owner acquired the property in November of 2013.<sup>1</sup> The rehabilitation project occurred in 2014.

#### Square Footage

The public property profile and the Alameda County Assessor's Office Property Characteristics for the subject property and APN 12-929-11 shows that the square footage is 13,336 square feet.<sup>2</sup>

Martin Gallagher, a general contractor whose firm did most of the work on the construction project, testified that the total square footage of the building (13,336) does not include the 16 decks on the building, which were part of the construction project and expense. He testified that 15 of the decks are 12 x 4.5 square feet (totaling 810 square feet) and the penthouse deck is about 16 x 12 square feet (192). The total square footage of the decks and balconies is 1,002 square feet.

#### Type of Construction

Gallagher testified that the subject building is of wood frame construction, which corresponds to Type V-1 identified on the City of Oakland Certificate of Occupancy issued for the subject building.<sup>3</sup>

#### Construction Expenses

The original Hearing Officer calculated a total of \$850,441.00 as the cost of the rehabilitation project. The Court stated, and the City of Oakland admitted, that the Hearing Officer made a calculation error by about \$26,000 when he added up the eligible expenses. Accordingly, the submitted invoices and proofs of payments are recalculated in this Hearing Decision to correct the calculation error.

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<sup>1</sup> Exhibits 1-3 (Grant Deed)

<sup>2</sup> Exhibits 4 and 5

<sup>3</sup> Exhibit 6

The amounts the owner spent on the rehabilitation project, as stated by the prior Hearing Officer, based on the submitted invoices and proofs of payments, broken down by each contractor, are as follows:

Martin Gallagher Construction, Inc.	\$857,956.66 <sup>4</sup>
Kelly-Moore Paint	738.87 <sup>5</sup>
Bay Area Carpets	1,623.31 <sup>6</sup>
Craig Bull Construction	2,964.25 <sup>7</sup>
Advocate Painting	2,030.00 <sup>8</sup>
Raynard's Appliance Repair	194.32 <sup>9</sup>
Just Plumbing	9,660.00 <sup>10</sup>
Globe Plumbing Supply Co.	438.58 <sup>11</sup>
Oak Leaf Painting	1,195.00 <sup>12</sup>
TOTAL:	<u>\$876,800.99</u>

The total amount of \$876,800.99 is a recalculation of the sums of the amounts listed above, which leads to the correct figure of \$876,800.99.

In addition, the record also included invoices and proofs of payments for certain expenses that the owner submitted, but are not considered part of the rehabilitation project. As stated by the prior Hearing Officer, those expenses include routine cleaning and maintenance of the common areas, replacement of light bulbs in the common areas, repairs or replacement of broken appliances, snaking out clogged drains, vandalized copper pipes, and tree cutting. These expenses total \$9,541.89<sup>13</sup> and are not included in the total amount above.

The total amount of eligible expenses the owner spent on the rehabilitation project is \$876,800.99.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **Substantial Rehabilitation**

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

<sup>4</sup> Exhibits 18, 19, 28, 29, 43-54, 57-81, 96-98, 117-129, 132, 133

<sup>5</sup> Exhibits 20-23, 90-92, 107-109

<sup>6</sup> Exhibits 24, 25, 84, 85

<sup>7</sup> Exhibits 37 and 38

<sup>8</sup> Exhibits 41 and 42

<sup>9</sup> Exhibits 86 and 87

<sup>10</sup> Exhibits 35, 36, 88, 89, 99, 100, 112-114, 130, 131

<sup>11</sup> Exhibits 101, 102, 110, 111

<sup>12</sup> Exhibits 105 and 106

<sup>13</sup> Exhibits 26, 27, 30-36, 39, 40, 55, 56, 82, 83, 93, 95, 103, 104, 115, 116, 134-137

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.<sup>14</sup>

At the original hearing the Hearing Officer and the Board incorporated Table B - Quarterly Cost Indexes (Table "B") from Marshall Valuation Services - in the calculation of the cost of the rehabilitation project. This is not a table issued by the Chief Building Inspector as mandated by the Ordinance.

The Court found that the Board erred as a matter of law by incorporating Table B into the Ordinance as the substantive standard when Table B was not "issued by the chief building inspector." Additionally, the Court held that Table B was not an "other definable source" the public used and that the Ordinance did not give the owner a fair warning that Table A was not the standard against which the evidence of expense would be measured and that Table A would be modified by Table B.

The Court held that the record showed that Table A, issued August 1, 2009, was issued by the chief building inspector. City Engineering Manager Harlan testified that Table A was the latest table issued by the City of Oakland and was then the most recent and currently used Table. Accordingly, only Table A should have been used in the calculation and is used in the calculation in this Hearing Decision.

#### Square Footage

The Court held that the Board made a legal error when it treated both the building space (13,336) and the deck/balcony space (1,002) the same as Apartment space and applied the same cost of construction per square foot. The Court found that the original Hearing Officer and the Board both misapplied the law by focusing on potential use of the balconies rather than their cost of construction and by not giving effect to the specific description for "Elevated Decks & Balconies."

Therefore, this Hearing Decision corrects this error and calculates the Apartment building space and the deck/balcony space separately and for the cost of construction amount specified for each category.

#### Calculation

The attached Table A states that effective August 1, 2009, the cost of new construction of Apartment buildings of more than 2 units, Type V – wood frame

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<sup>14</sup> O.M.C. Section 8.22.030(B)(2)

construction, is \$127.00 per square foot. Table A also states that the cost of newly constructed "Elevated Decks and Balconies" is \$41.16 per square foot.

To determine if the owner is entitled to the exemption, the following calculation is necessary: multiply the building square footage (13,336) by \$127.00, then multiply the square footage of the decks/balconies (1,002) by \$41.16. Add these amounts together, and divide that result by two (2). The calculation is as follows:

$$\begin{array}{r} 13,336 \times \$127.00 = \$1,693,672.00 \\ 1,002 \times \$ 41.16 = \$ \quad 41,242.32 \\ \hline \text{Total: } \$1,734,914.32 \text{ divided by } 2 = \$867,457.16 \end{array}$$

If the owner spent at least \$867,457.16 on the construction rehabilitation project, the building is exempt from the Rent Ordinance.

The owner provided invoices and proof of payments of eligible expenses showing that he spent \$876,800.99 on the rehabilitation project. Therefore, the subject property has been "substantially rehabilitated" and the rental units in the building are exempt from the Rent Ordinance.

#### ORDER

1. Petition L14-0065 is granted.
2. The subject property is exempt from the Rent Adjustment Program as a "substantially rehabilitated" building.
3. The subject property is not exempt from the Rent Adjustment Program Service Fee because it is still subject to the Just Cause for Eviction Ordinance.
4. The Certification of Exemption will be issued after expiration of the appeal period.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program (RAP). Either party may appeal by filing a properly completed RAP appeal form that must be filed within 15 days after service of the decision.<sup>15</sup> The date of service is shown on the attached Proof of Service.

Dated: September 30, 2021

  
\_\_\_\_\_  
Linda M. Moroz, Hearing Officer  
Rent Adjustment Program

<sup>15</sup> O.M.C. §8.22.120(A)(1)

**City of Oakland  
Building Services  
Construction Valuation<sup>1</sup>  
For Building Permits<sup>4</sup>  
Effective Aug. 1, 2009**

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

TABLE A

Occ	Description <sup>4</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swift 3Q 709 Section pg (Class/Type)
			New	Remodel	New	Remodel	
R3	Custom Residence	V	\$207.53	\$107.93	\$269.79	\$140.29	Section 12 pg 25 (Cre)
	Single Family & Duplex	V	\$144.48	\$75.12	\$187.80	\$97.68	Section 12 pg 25 (Cg)
	Factory/Manufactured home	V	\$43.50	\$22.62	\$56.55	\$29.41	Section 12 pg 26 (CDSg)
	Finished Habitable Basement Conversion	V	\$96.42	\$50.14	\$125.35	\$65.18	Section 12 pg 25 (Bas)
	Convert non-habitable to habitable	V	N/A	\$43.50	N/A	\$56.55	Section 12 pg 26 (CDSg)
	Partition Walls	V	N/A	\$16.19	N/A	\$21.05	Section 92 pg 2 (6"wall)
	Foundation Upgrade (I.F.)	V	\$105.37	NA	\$136.98	NA	Section 51 pg 2 (R04x72)
	Patio/Porch Roof	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 66 pg 2 (Wood)
U1	Garage	V	\$38.42	\$19.98	\$49.95	\$25.97	Section 12 pg 35 (Dn600)
	Carport	V	\$24.70	\$12.84	\$32.11	\$16.70	Section 12 pg 35 (Dn4car)
	Retaining wall (s.f.)	III	\$32.98	NA	\$42.85	NA	Section 55 pg 3 (112"height)
R2	Apartment (1-2 units)	I & II	\$174.69	\$90.84	\$227.10	\$118.09	Section 11 pg 18 (Brg)
		III	\$156.91	\$81.69	\$203.98	\$106.07	Section 11 pg 18 (Dnmlk)
		V	\$127.00	\$66.04	\$165.10	\$85.65	Section 11 pg 18 (Drg)
Non-Residential Occupancy							
A	Church/Auditorium	I & II	\$247.07	\$126.48	\$321.19	\$167.02	Section 15 pg 9 (Brg)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 9 (Bla)
		V	\$175.93	\$91.48	\$228.71	\$118.93	Section 15 pg 9 (Sg)
A	Restaurant	I & II	\$221.82	\$115.35	\$286.37	\$149.95	Section 13 pg 14 (A-Brg)
		III	\$174.20	\$90.58	\$226.48	\$117.76	Section 13 pg 14 (Crg)
		V	\$168.80	\$86.74	\$216.64	\$112.78	Section 13 pg 14 (Drg)
B	Restaurant <50 occupancy	V	\$145.24	\$75.52	\$188.81	\$96.18	Section 13 pg 17 (Cra)
B	Bank	I & II	\$223.46	\$116.20	\$290.50	\$151.08	Section 15 pg 21 (Bla)
		III	\$182.01	\$94.65	\$236.61	\$123.04	Section 15 pg 21 (Cra)
		V	\$173.02	\$89.97	\$224.93	\$116.96	Section 15 pg 21 (Dra)
B	Medical Office	I & II	\$249.78	\$129.88	\$324.89	\$168.84	Section 15 pg 22 (Arg)
		III	\$243.19	\$126.46	\$316.15	\$164.40	Section 15 pg 22 (Brg)
		V	\$200.73	\$104.38	\$260.95	\$135.69	Section 15 pg 22 (Crg)
B	Office	I & II	\$165.41	\$86.01	\$215.03	\$111.82	Section 15 pg 17 (Bla)
		III	\$120.77	\$62.80	\$167.00	\$81.64	Section 15 pg 17 (Cra)
		V	\$115.34	\$59.98	\$149.84	\$77.97	Section 15 pg 17 (Dra)
E	School	I & II	\$239.11	\$124.34	\$310.84	\$161.64	Section 18 pg 14 (A-Brg)
		III	\$181.96	\$94.62	\$236.56	\$123.00	Section 18 pg 14 (Crg)
		V	\$171.94	\$89.41	\$223.52	\$116.23	Section 18 pg 14 (Drg)
H	Repair Garage	I & II	\$186.20	\$96.85	\$242.13	\$125.91	Section 14 pg 33 (MSG 527Cre)
		III	\$180.70	\$93.96	\$234.91	\$122.15	Section 14 pg 33 (M.J.G 423Cre)
		V	\$175.14	\$91.07	\$227.68	\$118.39	Section 14 pg 33 (M.J.G 423Dre)
I	Care Facilities / Institutional	I & II	\$186.04	\$96.74	\$241.85	\$125.78	Section 15 pg 22 (Bla)
		III	\$152.09	\$79.09	\$197.72	\$102.81	Section 15 pg 22 (Cra)
		V	\$146.52	\$76.19	\$190.48	\$99.05	Section 15 pg 22 (Dra)
M	Market (Retail sales)	I & II	\$143.82	\$74.79	\$186.97	\$97.22	Section 13 pg 28 (Arg)
		III	\$117.10	\$60.89	\$152.23	\$79.18	Section 13 pg 28 (Drg)
		V	\$113.19	\$58.88	\$147.15	\$76.52	Section 13 pg 28 (Drg)
S	Industrial plant	I & II	\$157.34	\$81.82	\$204.64	\$106.36	Section 14 pg 15 (Bla)
		III	\$134.38	\$69.88	\$174.69	\$90.84	Section 14 pg 15 (Cra)
		V	\$111.93	\$58.20	\$148.51	\$75.86	Section 14 pg 15 (Dra)
S	Warehouse	I & II	\$96.28	\$50.07	\$125.16	\$65.09	Section 14 pg 26 (Arg)
		III	\$91.77	\$47.72	\$119.30	\$62.04	Section 14 pg 26 (Brg)
		V	\$90.79	\$47.21	\$118.03	\$61.37	Section 14 pg 26 (Cnmlk)
B	Parking Garage	I & II	\$76.31	\$39.68	\$99.20	\$51.59	Section 14 pg 34 (Arg)

<sup>1</sup> Cost per square foot, unless noted otherwise. (L) = linear foot, s.f. = square foot; includes 1.3 regional multiplier (see Sec. 99 pg 6 July 2009 Marshall & Swift)

<sup>2</sup> Hillside construction = slope >20%, multiply by additional 1.3 multiplier

<sup>3</sup> Remodel/Fund of New Construction is a 0.52 multiplier

<sup>4</sup> Separate structures or occupancies valued separately

<sup>5</sup> Separate fees assessed for EIPM permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Exits, & Shoring

C:\Documents and Settings\kas099\Local Settings\Temporary Internet Files\OL\9\Building valuation Aug 1 2009.xls

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**PROOF OF SERVICE**  
**Case Number L14-0065**

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

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

**Documents Included**  
Hearing Decision

**Representative**

The Honorable Frank Roesch, Alameda County Superior Court  
1221 Oak Street Department 17  
Oakland, CA 94612

**Owner Representative**

525-655 Hyde Street CNML Tsegab Assefa  
4844 Telegraph Ave  
Oakland, CA 94609

**Owner Representative**

Angie Sandoval, Fried & Williams LLP  
1901 Harrison St. 13th Floor  
Oakland, CA 94612

**Owner Representative**

Clifford E. Fried, Fried & Williams LLP  
1901 Harrison St. 13th Floor  
Oakland, CA 94612

**Owner Representative**

Liz Hart, c/o Fried & Williams LLPP  
1901 Harrison St. 13th Floor  
Oakland, CA 94612

**Tenant**

Alexander Taylor  
3921 Harrison St #104  
Oakland, CA 94611

**Tenant**

Alexandru Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

**Tenant**

Alexandru Vasilescu  
3921 Harrison St #301  
Oakland, CA 94611

**Tenant**

Andrew Simkin  
3921 Harrison St #305  
Oakland, CA 94611

**Tenant**

Angelique Johnson-Martinez  
3921 Harrison St #103  
Oakland, CA 94611

**Tenant**

Bianca Penaloza  
3921 Harrison St #204  
Oakland, CA 94611

**Tenant**

Cooper Spinelli  
3921 Harrison St #203  
Oakland, CA 94611

**Tenant**

Dana Sarvestani  
3921 Harrison St #203  
Oakland, CA 94611

**Tenant**

Elena Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

**Tenant**

Elizabeth VanLanen  
3921 Harrison St Penthouse  
Oakland, CA 94611

**Tenant**

Fernando Garcia  
3921 Harrison St #201

Oakland, CA 94611

**Tenant**

Jessica Simkin  
3921 Harrison St #305  
Oakland, CA 94611

**Tenant**

Jilleun Eglin & Lexie Eglin  
3921 Harrison St #101  
Oakland, CA 94611

**Tenant**

Julie Amberg  
3921 Harrison St #302  
Oakland, CA 94611

**Tenant**

Kate Garcia  
3921 Harrison St #202  
Oakland, CA 94611

**Tenant**

Lisa Romero  
3921 Harrison St #205  
Oakland, CA 94611

**Tenant**

Mari Oda  
3921 Harrison St #304  
Oakland, CA 94611

**Tenant**

Ria Cruz  
3921 Harrison St #105  
Oakland, CA 94611

**Tenant**

Steven Miller  
3921 Harrison St Penthouse  
Oakland, CA 94611

**Tenant**

Suzanne Miller  
3921 Harrison St #201  
Oakland, CA 94611

**Tenant**

Tadeusz Butnaru  
3921 Harrison St #102  
Oakland, CA 94611

**Tenant**

Todd McMahon  
3921 Harrison St #304  
Oakland, CA 94611

**Tenant**

Tyler Ritter  
3921 Harrison St #303  
Oakland, CA 94611

**Tenant**

Zoe Bridges  
3921 Harrison St #301  
Oakland, CA 94611

**Tenant**

Zvetlana Butnaru  
3921 Harrison St #104  
Oakland, CA 94611

**Tenant Representative**

Ana Mira  
3022 International Blvd #410  
Oakland, CA 94601

**Tenant Representative**

Stanley Amberg  
11 Carolyn Lane  
Chappaqua, NY 10514

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 **October 04, 2021** in Oakland, CA.

000413



Teresa Brown-Morris

Oakland Rent Adjustment Program

OCT 15 2021

RENT ADJUSTMENT PROGRAM  
OAKLAND

Angelica A. Sandoval  
asandoval@friedwilliams.com

October 7, 2021

**Via First-Class Mail and Email to:RCosta@oaklandca.gov**

City of Oakland Rent Adjustment Program  
c/o Robert Costa  
250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612

Re: RAP Case No. L14-0065; 525, 655 Hyde Street CNML Properties, LLC v. Tenants

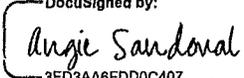
To Whom it May Concern:

The rent adjustment program's records and the reconsideration of board appeal decision after court judgment incorrectly names 525, 655 Hyde Street CNML Properties, LLC as the property owner in the above referenced decision.

While this matter was on appeal, Fried & Williams LLP, filed a request that Mandana Properties, LLC be substituted as the current and proper owner. A true and correct copy of the Motion to Substitute Mandana Properties LLC is attached for reference.

Notices related to this matter should be directed to the undersigned and to the attention of Ray McFadden at email: [ray@mandanaproperties.com](mailto:ray@mandanaproperties.com). Thank you.

Sincerely,  
FRIED & WILLIAMS LLP

DocuSigned by:  
  
3FD3AA6FD0CA07...  
Angelica A. Sandoval

cc: Ray McFadden  
Enclosures [as stated]

1901 Harrison Street, 13<sup>th</sup> Floor, Oakland, CA 94612  
Tel 510-625-0100 Fax 510-550-3621

625 Market Street, 4<sup>th</sup> Floor, San Francisco, CA 94105  
Tel 415-421-0100 Fax 415-762-5435

[www.friedwilliams.com](http://www.friedwilliams.com)

000415

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION ONE

525-655 HYDE ST. CNML PROPS., LLC

Petitioner and Respondent on  
Appeal;

v.

CITY OF OAKLAND'S DEPT. OF  
HOUSING AND COMMUNITY  
DEVELOPMENT RENT ADJUSTMENT  
PROGRAM

Respondent;

FERNANDO GARCIA, JULIE  
AMBERG, TODD MCMAHON, ET AL.,

Real Parties in Interest and  
Appellants.

Court of Appeal No. A156463

Appeal from Judgment Entered  
on December 12, 2018 Granting  
Writ of Administrative  
Mandamus of the Superior Court  
of California, Alameda County,  
Case No. RG17-862841, Hon.  
Jeffrey S. Brand and Hon.  
Kimberly Colwell

**RECEIVED**

OCT 15 2021

RENT ADJUSTMENT PROGRAM  
OAKLAND

**MOTION TO SUBSTITUTE MANDANA PROPERTIES, LLC IN PLACE  
OF RESPONDENT ROCKRIDGE REAL ESTATE, LLC AND REINKE,  
LLC; MEMORANDUM OF POINTS AND AUTHORITIES;  
DECLARATION OF CLIFFORD E. FRIED; EXHIBITS**

Clifford E. Fried (SBN # 118288)  
Fried & Williams LLP  
1901 Harrison Street  
Oakland, CA 94612  
Phone: (510) 625-0100  
Fax: (510) 550-3621  
cfried@friedwilliams.com

Attorney for Respondent ROCKRIDGE  
REAL ESTATE, LLC, REINKE, LLC  
and MANDANA PROPERTIES, LLC

**MOTION TO SUBSTITUTE MANDANA PROPERTIES, LLC IN PLACE  
OF RESPONDENT ROCKRIDGE REAL ESTATE, LLC AND REINKE,  
LLC**

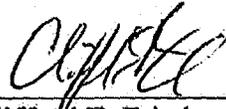
Pursuant to Rule 8.36, subdivision (a), of the California Rules of Court, Respondents ROCKRIDGE REAL ESTATE, LLC and REINKE, LLC request that MANDANA PROPERTIES, LLC be substituted in place of Respondents for all purposes including this appeal.

This motion is based on the attached Memorandum, Declaration of Clifford E. Fried and Exhibits.

Dated: January 9, 2020

Respectfully submitted,

Fried & Williams LLP



---

Clifford E. Fried  
Attorney for Respondent ROCKRIDGE  
REAL ESTATE, LLC, REINKE, LLC  
and MANDANA PROPERTIES, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

Rule 8.36, subdivision (a), of the California Rules of Court provides in pertinent part that the substitution of parties in an appeal must be made by serving and filing a motion in the reviewing court, and the clerk of the court must notify the lower court of any ruling on the motion.

Here, substitution of Mandana Properties, LLC (“Assignee”) as Petitioner in the original proceeding and as Respondent on appeal is appropriate. Assignee purchased the subject property commonly known as 3921 Harrison Street, Oakland, CA (“Property”) from Respondents Rockridge Real Estate, LLC and Reinke, LLC, including but not limited to the Judgment Granting Writ of Administrative Mandamus, Writ of Administrative Mandamus, Order Granting Motion to Augment Record, Order granting Petition for Writ of Administrative Mandate, and any rights or remedies in connection with any appeal of the foregoing matters. [See Declaration of Clifford E. Fried, Assignment of Judgment filed with the Alameda County Superior Court on December 23, 2019 as Exhibit “A” hereto, and Acknowledgement of Assignment of Judgment as Exhibit “B” hereto.

///

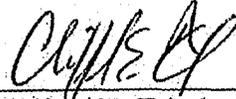
///

For the foregoing reasons, Mandana Properties, LLC should be substituted in as party in place of Rockridge Real Estate, LLC and Reinke, LLC, and the Superior Court of the County of Alameda should be notified of this substitution pursuant to Rule of Court 8.36(a).

Dated: January 9, 2020

Respectfully submitted,

Fried & Williams LLP



---

Clifford E. Fried  
Attorney for Respondent ROCKRIDGE  
REAL ESTATE, LLC, REINKE, LLC  
and MANDANA PROPERTIES, LLC

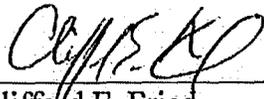
**DECLARATION OF CLIFFORD E. FRIED**

I, CLIFFORD E. FRIED, declare:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Respondents Rockridge Real Estate, LLC and Reinke, LLC.
2. By this motion, Respondents Rockridge Real Estate, LLC and Reinke, LLC seek to substitute Mandana Properties, LLC as the Petitioner in the original proceeding and as Respondent on appeal.
3. This landlord-tenant dispute has been pending since November 2014. During the pendency of the dispute, there have been three different sets of owners. The first owner was 525-655 Hyde St. CNML PROPS., LLC whose name appears on the caption of this appeal. The second owner was Rockridge Real Estate, LLC. The current owner is Mandana Properties, LLC. My firm and I have been representing all of these owners while the dispute has been pending.
4. On December 6, 2019, Nathaniel Reinke as Managing Member of Rockridge Real Estate, LLC and Alan Reinke as Managing Member of Reinke, LLC executed an Assignment of Judgment. I caused the Assignment of Judgment to be filed with the Superior Court of California, County of Alameda on December 23, 2019. A true and correct copy of the notarized and filed endorsed copy of the Assignment of Judgment is attached hereto as Exhibit "A".

5. On December 16, 2019, Nathaniel Reinke as Managing Member of Rockridge Real Estate, LLC and Alan Reinke as Managing Member of Reinke, LLC further executed an Acknowledgment of Assignment of Judgment. A true and correct copy of the notarized copy of the Acknowledgment Assignment of Judgment is attached hereto as Exhibit "B".

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 9, 2020, in Oakland, California.

  
\_\_\_\_\_  
Clifford E. Fried

**EXHIBIT A**

**ASSIGNMENT OF JUDGMENT**

1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street, 14<sup>th</sup> Floor  
4 Oakland, CA 94612  
5 (510) 625-0100

6 Attorneys for Petitioner,  
7 Rockridge Real Estate, LLC & Reinke,  
8 LLC

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 28 2019

CLERK OF THE SUPERIOR COURT  
By JAMIE THOMAS, Deputy

8 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION

11 525-655 Hyde St. Cmnl Props., LLC,

Case No.: RG17862841

12 Petitioner,

ASSIGNMENT OF JUDGMENT

13 vs.

14 City of Oakland's Department of Housing and  
15 Community Development Rent Adjustment  
16 Program, and Does 1 through 25,

17 Respondents.

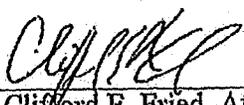
18 AND REAL PARTIES IN INTEREST.

19  
20 TO THE COURT AND ALL INTERESTED PARTIES:

21 Attached hereto an ASSIGNMENT OF JUDGEMNT dated December 6,  
22 2019.

23 Dated: December 20, 2019

Fried & Williams LLP

24  
25   
26 by Clifford E. Fried, Attorneys for Petitioner  
27 Rockridge Real Estate, LLC & Reinke, LLC  
28

**RECORDING REQUESTED BY:**

MANDANA PROPERTIES, LLC

**AND WHEN RECORDED MAIL TO:**

Clifford E. Fried, Esq.  
Fried & Williams LLP  
1901 Harrison Street  
Oakland, CA 94612

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 012-0929-011

**ASSIGNMENT OF JUDGMENT**

**THE UNDERSIGNED ASSIGNORS DECLARE:**

There is no fee or documentary transfer tax due as this instrument is unrelated to the transfer of real property under Government Code § 27388.1(a)(1) and a documentary transfer tax was previously paid upon the transfer of title to the real property described herein.

The property is located in the city of Oakland, California.

This assignment is made as of 6<sup>th</sup> day of <sup>December</sup> ~~November~~, 2019, by ROCKRIDGE REAL ESTATE LLC, a California limited liability company and REINKE LLC, a California limited liability company (collectively, "Assignor") and MANDANA PROPERTIES, LLC, a California limited liability company ("Assignee"), with reference to the following facts: *4260 PARK BLVD. #130, OAKLAND, CA 94602 CM*

A. WHEREAS, Assignor was the owner of real property, commonly known as 3921 Harrison Street, Oakland, California, and more particularly described in Exhibit "A" attached hereto which is fully incorporated herein by reference ("Property").

B. WHEREAS, Assignor sold all of its right, title and interest in and to the Property to Assignee, including but not limited to all of Assignor's right, title and interest in and to: (i) The Judgment Granting Writ of Administrative Mandamus entered in Alameda Superior Court, Case No. RG17862841, on December 12, 2018. (ii) The Writ of Administrative Mandamus issued by the Alameda Superior Court, Case No. RG17862841, on December 12, 2018. (iii) The Order (1) Granting Motion to Augment Record and (2) Granting Petition for Writ of Administrative Mandate, entered in Alameda Superior Court, Case No. RG17862841, on August 23, 2018 against Defendant and Judgment Debtor, CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM. (iv) Any rights or remedies in connection with any appeal of the forgoing matters.

C. WHEREAS, Assignor and Assignee desire to enter into this Assignment to confirm the assignment by Assignor to Assignee of all of Assignee's right, title and interest in and to the aforementioned intangible property.

NOW THEREFORE, in consideration of the mutual covenants of the parties herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged already received, the parties agree as follows:

1. *Assignment by Assignor.* Assignor hereby sells, transfers and assigns to Assignee all of Assignor's right, title and interest in and to each and all of the following: (i) The Judgment Granting Writ of Administrative Mandamus entered in Alameda Superior Court, Case No. RG17862841, on December 12, 2018. (ii) The Writ of Administrative Mandamus issued by the Alameda Superior Court, Case No. RG17862841, on December 12, 2018. (iii) The Order (1) Granting Motion to Augment Record and (2) Granting Petition for Writ of Administrative Mandate, entered in Alameda Superior Court, Case No. RG17862841, on August 23, 2018 against Defendant and Judgment Debtor, CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM. (iv) Any rights or remedies in connection with any appeal of the forgoing matters.

2. *Governing Law.* This Assignment is made and entered into in the State of California and shall be interpreted, construed and enforced in accordance with the laws of the State of California.

3. *Binding Effect.* This Assignment shall apply to, bind, and inure to benefit of Assignor and Assignee, and their respective heirs, legal representatives, successors and assigns.

4. *Counterparts.* This Assignment may be executed in one or more counterparts, each of which shall be an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, this Assignment has been executed as of the date first above written.

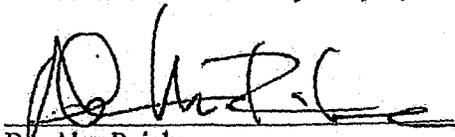
**ASSIGNOR:**

ROCKRIDGE REAL ESTATE LLC,  
a California limited liability company



By: Nathaniel Reinke  
Managing Member

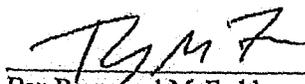
REINKE LLC,  
a California limited liability company



By: Alan Reinke  
Managing Member

**ASSIGNEE:**

MANDANA PROPERTIES, LLC, a Limited Liability Company

  
By: Raymond McFadden  
Managing Member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF Alameda

On 12-06-2019 before me, Zarina Rashod Notary Public (here insert name and title of the officer), personally appeared Raymond McFadden who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
(Signature)

(SEAL)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

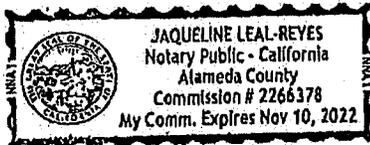
State of California  
County of Alameda

On December 16, 2019, before me, Jaqueline Leal-Reyes Notary Public,

personally appeared Nathaniel Reinke & Alan Reinke

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

*Jaqueline Leal-Reyes*  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s) \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer - Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_
- Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer - Title(s): \_\_\_\_\_
- Partner -  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_
- Signer is Representing: \_\_\_\_\_

**EXHIBIT B**

**ACKNOWLEDGMENT OF ASSIGNMENT OF JUDGMENT**

1 Clifford E. Fried, Esq., SBN 118288  
2 Fried & Williams LLP  
3 1901 Harrison Street, 14<sup>th</sup> Floor  
4 Oakland, CA 94612  
5 Tel: (510) 625-0100  
6 Fax: (510) 550-3621  
7 cfried@friedwilliams.com

8 Attorneys for Petitioners  
9 Rockridge Real Estate, LLC, and  
10 Reinke, LLC

ENDORSED  
FILED  
ALAMEDA COUNTY  
DEC 19 2019  
CLERK OF THE SUPERIOR COURT  
By *Jessica F. [Signature]* Deputy

11 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF ALAMEDA

13 525-655 Hyde St. Cmnl Props., LLC,

14 Petitioner,

15 vs.

16 City of Oakland's Department of Housing and  
17 Community Development Rent Adjustment  
18 Program, and Does 1 through 25,

19 Respondents.

20 And Real Parties in Interest.

Case No.: RG17862841

ACKNOWLEDGMENT OF  
ASSIGNMENT OF JUDGMENT

21 TO THE COURT AND ALL INTERESTED PARTIES:

22 PLEASE TAKE NOTICE that the Petitioners and Judgment Creditors  
23 ROCKRIDGE REAL ESTATE, LLC and REINKE LLC do hereby acknowledge  
24 assignment to MANDANA PROPERTIES, LLC, a California Limited Liability  
25 Company, of all interest, right and title to each and all of the following:  
26

27 (i) The Judgment Granting Writ of Administrative Mandamus entered in  
28 Alameda Superior Court, Case No. RG17862841, on December 12, 2018.

1 (ii) The Writ of Administrative Mandamus issued by the Alameda Superior  
2 Court, Case No. RG17862841, on December 12, 2018.

3  
4 (iii) The Order (1) Granting Motion to Augment Record and (2) Granting  
5 Petition for Writ of Administrative Mandate, entered in Alameda Superior Court,  
6 Case No. RG17862841, on August 23, 2018 against Defendant and Judgment  
7 Debtor, CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND  
8 COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM.  
9

10 (iv) Any rights or remedies in connection with any appeal of the foregoing  
11 matters.  
12

13 The following information is provided under Code of Civ. Proc. Sec. 473(b):

- 14 1. Judgment was entered in action number RG17862841 of the Alameda  
15 County Superior Court.  
16  
17 2. The Judgment was entered on December 12, 2018 in the Alameda County  
18 Register of Actions.  
19  
20 3. The name and address of the assignee and new Judgment Creditor are:

21 MANDANA PROPERTIES, LLC  
22 4200 Park Blvd #130  
23 Oakland, CA 94602

24 The Judgment Debtor's name and last known address is:

25 CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND COMMUNITY  
26 DEVELOPMENT RENT ADJUSTMENT PROGRAM  
27 City Hall, 6th Floor  
28 1 Frank H. Ogawa Plaza  
Oakland, California 94612

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4. The rights represented by the judgment assigned to the assignee are described above.

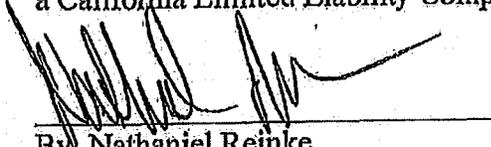
5. The names and address of the assignor and original Judgment Creditor are:

Rockridge Real Estate, LLC, and Reinke, LLC  
c/o Clifford E. Fried  
Fried & Williams LLP  
1901 Harrison Street, 14<sup>th</sup> Floor  
Oakland, CA 94612

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

Dated:

ROCKRIDGE REAL ESTATE, LLC,  
a California Limited Liability Company

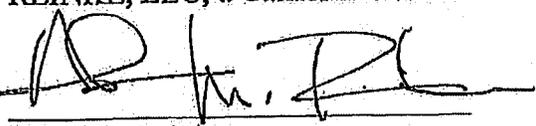


By: Nathaniel Reinke  
Managing Member

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

Dated:

REINKE, LLC, a California Limited Liability Company



By: Alan Reinke  
Managing Member

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT** Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

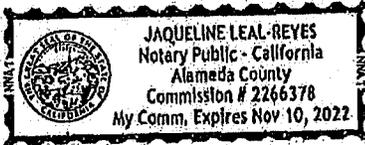
State of California  
County of Alameda

On December 16, 2019 before me, Jaqueline Leal-Reyes Notary Public,  
personally appeared Nathaniel Reinke & Alan Reinke

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



*[Handwritten Signature]*  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer(s) \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer - Title(s): \_\_\_\_\_

Partner -  Limited  General

Individual  Attorney In Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer - Title(s): \_\_\_\_\_

Partner -  Limited  General

Individual  Attorney In Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

<p style="text-align: center;"><b>PROOF OF SERVICE (Court of Appeal)</b></p> <p style="text-align: center;"><input checked="" type="checkbox"/> Mail      <input type="checkbox"/> Personal Service</p>	
<p><b>Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.</b></p>	
<p>Case Name: 525-655 Hyde St. Cnml Props., LLC v. City of Oakland                  Court of Appeal Case Number: A156463                  Superior Court Case Number: RG17-862841</p>	

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My  residence  business address is (*specify*):  
 1901 Harrison Street, 14th Floor, Oakland, CA 94612
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):  
 Motion to Substitute Mandana Properties, LLC in Place of Respondent Rockridge Real Estate, LLC and Reinke, LLC; Memorandum of Points and Authorities; Declaration of Clifford E. Fried; Exhibits
  - a.  Mail. I mailed a copy of the document identified above as follows:
    - (1) I enclosed a copy of the document identified above in an envelope or envelopes and
      - (a)  deposited the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
      - (b)  placed the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
    - (2) Date mailed: January 10, 2020
    - (3) The envelope was or envelopes were addressed as follows:
      - (a) Person served:
        - (i) Name: Trial Court - Alameda Superior Court
        - (ii) Address:  
 Judge Jeffrey Brand - Hayward Hall of Justice,  
 24405 Amador Street,  
 Hayward, CA 94544
      - (b) Person served:
        - (i) Name: Fernando Garcia
        - (ii) Address:  
 3921 Harrison Street, #202  
 Oakland, CA 94611
      - (c) Person served:
        - (i) Name: Todd McMahon
        - (ii) Address:  
 3921 Harrison Street, #304  
 Oakland, CA 94611
- Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).
- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): Oakland, CA

Case Name: 525-655 Hyde St. Crml Props., LLC v. City of Oakland	Court of Appeal Case Number: A156463
	Superior Court Case Number: RG17-862841

3. b.  Personal delivery. I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

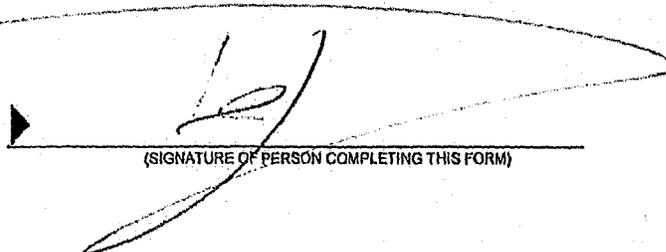
(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (write "APP-009, Item 3b" at the top of the page).

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

Date: January 10, 2020

Fablenne Lopez  
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)

*525-655 Hyde St. Cmml Props., LLC v. City of Oakland,  
Alameda County Superior Court case no. RG17-862841*

Name  
Julie E. Amberg

Address  
3921 Harrison Street, #302  
Oakland, CA 94611

000435

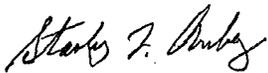


- f)  **I was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.** (In your explanation, you must describe how you were denied the chance to defend your claims and what evidence you would have presented. Note that a hearing is not required in every case. Staff may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

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

• **You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed.** •  
 I declare under penalty of perjury under the laws of the State of California that on October 19, 2021, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Clifford E. Fried, Fried & Williams LLP
<b>Address</b>	1901 Harrison Street, 13th Floor
<b>City, State Zip</b>	Oakland, CA 94612
<b>Name</b>	Ray McFadden, Mandana Properties
<b>Address</b>	4200 Park Boulevard, #130
<b>City, State Zip</b>	Oakland, CA 94602

	10/19/2021
---	------------

SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE

DATE

For more information phone (510) 238-3721.

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**525, 655 Hyde Street CNML Properties, LLC v. Tenants**  
**Case No. L14-0065**

**TENANT AMBERG’S EXPLANATION OF GROUNDS FOR APPEAL**

**INTRODUCTION**  
**and**  
**SUMMARY OF GROUNDS FOR APPEAL**

This is an appeal by tenant Julie E. Amberg from a Hearing Decision in Case No. L14-0065, in the Department of Housing and Community Development Rent Adjustment Program (“RAP”). The Hearing Decision is dated September 30, 2021 and it was served by United States mail on October 4, 2021.

The Hearing Decision granted an owner’s petition to exempt the property at 3921 Harrison Street, Oakland, CA, from the RAP as a ”substantially rehabilitated” building. OMC 8.22.030(A)(6)

This case comes before the RAP on remand from an August 23, 2018 Order (“Order”) and a December 12, 2018 Judgment of the Alameda County Superior Court (Case No. RG17-862841).

The Superior Court Order expressly stated that the “Rent Board may direct the Hearing Officer to conduct a further hearing.” The Order said at page 15:

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court’s opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.

Tenant Amberg was not given an opportunity, on remand, to request a further hearing by a Hearing Officer.

Tenant Amberg does request a further hearing, but, at this stage of the case, Tenant Amberg does not know of any procedure to request a further hearing except by filing this Appeal.

Tenant Amberg asks the Rent Board to at least temporarily stay the RAP's September 30, 2021 Hearing Decision, to order a further hearing, and to allow Tenant Amberg to introduce evidence and argument, principally on the issue of whether \$127.00/sq.ft. or \$41.16/sq.ft. is the factually and legally correct multiplier for determining the "average basic cost for new construction for a rehabilitation project" (OMC 8.22.030) for the 15 balconies that are structurally integral to 15 apartments in the property.

The burden of a further hearing on the RAP and the parties will be minimal. The time length of the requested hearing would not exceed two hours. The Hearing Officer (Linda M. Moroz) who authored the September 30, 2021 Hearing Decision now on Appeal is familiar with the property and the work done on it, which are the same as in case L15-0073 in which Officer Moroz was the Hearing Officer.

The Superior Court's August 23, 2018 Order contemplates a hearing on remand which focuses on the "cost of building or rehabilitating the balconies." The Order states, at page 13:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. The Board's decision states 'there was no abuse of discretion by the Hearing Officer in including the balconies' area where such space is useable space that expands the tenants' livable area.'

This was legal error because the Table A analysis concerns the cost of constructing the project or part of the project, not the potential use of the constructed property. Although the Rent Board in other contexts might be focused on whether rental space is usable, livable, and habitable, in the context of OMC 8.22.B.2.b and Table A, the Rent Board must focus on the cost of construction.

At the hearing requested by Tenant Amberg, a focus will be on the significant cost of building and rehabilitating the 15 balconies. For example, Martin Gallagher Construction's invoices show the cost of rehabilitating the 15 balconies was \$180,000, which is a full 20.98% of Gallagher's construction costs. (Gallagher invoices 58 and 63) This evidence complies with the Superior Court's Order, quoted above, that a focus must be on the cost of building or rehabilitating the balconies.

A further focus at the hearing requested by Tenant Amberg will be on the physical structure of the balconies as being an integral part of the building itself. For example, the

evidence will show that each balcony, when constructed, was supported by, and attached to, horizontal wood beams. The beams were, at one end, embedded into and structurally attached to the interior framing of the building, and, at the other end, were embedded into and structurally attached to the floor of the balcony. This evidence complies with the Superior Court's Order, at page 13, which states:

As a matter of statutory construction, the City must apply Table A to projects or parts of projects based on whether the Description reasonably describes the physical structure to be constructed.

The evidence will show the balconies were intimately physically a part of the building's wood framing and, per Table A, the appropriate construction cost for the 15 balconies should be \$127/sq.ft.

The evidence will show that the correct calculation is:

$13,336 \times \$127 = \$1,693,672.00$   
 $810 \times \$127 = \$102,870.00$  [construction cost of 15 balconies]  
 $192 \times \$41.16 = \$7,902.72$  [construction cost of penthouse deck]  
Total = \$1,804,444.72 divided by 2 = \$902,222.36

If the owner spent at least \$902,222.36 on the construction rehabilitation project, the building is exempt from the Rent Ordinance. The September 30, 2021 Hearing Decision, at pages 2-3, recalculated the construction expenses as being \$876,800.99. Because the owner failed to expend the required \$902,222.36, the Rent Board should hold that the subject property has not been substantially rehabilitated and the rental units in the building remain under the Rent Ordinance.

#### Further Statement of Grounds for Appeal

Appeal ground #1. The September 30, 2021 Hearing Decision contains math errors. As explained above, the correct "Calculation" is \$902,222.36

Appeal grounds #2(a), #2(b), and #2(d). Under OMC 8.22.030, prior decisions of the Board, and decisions by other hearing officers, it is permissible, depending on the facts of each case, to take into account the actual use of the 15 balconies. Under OMC 15.20.030, the 15 balconies are "occupiable space" as opposed to unoccupiable spaces such as crawl spaces. The 15 balconies are not crawl spaces. They are entered through a sliding door in the living room, and tenants sit on the balconies, barbeque food on the balconies, and eat and enjoy beverages on the balconies.

Appeal grounds #2(c) and #2(e). The September 30, 2021 Hearing Decision raises a new policy issue that has not been decided by the Board: what are the rights of tenants to a new hearing, to present new evidence and legal arguments, after their original case has been returned to RAP, following the granting of a *Writ of Mandamus* by the Alameda County Superior Court? The Hearing Decision entitled “Reconsideration of Board Appeal Decision After Court Judgment” was issued by a RAP hearing officer without notice to tenants and without hearing further relevant testimony or evidence. The Hearing Decision is not supported by substantial evidence because, as explained above, the 15 balconies were actually an integral, structural part of the wood frame of the building.

Appeal grounds #2(f) and 2(h). Tenant Amberg was denied a sufficient opportunity to respond to the owner’s claim. She was denied the opportunity to present testimony and evidence upon remand of the case to the RAP. The Superior Court’s August 23, 2018 Order expressly said that its judgment “shall not limit or control in any way the discretion legally vested in the respondent Board ... to conduct a further hearing.” The Order said, at page 15:

The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.

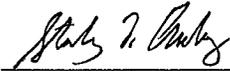
OMC 8.22.110 E.3 gives a party, Tenant Amberg, the rights to call and examine witnesses and to introduce exhibits. The Superior Court’s Order expressly said its judgement “shall not” limit the Board’s discretion to “conduct a further hearing.” However, it appears that the Board, *without notice to Tenant Amberg*, exercised its discretion to deny the tenant her rights under OMC 8.22.110 E.3. Respectfully, that was an abuse of discretion. Respectfully, the denial of a new hearing – without notice – has denied tenant due process of law. At the original hearing of this case, there was no need or reason for tenant to introduce testimony or evidence that the 15 balconies were an integral structural part of the building because RAP decisions had accepted use of the balconies as sufficient to justify a \$127/sq.ft. cost of construction. The Superior Court’s Order called into question the propriety of balcony “use” and placed the focus on balcony structure. The court implicitly recognized that a mandamus proceeding in the Superior Court did not allow introduction of tenant evidence, and therefore expressly allowed the

Board to direct a hearing officer to conduct a further hearing. Respectfully, the Board should grant tenant's appeal and direct the Hearing Officer to conduct a further hearing.

**CONCLUSION**

For the above-stated reasons, the Board should reverse the September 30, 2021 Hearing Decision and remand the case to a hearing officer for a further hearing.

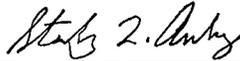
Respectfully submitted,



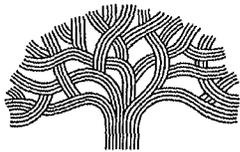
Stanley L. Amberg,  
4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
Representative for Tenant Amberg

October 19, 2021

I, Stanley L. Amberg, declare under penalty of perjury under the laws of the State of California that on October 19, 2021, I placed a copy of tenant Amberg's Appeal and a copy of this TENANT AMBERG'S EXPLANATION OF GROUNDS FOR APPEAL 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: Clifford E. Fried, Fried & Williams LLP, 1901 Harrison Street, 13<sup>th</sup> Floor, Oakland, CA 94612; and to the current owner of the property Ray McFadden, Mandana Properties, 4200 Park Boulevard, #130, Oakland, CA 94602.



Stanley L. Amberg



CITY OF OAKLAND

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

**RECEIVED**  
OCT 22 2021  
RENT ADJUSTMENT PROGRAM  
**OAKLAND APPEAL**

<b>Appellant's Name</b> Todd McMahon and Mari Oda		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street, #304, Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> 3921 Harrison Street, #304, Oakland, CA 94611		<b>Case Number</b> L14-0065	<b>Date of Decision appealed</b> September 30, 2021
<b>Name of Representative (if any)</b> Stanley L. Amberg		<b>Representative's Mailing Address (For notices)</b> 4115 Kendal Way Sleepy Hollow, NY 10591	

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

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

For more information phone (510) 238-3721.

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

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

• You must serve a copy of your appeal on the opposing parties or your appeal may be dismissed. •  
 I declare under penalty of perjury under the laws of the State of California that on October 19, 2021, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	Clifford E. Fried, Fried & Williams LLP
<b>Address</b>	1901 Harrison St, 14th Floor
<b>City, State Zip</b>	Oakland, CA 94612
<b>Name</b>	Ray McFadden, Mandana Properties
<b>Address</b>	4200 Park Boulevard, #130
<b>City, State Zip</b>	Oakland, CA 94602

	<u>10/19/2021</u>
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**525, 655 Hyde Street CNML Properties, LLC v. Tenants**  
**Case No. L14-0065**

**TENANTS MCMAHON AND ODA'S EXPLANATION OF GROUNDS FOR APPEAL**

**INTRODUCTION**  
**and**  
**SUMMARY OF GROUNDS FOR APPEAL**

This is an appeal by tenants Todd McMahon and Mari Oda from a Hearing Decision in Case No. L14-0065, in the Department of Housing and Community Development Rent Adjustment Program ("RAP"). The Hearing Decision is dated September 30, 2021 and it was served by United States mail on October 4, 2021.

The Hearing Decision granted an owner's petition to exempt the property at 3921 Harrison Street, Oakland, CA, from the RAP as a "substantially rehabilitated" building. OMC 8.22.030(A)(6)

This case comes before the RAP on remand from an August 23, 2018 Order ("Order") and a December 12, 2018 Judgment of the Alameda County Superior Court (Case No. RG17-862841).

The Superior Court Order expressly stated that the "Rent Board may direct the Hearing Officer to conduct a further hearing." The Order said:

Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.

Tenants McMahon and Oda were not given an opportunity, on remand, to request a further hearing by a Hearing Officer.

Tenants McMahon and Oda do request a further hearing, but, at this stage of the case, Tenants McMahon and Oda do not know of any procedure to request a further hearing except by filing this Appeal.

Tenants McMahon and Oda ask the Rent Board to at least temporarily stay the RAP's September 30, 2021 Hearing Decision, to order a further hearing, and to allow Tenants McMahon and Oda to introduce evidence and argument, principally on the issue of whether \$127.00/sq.ft. or \$41.16/sq.ft. is the factually and legally correct multiplier for determining the "average basic cost for new construction for a rehabilitation project" (OMC 8.22.030) for the 15 balconies that are structurally integral to 15 apartments in the property.

The burden of a further hearing on the RAP and the parties will be minimal. The time length of the requested hearing would not exceed two hours. The Hearing Officer (Linda M. Moroz) who authored the September 30, 2021 Hearing Decision now on Appeal is familiar with the property and the work done on it, which are the same as in case L15-0073 in which Officer Moroz was the Hearing Officer.

The Superior Court's August 23, 2018 Order contemplates a hearing on remand which focuses on the "cost of building or rehabilitating the balconies." The Order states, at page 13:

The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on the potential use of the balconies rather than the cost of building or rehabilitating the balconies. The Board's decision states 'there was no abuse of discretion by the Hearing Officer in including the balconies' area where such space is useable space that expands the tenants' livable area.'

This was legal error because the Table A analysis concerns the cost of constructing the project or part of the project, not the potential use of the constructed property. Although the Rent Board in other contexts might be focused on whether rental space is usable, livable, and habitable, in the context of OMC 8.22.B.2.b and Table A, the Rent Board must focus on the cost of construction.

At the hearing requested by Tenants McMahon and Oda, a focus will be on the significant cost of building and rehabilitating the 15 balconies. For example, Martin Gallagher Construction's invoices show the cost of rehabilitating the 15 balconies was \$180,000, which is a full 20.98% of Gallagher's construction costs. (Gallagher invoices 58 and 63) This evidence complies with the Superior Court's Order, quoted above, that a focus must be on the cost of building or rehabilitating the balconies.

A further focus at the hearing requested by Tenants McMahon and Oda will be on the physical structure of the balconies as being an integral part of the building itself. For example,

the evidence will show that each balcony, when constructed, was supported by, and attached to, horizontal wood beams. The beams were, at one end, embedded into and structurally attached to the interior framing of the building, and, at the other end, were embedded into and structurally attached to the floor of the balcony. This evidence complies with the Superior Court's Order, at page 13, which states:

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The evidence will show the balconies were intimately physically a part of the building's wood framing and, per Table A, the appropriate construction cost for the 15 balconies should be \$127/sq.ft.

The evidence will show that the correct calculation is:

$$\begin{aligned} 13,336 \times \$127 &= \$1,693,672.00 \\ 810 \times \$127 &= \$102,870.00 \text{ [construction cost of 15 balconies]} \\ 192 \times \$41.16 &= \$7,902.72 \text{ [construction cost of penthouse deck]} \\ \text{Total} &= \$1,804,444.72 \text{ divided by } 2 = \$902,222.36 \end{aligned}$$

If the owner spent at least \$902,222.36 on the construction rehabilitation project, the building is exempt from the Rent Ordinance. The September 30, 2021 Hearing Decision, at pages 2-3, recalculated the construction expenses as being \$876,800.99. Because the owner failed to expend the required \$902,222.36, the Rent Board should hold that the subject property has not been substantially rehabilitated and the rental units in the building remain under the Rent Ordinance.

#### Further Statement of Grounds for Appeal

Appeal ground #1. The September 30, 2021 Hearing Decision contains math errors. As explained above, the correct "Calculation" is \$902,222.36

Appeal grounds #2(a), #2(b), and #2(d). Under OMC 8.22.030, prior decisions of the Board, and decisions by other hearing officers, it is permissible, depending on the facts of each case, to take into account the actual use of the 15 balconies. Under OMC 15.20.030, the 15 balconies are "occupiable space" as opposed to unoccupiable spaces such as crawl spaces. The 15 balconies are not crawl spaces. They are entered through a sliding door in the living room, and tenants sit on the balconies, barbeque food on the balconies, and eat and enjoy beverages on the balconies.

Appeal grounds #2(c) and #2(e). The September 30, 2021 Hearing Decision raises a new policy issue that has not been decided by the Board: what are the rights of tenants to a new hearing, to present new evidence and legal arguments, after their original case has been returned to RAP, following the granting of a *Writ of Mandamus* by the Alameda County Superior Court? The Hearing Decision entitled “Reconsideration of Board Appeal Decision After Court Judgment” was issued by a RAP hearing officer without notice to tenants and without hearing further relevant testimony or evidence. The Hearing Decision is not supported by substantial evidence because, as explained above, the 15 balconies were actually an integral, structural part of the wood frame of the building.

Appeal ground #2(f) and #2(h). Tenants McMahon and Oda were denied a sufficient opportunity to respond to the owner’s claim. They were denied the opportunity to present testimony and evidence upon remand of the case to the RAP. The Superior Court’s August 23, 2018 Order expressly said that its judgment “shall not limit or control in any way the discretion legally vested in the respondent Board ... to conduct a further hearing.” The Order said, at page 15:

The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.

OMC 8.22.110 E.3 gives a party, Tenants McMahon and Oda, the rights to call and examine witnesses and to introduce exhibits. The Superior Court’s Order expressly said its judgement “shall not” limit the Board’s discretion to “conduct a further hearing.” However, it appears that the Board, *without notice to Tenants McMahon and Oda*, exercised its discretion to deny the tenants their rights under OMC 8.22.110 E.3. Respectfully, that was an abuse of discretion. Respectfully, the denial of a new hearing – without notice – has denied tenants due process of law. At the original hearing of this case, there was no need or reason for tenants to introduce testimony or evidence that the 15 balconies were an integral structural part of the building because RAP decisions had accepted use of the balconies as sufficient to justify a \$127/sq.ft. cost of construction. The Superior Court’s Order called into question the propriety of balcony “use” and placed the focus on balcony structure. The court implicitly recognized that a

mandamus proceeding in the Superior Court did not allow introduction of tenant evidence, and therefore expressly allowed the Board to direct a hearing officer to conduct a further hearing. Respectfully, the Board should grant tenants' appeal and direct the Hearing Officer to conduct a further hearing.

**CONCLUSION**

For the above-stated reasons, the Board should reverse the September 30, 2021 Hearing Decision and remand the case to a hearing officer for a further hearing.

Respectfully submitted,



Stanley L. Amberg,  
4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
Representative for Tenants McMahon and Oda

October 19, 2021

I, Stanley L. Amberg, declare under penalty of perjury under the laws of the State of California that on October 19, 2021, I placed a copy of Tenants McMahon and Oda's Appeal and a copy of this TENANTS MCMAHON AND ODA'S EXPLANATION OF GROUNDS FOR APPEAL 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: Clifford E. Fried, Fried & Williams LLP, 1901 Harrison Street, 14<sup>th</sup> Floor, Oakland, CA 94612; and to the current owner of the property Ray McFadden, Mandana Properties, 4200 Park Boulevard, #130, Oakland, CA 94602.



Stanley L. Amberg

1 Clifford E. Fried SBN 118288  
2 Angelica A. Sandoval SBN 318093  
3 Fried & Williams LLP  
4 1901 Harrison Street, 13<sup>th</sup> Floor  
5 Oakland, California 94612  
6 Telephone: (510) 625-0100  
7 Facsimile: (510) 550-3621  
8 Email: asandoval@friedwilliams.com

9 Attorneys for Respondent /Owner  
10 Mandana Properties, LLC

11 **DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT AGENCY**  
12 **RENT ADJUSTMENT PROGRAM**  
13 **CITY OF OAKLAND**

14 Julie E. Amberg;  
15 Todd MacMahon;  
16 Mari Oda;  
17 Fernando Garcia;  
18 Kate Garcia;

19 Appellants/Tenant,

20 vs.

21 525, 655 Hyde Street CNML Properties, LLC

22 Respondent/Owner.

**CASE NO.: L14-00650 \_\_\_\_\_**

**RESPONDENT’S RESPONSE TO APPEAL**

23 This is Respondent Mandana Properties, LLC response to appeals submitted by Julie E.  
24 Amberg, Rodd McMahon, Mari Oda, Fernando, and Kate Garcia, (collectively, “Appellants”).  
25 Appellants filed their appeals after receiving the September 30, 2021, Reconsideration of Board  
26 Appeal Decision After Court Judgment Decision (the “Decision”). The Decision follows the order  
27 issued by the Alameda Superior Court which ordered the City of Oakland Rent Adjustment  
28 Program to “**reconsider the Appeal Decision L14-0065 in its entirety in light of the Court’s  
Opinions, Order, and this Judgment.**”

1                   **I. INTRODUCTION**

2                   On March 7, 2017, Respondent, Mandana Properties LLC (as the current owner and  
3 taking over the rights and actions of its predecessors in interest) challenged a decision issued by the  
4 Oakland's Rent Adjustment Program (the "RAP") and Appeals Board Decision in RAP Case  
5 Number L14-0065 ("Original Decision") denying a petition for substantial rehabilitation for an  
6 apartment building located at 3921 Harrison Street, Oakland, California ("Property"). Respondent  
7 claimed that the RAP erred in its calculation of the minimum construction costs required for the  
8 building to be declared "substantially rehabilitated" pursuant to Oakland Municipal Code ("OMC")  
9 Section 8.22.030(A)(6) by inflating the minimum construction costs requirement using incorrect  
10 figures, based its decision on a schedule improperly introduced by one of the tenants, and  
11 improperly excluding certain invoices in favor of the Appellants without any basis.  
12

13                   In support of its petition for substantial rehabilitation, the owner submitted into evidence  
14 invoices and proofs of payment for work on the Property. The RAP overlooked \$26,000 in legitimate  
15 allowable expenses from those invoices when it calculated invoices by Martin Gallagher  
16 Construction, Inc. Due to the RAP's error, the RAP understated the total amount spent by  
17 Respondent and denied the owner \$26,000 in legitimate allowable expenses.

18                   The RAP miscalculated the average basic cost for new construction, which is used for  
19 determining the minimum amount that Respondent needed to spend on the Property to qualify for a  
20 Certificate of Exemption.

21                   The RAP admitted into evidence a document on the letterhead of the Alameda County  
22 Assessor which states that the total building area of the Property is 13,336 square feet. Because the  
23 13,336 square feet did not include the 16 decks on the Property, which were also renovated and  
24 considered in the total construction cost, the RAP added 1,002 square feet to the total square  
25 footage, instead of keeping it separate, for a total square footage of 14,338.

26                   The RAP then multiplied 14,338 square feet by \$127, which is the average basic costs of  
27 construction for an **apartment** with two or more units made of wood frame construction, to  
28 calculate the average basic costs of construction as \$1,820,926. This figure is incorrect, as it fails to

1 account for the average basic costs of construction for **decks and balconies**, which is substantially  
2 lower than the average basic cost of construction for apartments in general. Instead, the RAP should  
3 have multiplied 13,336 square feet by \$127, and 1,002 square feet by \$41.16 to derive a sum of  
4 \$1,734,914 for the average basic costs of construction for the Property.

5 The RAP improperly admitted “Quarterly Cost Indexes (1926 = 100)” (“Table B”) into  
6 evidence over Respondent’s objections, even though it was not properly submitted at least seven  
7 days before the hearing in violation of the rules set by the RAP in its notice of hearing, and the table  
8 did not come from the City of Oakland’s chief building inspected as required by Section  
9 8.22.030.B.2.b. The RAP then calculated a multiplier of 1.18% based on figures in Table B to  
10 adjust the average basic cost of construction for inflation. Then 1.18% was multiplied by the  
11 incorrect average basic cost of construction of \$1,820,926 which was further multiplied by 50% to  
12 derive the amount of \$1,074,347, as the minimum amount required by the owner to spend to have  
13 its Property deemed substantially rehabilitated.  
14

15 Because the RAP determined the total cost spent by Respondent in the amount of  
16 \$850,441 did not exceed \$1,074,347, the RAP denied the Exemption Petition. Respondent then  
17 appealed the Original Decision. The Original Decision was affirmed on appeal.

18 On June 5, 2017, Respondent filed a Petition for Writ of Administrative Mandamus  
19 (“Petition”) in the Superior Court of California, County of Alameda.

20 On December 12, 2018, the Alameda County Superior Court entered a Judgment  
21 **Granting** the Writ of Administrative Mandamus, setting aside and vacating the Original Decision.  
22 The Superior Court ordered the City of Oakland Rent Adjustment Program to “**reconsider the**  
23 **Appeal Decision L14-0065 in its entirety in light of the Court’s Opinions, Order and this**  
24 **Judgment.**” A copy true and correct copy of the Judgment and Writ from the trial court is attached  
25 hereto as **Exhibit A**.

26 On February 26, 2021, the Court of Appeal affirmed and trial court’s judgment and  
27 remanded the matter for consideration in accordance this its rulings. The remand order states:  
28 “Consistent with Code of Civil Procedure [section] 1094.5(f), the court orders the City of Oakland

1 Rent Board to reconsider the case in light of the **court's opinions and judgment.**” The order  
2 further allows the RAP to use its discretion to follow any appropriate procedures. A true and correct  
3 copy Court of Appeals Decision is attached hereto as **Exhibit B.**

4 On September 30, 2021, Hearing Officer Linda Moroz issued the new Decision. The  
5 Decision was served by mailing a copy on the parties on October 4, 2021. A true and correct copy  
6 of the Decision is attached hereto as **Exhibit C.** Appellant Julie E. Amberg served her appeal on  
7 October 19, 2021. Appellant Rodd McMahon and Mari Oda served their appeal on October 19,  
8 2021. And Appellant Fernando and Kate Garcia served their appeal on October 19, 2021.

9 **II. APPEAL GROUNDS:**

- 10
- 11 1. The decision is inconsistent with OMC Chapter 8.22;
  - 12 2. The decision is inconsistent with decisions issued by other Hearing Officers;
  - 13 3. The decision raises a new policy issue that has not been decided by the Board;
  - 14 4. The decision violates federal, state, or local law;
  - 15 5. The decision is not supported by substantial evidence;
  - 16 6. Appellant was denied a sufficient opportunity to present claims;

17 **III. ARGUMENTS**

18 **A. Appellants fail to demonstrate how this decision is inconsistent with Oakland's law, regulation, or prior decisions.**

19 When alleging a decision is inconsistent with the law, regulations, or prior decisions, an  
20 appellant is required to identify the Ordinance section, regulations, or prior Board decision, and  
21 describe how the decision is inconsistent. Appellant has not provided this information and thus fails  
22 to meet his burden of proof.

23 It is very difficult for Respondent to prepare a response since Appellants do not identify the  
24 law, regulation, or prior decision that is different. Thus, this claim should be disregarded.

25 **B. Appellants fail to demonstrate how this decision is inconsistent with decisions issued by other Hearing Officer.**

26  
27 When alleging that a decision is inconsistent with prior decisions, appellant is required to  
28 identify the prior inconsistent decision and explain how the decision is inconsistent.

1 It is very difficult Respondent to prepare a response since Appellants failed to identify any  
2 prior decision. Thus, this claim should be disregarded.

3  
4 **C. CCP § 1094.5 outlines the procedure after the issuance of a Writ of Mandamus,  
thus this is not a new policy issue.**

5 Appellants allege that after a Writ of Mandamus has been issued, tenants should be entitled  
6 to a new hearing and should be permitted to present new/same evidence and argument.

7 Pursuant to OMC 8.22.120.E, a party can seek judicial relief after a final decision has been  
8 issued by the Appeal Board. After exhausting all other remedies, Respondent filed a petition for  
9 writ of administrative mandate under CCP § 1085(a) and CCP § 1094.5 to seek such relief. CCP §  
10 1094.5 (f) states:

11 “[C]ourt shall enter judgement either commanding respondent to set aside the order  
12 or decision, or denying the writ. Where the judgment commands that the order or  
13 decision be set aside, it may order the reconsideration of the case in light of the  
14 court’s opinion and judgment and may order respondent to take such action as is  
15 specially upon it by law, but the judgment shall not limit or control in any way the  
discretion legally vested in the respondent.”

16 CCP § 1094.5 provides the framework by which an aggrieved party to an administrative  
17 proceeding may seek judicial review of a final order or decision. Respondent followed the  
18 appropriate procedures to seek relief. As a result, the Alameda Superior Court, affirmed by the  
19 Court of Appeals, granted Respondent’s Writ for Mandate with clear directions to the RAP. The  
20 RAP properly followed the trial court’s order. Thus, this is not a new issue, and the RAP exercised  
21 its discretion in not scheduling a new hearing.

22 **D. Appellants fail to demonstrate how the Decision is not supported by substantial  
evidence.**

23  
24 The RAP Board on appeal applies the substantial standard when reviewing the hearing  
25 officer’s decision. The Board’s function is not to decide whether it would have reached the same  
26 factual conclusions as the hearing officer. Instead, the Board’s task is to decide whether a  
27 reasonable factfinder could have come to the same conclusion based on the facts in the record.

28 The work for the RAP Board has been done. The trial court and the Court of Appeals  
closely reviewed supporting and opposing pleadings, arguments, evidence, and ordered that the

1 Original Decision be vacated and set aside, and the RAP reconsidered the case in light of the  
2 Court's opinion and judgment. The court's opinion and judgment detail the facts and specifically  
3 point out the errors in the Original Decision. The RAP considered the court's opinion and judgment  
4 when drafting the new Decision and properly followed the court's orders.

5 Appellants fail to demonstrate how, by following the Court's opinion and judgment, a  
6 different outcome would be reached. Instead, Appellants wish to present the same arguments that  
7 led to the errors in the Original Decision. Thus, this argument should be disregarded.

8  
9 **E. Appellant fails to demonstrate how the Decision violates federal, state, or local law.**

10 Appellants fails to state the law that is being violated, making it difficult for Respondent to  
11 prepare a response. Respondent followed the procedure outlined by OMC 8.22.120.E and CCP §  
12 1085(a) and CCP § 1094.5 as paraphrased under Section C above. Respondent is not violating any  
13 laws. It appears that Appellants are requesting the RAP to disobey the Court's orders and violate  
14 the law. Thus, this argument should be disregarded.

15 **F. Appellants had a fair opportunity to present their claims.**

16 The RAP properly exercised its discretion in issuing the Decision and not holding another  
17 hearing. Appellants are confused and misinterpret the Court of Appeal's decision. The remand  
18 order states:

19 "Consistent with Code of Civil Procedure [section] 1094.5(f), the court orders the  
20 **City of Oakland Rent Board** to reconsider the case in **light of the court's opinion**  
21 **and judgment**. The judgment shall not limit or control in any way the discretion  
22 legally vested in the response Board. If permitted by its procedures, the Rent Board  
23 may direct the Hearing Officer to conduct a further hearing. If permitted by its  
24 procedures, the Rent Board may reconsider the entire matter or only the issues  
25 implicated by this order. The court expressly does not direct the Rent Board to grant  
26 the petition for Certificate of Exemption." Emphasis added.

27 Appellants erroneously interpreted the Court of Appeal's Order to mean Appellants  
28 should be given the opportunity to appear at a hearing to introduce new/same evidence and  
29 argument related to the multiplier for determining the average costs of construction.

30 The Alameda Superior Court held and Court of Appeals found that the RAP erred by  
31 incorporating Table B as the substantive standard, using Table B since it was not issued by

1 the chief building inspector, excluding \$26,000 in invoices by Martin Gallagher  
2 Construction Inc., misapplying and miscalculating the construction costs by focusing on the  
3 potential use of the balconies rather than the costs of construction, using the wrong  
4 multiplier from the wrong table; and the Court found that there was substantial evidence to  
5 support the claim that the property space included both apartment space and deck and  
6 balcony space. See Exhibits A and B.

7 Any arguments and evidence Appellants wish to now introduce has already been  
8 considered by the trial court and the RAP. Thus, Appellants have not been denied their due  
9 process rights.

10 Lastly, Appellant Julie Amberg did not file a response to Respondent’s Exemption  
11 Petition within the 30 days of service of the notice by the RAP pursuant to OMC  
12 8.22.090.A.5. Thus, Appellant Julie Amberg lacks standing to present evidence, argue or  
13 object to the Respondent’s Exemption Petition and the Decision. See T-06-0059-0060,  
14 Martinez v. Wu and T10-0073, Hunter-Nicholson v. Hogan/Vest.

15  
16 **III. CONCLUSION**

17 Appellants have failed to provide valid arguments as to why the RAP’s Decision  
18 should be overturned or why a new hearing should be scheduled. The Alameda County  
19 Superior Court and the Court of Appeals considered the pleadings, Administrative Record,  
20 all moving opposition papers, arguments of counsel, and filed papers, the court entered an  
21 Order granting Respondent’s granting writ of mandate directing the City of Oakland’s RAP  
22 to set aside and vacate the Appeal Decision in Case No. L14-0065 and for the RAP to  
23 reconsider the Appeal Decision in Case No. L14-0065 in light of the court’s opinions,  
24 Order, and Judgment. The RAP properly followed the trial court’s and Court of Appeal’s  
25 orders. The appeal should be denied in entirety.

26 Date: November 23, 2021

27 ~~FRIPD~~ ~~Signature~~ WILLIAMS, LLP



28 3FB3AA6FDB0C407...  
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Attorneys for Respondent/Owner, Mandana Properties, LLC

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**FILED**  
ALAMEDA COUNTY

DEC 12 2018

By *[Signature]*

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

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IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

525-655 HYDE ST. CNML PROPS., LLP,

Case No.: RG17-862841

Petitioner,

**[PROPOSED] JUDGMENT  
GRANTING WRIT OF  
ADMINISTRATIVE MANDAMUS**

vs.

CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 THROUGH 25,

Respondents.

Jilleun Eglin,  
Lexie Eglin,  
Angelique Johnson-Martinez,  
Suzanne Miller,  
Fernando Garcia,  
Kate Flick Garcia,  
Bianca Penaloza,  
David Preciado,  
Julie Amberg,  
Tyler Ritter,  
Marie Oda,  
Todd McMahan,  
Andrew Simkin,  
Jessica Simkin,  
and DOES 26 THROUGH 40,

Real Parties in Interest.







**FILED**  
ALAMEDA COUNTY

AUG 23 2018

By *[Signature]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

525 HYDE STREET, CNML PROPS, LLP,

No. RG17-862841

Petitioner,

ORDER (1) GRANTING MOTION TO  
AUGMENT THE RECORD AND (2)  
GRANTING PETITION FOR WRIT OF  
MANDATE.

v.

CITY OF OAKLAND,

Date: 8/23/18  
Time: 9:00 a.m.  
Dept.: 511

Respondents.

The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record and the petition of the Developer for writ of mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No. L14-0065 for came on for hearing on 8/23/18, in Department 511 of this Court, the Honorable Kimberly Colwell presiding. Counsel appeared on behalf of Petitioner and on behalf of Respondents. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The motion of 525-655 Hyde St Commercial Properties (the "Developer") to augment the administrative record is GRANTED. The Petition of the Developer for writ of

1 mandate directing the City of Oakland Rent Board to vacate the Appeal Decision in Case No.  
2 L14-0065 is GRANTED.

3  
4 OPPORTUNITY FOR POST-HEARING BRIEFING

5 The court's tentative decision issued before the 7/26/18 hearing framed the issues  
6 differently than as presented by the parties and at the hearing the parties indicated that they might  
7 want supplemental briefing depending on the outcome of the motion to augment. The court's  
8 tentative decision issued before the 8/23/18 hearing stated that the court would permit the  
9 opportunity for post-hearing supplemental briefing if any party requested supplemental briefing.  
10 (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1286.) No party requested  
11 supplemental briefing.  
12  
13

14 EVIDENCE

15 The court GRANTS the Developer's request on 5/1/18 for judicial notice of ordinances  
16 (Exhs 1-3) and Hearing Decisions (Exhs 8-12.) The court GRANTS the Developer's request on  
17 5/1/18 for judicial notice of Tables A, B, C, and D (Exhs 4-7), but does augment the evidentiary  
18 record with those documents.  
19

20 The court GRANTS the City's request on 6/1/18 for judicial notice of Hearing Decisions.

21 The court GRANTS the City's request on 6/1/18 to supplement the record with the  
22 transcript of the Rent Board hearing. This was part of the evidence and was apparently omitted  
23 in error.

24 The court DENIES the City's implicit request on 6/1/18 to supplement the record with the  
25 Declaration of David Harlan. Harlan testified before the Hearing officer. (AR 146:17-157:9.)  
26

1 The City has not demonstrated that Harlan's declaration testimony was either improperly  
2 excluded during the administrative process or it could not, in the exercise of reasonable  
3 diligence, have been presented before the administrative decision was made. (CCP 1094.5(e);  
4 *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1144.)

5 The court GRANTS the Developer's request on 6/25/18 for judicial notice of Hearing  
6 Decisions.

7  
8  
9 MOTION TO AUGMENT THE RECORD

10 The City argued that the Developer failed to exhaust administrative remedies because it  
11 failed to argue to the Board that the Hearing Officer failed to properly apply Table A when  
12 calculating the cost of new construction. (City Oppo at 9-10.) At the hearing on 7/26/18, the  
13 Developer handed the court a copy of a brief on appeal allegedly filed with the Rent Board on  
14 5/4/16 that raised the issue at page 4 (the "Appeal Brief"). The City did not concede that the  
15 Appeal Brief was in the administrative record.  
16

17 On 8/10/18, the Developer filed a post-hearing motion under CCP 1094.5(e) to augment  
18 the record with the Appeal Brief. "A court may exercise its discretion to augment an  
19 administrative record if the evidence is relevant and if it was either improperly excluded during  
20 the administrative process or it could not, in the exercise of reasonable diligence, have been  
21 presented before the administrative decision was made." (*Evans v. City of San Jose* (2005) 128  
22 Cal.App.4th 1123, 1144.) This motion to augment does not concern evidence going to the merits  
23 that was presented to the hearing officer, but rather concerns evidence going to the procedural  
24 issue of whether the Developer raised an issue with the Board.  
25  
26

1 The Developer's Notice of Appeal filed 6/18/15 raises the primary issue of whether the  
2 balcony area should be included but not the secondary issue of whether if the balcony is included  
3 it should be treated differently than apartment space. (AR 108.)

4 The Developer's Appeal Brief is file stamped "RECEIVED CITY OF OAKLAND RENT  
5 ARBITRATION PROGRAM 2016 MAY - 4 PM 2:52." The stamp is the same as other  
6 documents filed with the Rent Board. (AR 35, 46, 72, 104.) The City has presented declaration  
7 testimony from City employees Keith Mason and Kelly Rush that the City has no record of  
8 receiving the Appeal Brief. The real parties in interest also present evidence and argue that they  
9 have no record of the Appeal Brief.  
10

11 The transcript of the Board hearing on 12/8/16 indicates that the Board discussed the  
12 primary issue of whether the balcony area should be included but that the Board did not reach the  
13 secondary issue of whether if the balcony is included it should be treated differently than  
14 apartment space.  
15

16 The motion of the Developer to augment the administrative record with the Appeal Brief  
17 is GRANTED. The Appeal Brief is file stamped as received by the Board. This creates a  
18 presumption of filing. (*In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1103 ["a  
19 judgment or appealable order is presumptively filed, for purposes of the 180-day time limit, on  
20 the file-stamped date"].) The City has not presented evidence that on 5/4/16 the Developer used  
21 the City's self-file-stamp procedure to file-stamp the brief but then failed to leave a copy with the  
22 City or that the Developer falsified the file stamp on the Appeal Brief. The Court finds that the  
23 substantial evidence supports a finding that the Developer filed the brief and that the City  
24 inadvertently mis-filed or lost the brief. There is no indication that the City intentionally  
25 withheld the Appeal Brief from the administrative record.  
26

1  
2 FACTS AND PROCEDURE

3 The Developer or its predecessor in interest rehabilitated the property located at 3921  
4 Harrison St, Oakland, CA. The Developer spent approximately \$850,000 on the project.

5 The Developer then sought a Certificate of Exemption from the Rent Board so that it  
6 could raise rents at the property. OMC 8.22.030.B.2 states, "In order to obtain an exemption  
7 based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of  
8 the average basic cost for new construction for a rehabilitation project and performed substantial  
9 work on each of the units in the building.  
10

11 The City notified the parties that the hearing would be on 3/20/15 and that they would be  
12 required to submit all evidence 7 days before the hearing date and that if they did not do so it  
13 "may" be excluded. (AR 414-415, 471-473.)

14 On 4/27/15, the Hearing Officer held a hearing. (AR 141-236.) During the presentation  
15 of evidence, Ms. Mira, attorney for tenants, showed Table B, which is Quarterly Cost Indexes to  
16 City Engineering Manager of the Bureau of Building David Harlan. The Hearing officer did not  
17 admit Table B into evidence at that time. (AR 152:13-27.) The submission of evidence  
18 concluded. (AR 225:16-22.)

19 At argument following the presentation of evidence, Ms. Mira argued that Table A, the  
20 City of Oakland Building Services Construction Valuation, effective 8/1/09, should be adjusted  
21 by the Table B, the Quarterly Cost Indexes. (AR 228:8-11; 229:7-13). Ms. Mira presented  
22 Table B and asserted that the Hearing Officer should use it in making calculations. (AR 230:20-  
23 21.) Developer's counsel objected.  
24  
25  
26

1 The Hearing Officer said that he could take official notice of Table B if he was supposed  
2 to use it in his calculations. (AR 230:23-231:27.) The Hearing Officer said that he was unaware  
3 of Table B until the day of the hearing. (AR 236:14-16.)

4 On 5/29/15, the Hearing Officer issued a decision denying Developer's petition for a  
5 Certificate of Exemption from the rent control ordinance. (AR 120-131.)

6 The Developer sought review by the Rent Board. On 12/8/16, the Rent Board held a  
7 hearing. (AR 777-798.) On 3/7/16, the Rent Board issued its written decision. (AR 2-4.)  
8

9  
10 ISSUE CLARIFICATION

11 Petitioner commingles three analytically distinct issues regarding the use of Table B  
12 during the administrative process. The first issue is whether the Board violated its own  
13 procedures when it considered Table B as evidence even though it was not disclosed seven days  
14 before the hearing. The second issue is whether the Board erred as a matter of law by  
15 incorporating Table B into the OMC 8.22.030.B.2.b substantive standard. The third issue is  
16 whether the Board violated due process by failing to adequately disclose the existence of Table B  
17 to Petitioner while Petitioner was planning and executing the rehabilitation project.  
18

19  
20 PROCEDURES – ADMISSION OF TABLE B AS EVIDENCE

21 The arguments on the admission of Table B as evidence presume that it is a document  
22 that is fact evidence. As discussed below, OMC 8.22.030.B.2.b incorporates tables “issued by  
23 the chief building inspector” as the substantive standard. Therefore, if the tables are the  
24 documents described in the OMC, then they are incorporated in, and extensions of, the ordinance  
25 itself. The court must take judicial notice of the law. (Evid Code 451.) Subject to the  
26

1 significant limitation that the court must provide parties the opportunity to present argument on  
2 material issues, the court (or a hearing officer) can consider law even if it is not formally  
3 presented by a party. (*Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282,  
4 1286.)

5 The Board's letters required the parties to disclose evidence 7 days before the hearing and  
6 cautioned that evidence not disclosed "may" be excluded. As a matter of policy construction,  
7 "may" is discretionary and permitted the Hearing officer to admit evidence that was not disclosed  
8 7 days before the hearing.

9 Assuming that Table B is factual evidence, the court finds that the Board did not violate  
10 its own procedures and abuse its discretion when it considered Table B even though it was not  
11 disclosed seven days before the hearing.

12 At the hearing the Hearing Officer stated that he would not admit Table B as evidence but  
13 would take official notice of Table B. Official notice appears to be equivalent to judicial notice  
14 and judicial notice is a basis for the admission of evidence. Therefore, there is no material  
15 difference between accepting Table B into evidence as submitted by a witness and taking judicial  
16 notice of Table B.

17  
18  
19  
20 **INCORPORATION OF TABLE B INTO ORDINANCE - STATUTORY INTERPRETATION.**

21 OMC 8.22.030.B.2 states:

22  
23 **Exemptions for Substantially Rehabilitated Buildings.**

- 24  
25 a. In order to obtain an exemption based on substantial rehabilitation, an owner  
26 must have spent a minimum of fifty (50) percent of the average basic cost for

1 new construction for a rehabilitation project and performed substantial work on  
2 each of the units in the building.

- 3  
4 b. The average basic cost for new construction shall be determined using tables  
5 issued by the chief building inspector applicable for the time period when the  
6 substantial rehabilitation was completed.

7 The court exercises its independent judgment in considering statutory construction and other  
8 issues of law. (*Smith v. Santa Rosa Police Dept.* (2002) 97 Cal.App.4th 546, 553-554.)  
9

10 As a matter of statutory construction, the court determines that OMC 8.22.030.B.2.b  
11 requires that the tables must be both (1) issued by the chief building inspector and (2) applicable  
12 for the time period when the substantial rehabilitation was completed.

13 As a matter of determining whether there was a fair hearing the court applies its  
14 independent judgment regarding whether the City complied with the law. The court does not  
15 apply the abuse of discretion standard usually applied to evidence decisions because the statute  
16 clearly defines the substantive standard with reference to the tables. Therefore, referring to an  
17 incorrect table is in the nature of using an incorrect jury instruction rather than making a  
18 discretionary decision on the admission of evidence.  
19

20 Table A is identified as City of Oakland Building Services Construction Valuation,  
21 effective 8/1/09. Table A is issued by the chief building inspector. Table A states that it is  
22 "Effective Aug 1, 2009." This suggests that it is effective until replaced by a new table. When  
23 testifying, City Engineering Manager Harlan was asked if Table A was "the latest table put out by  
24 the City" and he answered "Yes, that's the table we currently use." (AR 146:20-23.) There is no  
25 objection to the use of Table A.  
26

1 Table B is identified as Quarterly Cost Indexes. Table B has a footer that indicates it is  
2 from Marshall Valuation Services. There is no indication that Table B was “issued by the chief  
3 building inspector.” When testifying, City Engineering Manager Harlan identified Table B and  
4 referred to it as “this source that we use.” (AR 153:27.) The court finds that the Board erred as a  
5 matter of law by incorporating Table B into the ordinance as the substantive standard when it was  
6 not “issued by the chief building inspector.”  
7

8 The Petition is GRANTED on the basis that applying its independent judgment the court  
9 finds that OMC 8.22.030.B.2.b requires that a table be “issued by the chief building inspector”  
10 and Table B was not “issued by the chief building inspector.”  
11

#### 12 INCORPORATION OF TABLE B INTO ORDINANCE - DUE PROCESS.

13 The Developer made a discernable argument before the Hearing Officer (AR 235-236)  
14 and at the Rent Board (AR 784-785) and in this court (Reply at 5) that the Board violated due  
15 process by failing to adequately disclose the existence of Table B to Petitioner when Petitioner  
16 was planning and executing the rehabilitation project. The court exercises its independent  
17 judgment in considering issues of adequate notice or due process. (*Tafti v. County of Tulare*  
18 (2011) 198 Cal.App.4th 891, 896.)  
19

20 A statute, or ordinance, must be sufficiently clear to give a person fair warning of the  
21 conduct prohibited and they must provide a standard or guide against which conduct can be  
22 uniformly judged by courts and administrative agencies. (*Morrison v. State Board of Education*  
23 (1969) 1 Cal.3d 214, 230-231; *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308-  
24 309.) Similarly, an ordinance must be sufficiently clear to give a person adequate notice of the  
25 requirements for obtaining a government benefit, or a Certificate of Exemption.  
26

1 A statute "will be upheld if its terms may be made reasonably certain by reference to other  
2 definable sources." (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1180; *Personal*  
3 *Watercraft Coalition v. Board of Supervisors* (2002) 100 Cal.App.4th 129, 138-139.)

4 Making an "on its face" analysis, the Ordinance could reasonably refer to and incorporate "tables  
5 issued by the Chief Building Inspector."

6  
7 Making an "as applied" analysis, it is much less clear whether Table B is an "other  
8 definable source." When testifying, City Engineering Manager Harlan was asked if Table A was  
9 "the latest table put out by the City" and he answered "Yes, that's the table we currently use."  
10 (AR 146:20-23.) City Engineering Manager Harlan also identified Table B and referred to it as  
11 "this source that we use." (AR 153:27.) The Hearing Officer stated that he was unaware of  
12 Table B until the day of the hearing. (AR 236:14-16.)

13  
14 The Developer did not present evidence, but argued that it was unaware of Table B until  
15 the hearing on 4/27/15. Before the Hearing Officer, the Developer's counsel argued that the  
16 Building Department did not make Table B available to the public. (AR 235:19-236:1.) Before  
17 the Board, the Developer's counsel argued that the Developer assumed that the relevant time  
18 period was "set forth in the most recent table that's issued by the Building Services Department.  
19 That's Exhibit A" and that the Developer "relied on this Table A and be believed that when his  
20 project was competed it would be exempt." (AR 784:17-23.)

21  
22 The City and the tenants presented no evidence that Table B was an "other definable  
23 source" that was disclosed to the public as relevant to the ordinance. The court has denied the  
24 City's request to supplement the record with the declaration of Harlan. That noted, the  
25 declaration states that the City distributes Table B to persons "who request the table" and "that  
26 the City distributes [the Table] upon request." (Harlan Dec., paras 6 and 7.)



1  
2 SEPARATE TREATMENT OF APARTMENT SPACE AND DECK/BALCONY SPACE

3 County records state the property was 13,337 sqft. (AR 247.) The Developer  
4 rehabilitated the balconies, which are an additional 1,002 sqft.

5 Table A differentiates among different "Descriptions" of construction. Table A included  
6 "Apartment space" at \$127 sqft, "Elevated Decks and Balconies" space at \$41.16 sqft, and many  
7 other descriptions of space. The Hearing Officer and the Board both decided to treat both the  
8 13,337 sqft interior space and the 1,002 sqft deck/balcony space as "Apartment space." (AR 004,  
9 123.)  
10

11 Petitioner argues that the Board erred as a matter of law by treating the deck/balcony  
12 space as "Apartment space" and should have treated it as "Elevated Decks and Balconies" space.  
13 (Opening brief at 4:21-26; 6:26-27; 7:29-8:7.)  
14

15 Petitioner has not waived this argument. At the hearing before the Hearing Officer,  
16 Petitioner argued that the calculations should exclude the deck space. (AR 3.) In the briefing to  
17 the Board, Petitioner accepted that the Hearing Officer used the deck space, but argued that the  
18 Hearing Officer should have calculated "R3 Elevated Decks and Balconies" space at \$41.16 sqft.  
19 (Brief filed with Board on 5/4/16 at page 4.) At argument before the Board, petitioner raised the  
20 primary issue of whether the balcony area should be included but did not reach the secondary  
21 issue of whether if the balcony is included whether it should be treated differently than apartment  
22 space. (AR 004, 792:3-11; 795:3-11; 796:5-798:12.)  
23

24 This is an issue of statutory construction because OMC 8.22.030.B.2.b incorporates tables  
25 be "issued by the chief building inspector."  
26

1           As a matter of statutory construction, the City must apply Table A to projects or parts of  
2 projects based on whether the Description reasonably describes the physical structure to be  
3 constructed. The Descriptions in Table A are defined by the cost of construction rather than the  
4 potential use of the structure. The court takes judicial notice that the City of Oakland Planning  
5 and Building website states, "The cost of building permits is based upon the construction  
6 valuation of the project. Valuation includes all labor and structural materials, and all lighting,  
7 heating, ventilation, water supply, plumbing, electrical, fire sprinklers, elevator equipment."  
8 (<http://www2.oaklandnet.com/government/o/PBN/OurServices/permits/index.htm>) Consistent  
9 with this purpose, the Rent Board should apply schedule A to projects and parts of projects based  
10 on whether the Description reasonably describes the physical structure to be constructed.  
11

12           The Board misapplied OMC 8.22.030.B.2.b and the incorporated tables by focusing on  
13 the potential use of the balconies rather than the cost of building or rehabilitating the balconies.  
14 The Board's decision states "there was no abuse of discretion by the Hearing Officer in including  
15 the balconies' area where such space is useable space that expands the tenants' livable area."  
16 (AR 004.) (See also AR 797:10-11.)  
17

18           This was legal error because the Table A analysis concerns the cost of constructing the  
19 project or part of the project, not the potential use of the constructed property. Although the Rent  
20 Board in other contexts might be focused on whether rental space is usable, liveable, and  
21 habitable, in the context of OMC 8.22.030.B.2.b and Table A, the Rent Board must focus on the  
22 cost of construction. Even if OMC 8.22.030.B.2.b and Table A did concern usable, liveable, or  
23 habitable space, the BMC elsewhere defines "habitable space" and "habitable rooms" in a way  
24 that suggests they do not include exterior balconies and decks. (OMC 15.20.030 [Building and  
25 Construction Code]; 17.09.040 [Planning Code].)  
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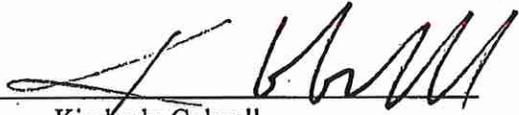
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Consistent with CCP 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider either the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.

At the hearing on 8/23/18, counsel for the Developer asked that the court order the Rent Board to expedite further proceedings given that the Developer filed the petition for certificate of exemption on 11/10/14 (AR 558-761) and the matter has been pending for almost four years. Counsel for the City did not object to that request. The court encourages the Rent Board to promptly reconsider this matter consistent with the procedures in OMC 8.22.120 and Rent Adjustment Program Regulations 8.22.110 and 8.22.120.

The court directs the Developer to prepare and submit to the court both a proposed judgment and a proposed writ. (CRC 3.1312.)

Dated: August 23, 2018

  
\_\_\_\_\_  
Kimberly Colwell  
Judge of the Superior Court

55

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4 Oakland, CA 94612  
5 Phone: (510) 625-0100  
6 Email: cfried@friedwilliams.com

7 Attorneys for Petitioners  
8 Rockridge Real Estate, LLC & Reinke, LLC

9  
10 IN THE SUPERIOR COURT OF STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF ALAMEDA

12 525-655 HYDE ST. CNML PROPS., LLP,

13 Petitioner,

14 vs.

15 CITY OF OAKLAND'S DEPARTMENT OF  
16 HOUSING AND COMMUNITY  
17 DEVELOPMENT RENT ADJUSTMENT  
18 PROGRAM, and DOES 1 THROUGH 25,

19 Respondents.

20 Jilleun Eglin,  
21 Lexie Eglin,  
22 Angelique Johnson-Martinez,  
23 Suzanne Miller,  
24 Fernando Garcia,  
25 Kate Flick Garcia,  
26 Bianca Penaloza,  
27 David Preciado,  
28 Julie Amberg,  
Tyler Ritter,  
Marie Oda,  
Todd McMahon,  
Andrew Simkin,  
Jessica Simkin,  
and DOES 26 THROUGH 40,

Real Parties in Interest.

Case No.: RG17-862841

**[PROPOSED] WRIT OF  
ADMINISTRATIVE MANDAMUS**

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WRIT OF MANDAMUS

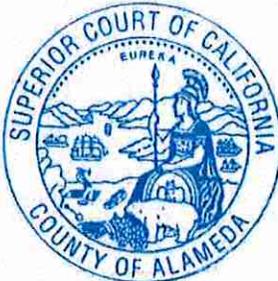
To: CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT RENT ADJUSTMENT PROGRAM AND ITS  
ATTORNEY OF RECORD:

**YOU ARE HEREBY COMMANDED** immediately upon receipt of this writ to:

1. Set aside and vacate the Rent Adjustment Program Appeal Decision in  
Case No. L14-0065.

2. Reconsider the Appeal Decision in Case No: L14-0065 in light of the court's  
opinions, Order and Judgment.

The Court will retain jurisdiction over Respondent proceedings by way of a return to this  
peremptory writ of mandamus until the Court has determined that Respondent has  
complied with the following order:



Chad Fiske, Clerk

By [Signature], Deputy Clerk

ORDER

LET THE WRIT OF MANDAMUS ISSUE.

Date: 12/2/18

[Signature]  
JEFFREY S. BRAND,  
Judge of the Alameda Superior Court



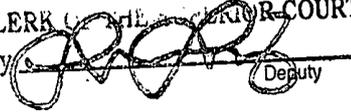
COURT OF APPEAL, FIRST APPELLATE DISTRICT  
350 MCALLISTER STREET  
SAN FRANCISCO, CA 94102  
DIVISION 1

Office of the County Clerk  
Alameda County Superior Court - Main  
1225 Fallon Street, Room G4  
Oakland, CA 94612

**FILED**  
**ALAMEDA COUNTY**

MAY - 3 2021

525-655 HYDE STREET CNML PROPS., LLP et al.,  
Petitioners and Respondents,

CLERK OF THE SUPERIOR COURT  
By:  Deputy

v.  
CITY OF OAKLAND'S DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT RENT  
ADJUSTMENT PROGRAM,  
Respondent;  
JULIE AMBERG et al.,  
Real Parties in Interest and Appellants.

A156463  
Alameda County Super. Ct. No. RG17862841

**\*\* REMITTITUR \*\***

I, Charles D. Johnson, Clerk of the Court of Appeal of the State of California, for the First Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on February 26, 2021 and that this opinion has now become final.

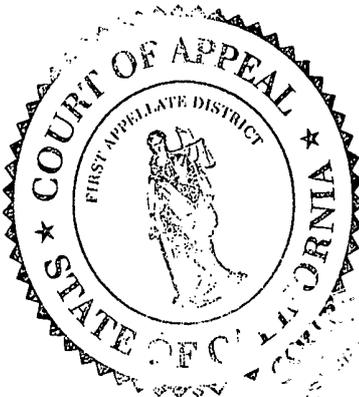
Appellant  Respondent to recover costs  
 Each party to bear own costs  
 Costs are not awarded in this proceeding  
 See decision for costs determination

Witness my hand and the Seal of the Court affixed at my office this **APR 30 2021**

Very truly yours,  
Charles D. Johnson  
Clerk of the Court

 T. Nevils  
Deputy Clerk

P.O. Report: \_\_\_\_\_  
Marsden Transcript: \_\_\_\_\_  
Boxed Transcripts: \_\_\_\_\_  
Exhibits: \_\_\_\_\_  
None of the above: \_\_\_\_\_



Filed 2/26/21

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

525-655 HYDE STREET CNML  
PROPS., LLP et al.,

Petitioners and Respondents,

v.

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

Respondent.

JULIE AMBERG et al.,

Real Parties in Interest and  
Appellants.

A156463

(Alameda County  
Super. Ct. No.  
RG17862841)

Real parties in interest, three residents of an Oakland apartment building (Tenants), appeal from an adverse judgment in this administrative mandamus proceeding filed by the owner of the building (Owner). Owner, after making substantial repairs and improvements to the building, filed a "Petition for Exemption" from Oakland's Rent Adjustment Ordinance, pursuant to its "substantial rehabilitation" provisions. Following a hearing, at which Owner and numerous tenants represented by counsel submitted evidence, the hearing officer found the dollar amount of qualifying repairs

and improvements insufficient to meet the exemption requirement. Owner appealed to the Oakland Housing, Residential, Rent and Relocation Board (Board), which upheld the decision.

Owner then filed a writ petition, which the trial court granted, concluding the hearing officer and Board had made several legal errors. The court remanded the matter for reconsideration in accordance with its rulings.<sup>1</sup>

Tenants challenge one of these rulings, as well as an order augmenting the administrative record.<sup>2</sup> We affirm.

### DISCUSSION<sup>3</sup>

#### *Mootness*

We first address Tenants' claim that the case has been rendered moot by Oakland's elimination of the substantial rehabilitation exemption.

The pertinent circumstances are as follows:

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<sup>1</sup> The remand order states:

"Consistent with Code of Civil Procedure [section] 1094.5(f), the court orders the City of Oakland Rent Board to reconsider the case in light of the court's opinion and judgment. The judgment shall not limit or control in any way the discretion legally vested in the respondent Board. If permitted by its procedures, the Rent Board may direct the Hearing Officer to conduct a further hearing. If permitted by its procedures, the Rent Board may reconsider the entire matter or only the issues implicated by this order. The court expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption."

<sup>2</sup> Although the City of Oakland appeared in the trial court and urged that the Board's decision be upheld, the city did not appeal from the trial court's judgment and has not appeared, as amicus or otherwise, in this appeal.

<sup>3</sup> We discuss the relevant facts and procedural background in connection with our discussion of the issues on appeal.

Owner filed for a substantial rehabilitation exemption on November 10, 2014.

Three years later, on November 28, 2017, the city enacted a 180-day moratorium on such exemptions, which it extended for another 180 days so staff could complete a report with options and recommendations. (Oak. Ord. No. 13523.<sup>4</sup>)

The staff report, dated August 14, 2018, discussed three options—a three-year moratorium allowing further study and analysis, restricting the exemption to vacant and uninhabitable units, and eliminating the exemption. The report observed that most rent control jurisdictions no longer have such exemptions and provide other means for owners to recoup capital improvement costs, which Oakland also allows.

Following a public hearing on September 17, the city council extended the moratorium an additional 180 days and voted to eliminate the exemption.

On March 21, 2019, the city council adopted ordinance No. 13523, eliminating the exemption. (Oak. Ord. No. 13523.) The ordinance amended Municipal Code section 8.22.030 to read in pertinent part:

“A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter. . . : [¶] . . . [¶]

“6. Substantially rehabilitated buildings. This exemption shall apply only to buildings where the rental property owner submitted an application for a certification of exemption to the Rent Adjustment Program prior to October 20, 2017, and which have been issued a certificate of exemption from the Rent Adjustment Program.” (Oak. Ord. No. 13523, § 1, A(6), underscoring omitted.)

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<sup>4</sup> We take judicial notice of the city’s legislative actions and the staff reports prepared in connection therewith. (Evid. Code, § 452.)

There is no dispute Owner filed its application long before October 20, 2017. Tenants assert that not only must an application have been filed by that date, but such application also must have been granted by that date.

The plain language of the ordinance does not support Tenants' reading. (See *L.G. v. M.B.* (2018) 25 Cal.App.5th 211, 227 [it is a "general principle that the plain language of a statute is controlling"].) As a grammatical matter, the October 20, 2017 date pertains only to the application for a substantial rehabilitation exemption. Moreover, the ordinance easily could have stated that both an application for such an exemption must have been filed *and* a certificate of exemption must have been obtained, by October 20, 2017. It does not, however, so state. (See *The Internat. Brotherhood of Boilermakers, etc. v. NASSCO Holdings Inc.* (2017) 17 Cal.App.5th 1105, 1117 [although legislature could have defined key term of statute to include certain employment action, it did not do so, and court would not read statute as though it included such definition].)

The most plausible reading of the plain language, then, is that the city council established a cut-off date for exemption applications, thus allowing timely filed applications to be processed, but barring any further applications and ensuing exemptions.

Tenants also point out Owner's application was denied by the hearing officer and the Board. But there is no suggestion in either the ordinance or staff reports that a timely applicant receiving an adverse ruling from a hearing officer would be barred from pursuing either the administrative appeal expressly provided for by the Rent Adjustment Ordinance or foreclosed from seeking judicial review of a Board decision.

We therefore conclude, since Owner filed an application for a substantial rehabilitation exemption well before the October 2017 deadline, the instant proceeding is not moot.

***Order Augmenting Administrative Record***

We next address Tenants' challenge to the trial court's order augmenting the administrative record to include Owner's "Brief on Appeal" submitted to the Board in support of its administrative appeal. We review the court's order for substantial evidence.<sup>5</sup> (See *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 197–201 (*Consolidated Irrigation*) [affirming order augmenting record, as substantial evidence supported trial court's finding that memoranda not included in record had, in fact, been submitted to local governing agency].)

The motion to augment was made in response to assertions by the City and the Tenants in their opposition to the writ petition, that Owner had forfeited an issue—specifically, that the hearing officer had erred in using one construction cost figure (\$127) for both interior living space and balcony

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<sup>5</sup> "A substantial evidence inquiry examines the record in the light most favorable to the judgment and upholds it if the record contains reasonable, credible evidence of solid value upon which a reasonable trier of fact *could* have relied in reaching the conclusion in question. Once such evidence is found, the substantial evidence test is satisfied. (See *People v. Johnson* (1980) 26 Cal.3d 557, 578. . . .) Even when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the standard is sufficient to uphold the finding." (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.) A trial court's "conclusions of law" in connection with a motion to augment "are subject to independent review on appeal." (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 65 (*Madera*), disapproved on another ground in *Neighbors for Smart Rail v. Exposition Metro Line Authority* (2013) 57 Cal.4th 439, 457.) However, as we explain, we are not dealing here with an issue of law, but with a challenged finding of fact.

space, rather than a lower figure for balcony space (\$41.16)—because it had not raised the issue before the Board. At the hearing on the writ petition, Owner provided the trial court with a file endorsed copy of its “Brief on Appeal,” wherein Owner had raised the exact issue the City and the Tenants claimed was forfeited. The City declined to concede the brief was in the record.

Owner therefore filed a post-hearing motion to augment the record. This was supported by a detailed declaration of the attorney who had prepared the administrative appeal brief and had extensive experience with Board filing requirements. He explained that he had instructed his staff to file the brief, on staff's return to his office he/she confirmed the brief had been filed, and counsel was handed and retained in his possession a “blue ink” file-endorsed copy of the brief. Counsel acknowledged he had reviewed the administrative record after it was prepared. But he had not noticed the omission of the brief then, or later when he prepared the memoranda in support of the writ petition as he had had no occasion to refer to it. He also recounted this was not the first time he had experienced a situation where a filed document had been misplaced by the Board. He further stated that, at the time, Board rules did not require service of such briefs on real parties.

The City opposed the motion to augment, submitting declarations of two city employees that the city had no record of receiving the brief. Real parties also maintained they had no copy of the brief.

After considering all the evidence before it, the trial court granted the motion, pointing out the copy of the brief provided with the motion was “file stamped ‘RECEIVED CITY OF OAKLAND RENT ARBITRATION PROGRAM 2016 MA- 4 PM 2:52.’” The court also observed neither the City, nor real parties, had provided any evidence that Owner had “used the City’s

self-file-stamp procedure” but then failed to leave a copy for the Board or had deliberately falsified the file stamp. The court ruled “substantial evidence” supported “a finding that the [Owner] filed the brief and that the City inadvertently mis-filed or lost the brief.” It further found there was “no indication that the City intentionally withheld the Appeal Brief from the administrative record.”

On this record, the trial court’s augmentation order is amply supported.

Citing to *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, Tenants claim the trial court erred “as a matter of law” in granting the motion. Tenants misperceive the distinction between augmenting a record with *evidence not presented* during the administrative proceedings and augmenting a record to ensure it is complete and includes all materials that were presented *during* the administrative proceedings. (See *Consolidated Irrigation, supra*, 204 Cal.App.4th at p. 198 [pointing out the “importance of distinguishing between documents that belong in the record of proceedings versus documents that might be admissible as extra-record evidence”]; see generally California Practice Guide-Administrative Law, “Pretrial and Trial of Mandamus Cases, § 20:195 (The Rutter Group 2020) [“If petitioner contends the record certified by the agency is incomplete, the appropriate remedy is a motion to augment the record.”].)

*Western States* does, indeed, place constraints on extra-record evidence pertaining to the merits of the matters before the administrative tribunal that is proffered after-the-fact during judicial review. But the case has no bearing on a motion to augment of the sort made here—to correct the administrative record to include a document that the trial court found, on substantial evidence, was submitted to the Board but was inadvertently not

included in the administrative record. (See *Consolidated Irrigation, supra*, 204 Cal.App.4th at pp. 198–199.)

As for Tenants' assertion that Owner did not show reasonable diligence in seeking to augment the record, we must presume the trial court found otherwise as there is substantial evidence to support such a finding. (See *Madera, supra*, 199 Cal.App.4th at pp. 65–66 [in connection with rulings on motions to augment, appellate court applies traditional presumptions on appeal, including that trial court made all requisite findings where substantial evidence supports such implied findings].) Moreover, "it is within the province of the trial court, sitting as the trier of fact, to decide factual questions such as reasonable diligence and the persuasiveness of the evidence presented," and we "will not not second-guess the implied finding[] made by the trial court." (*Id.* at pp. 71–72.)

Tenants further maintain their "due process" rights were impinged by the augmentation order. But they provide no specifics. As the trial court pointed out, augmentation was not sought to bolster any merits argument. Rather, it was sought solely to rebut a claim of forfeiture. We fail to see how the trial court's proceeding to the merits of the issue, otherwise fully briefed by the parties and based on evidence indisputably in the record, prejudiced Tenants in any respect.

Finally, Tenants spend considerable time rearguing the evidence, urging that the declarations of city staff should have been given controlling weight and the declaration of Owner's counsel should have been viewed with skepticism and discounted. However, even where a factual matter is tried on declarations and affidavits, credibility and weight are matters for the trial court, not the Court of Appeal. (See *Consolidated Irrigation Dist., supra*, 204 Cal.App.4th at p. 198 ["Appellate courts routinely apply the substantial

evidence standard to findings of fact made by a trial court based on affidavits and declarations without any oral testimony.”]; *Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514–515 [“we do not evaluate the credibility of the witnesses or otherwise reweigh the evidence”; rather, “ ‘we defer to the trier of fact on issues of credibility’ ”].)

We therefore conclude there is no merit to Tenants’ challenge to the augmentation order.

Tenants have not challenged the merits of the trial court’s ruling on the issue found not to have been forfeited—namely, its ruling that the hearing officer, and in turn the Board, erred in using a single construction cost number, \$127, for the entirety of the square footage. Accordingly, we do not consider this issue further, and the trial court’s ruling on this issue is controlling on remand.

### ***The Hearing Officer’s Use of “Table B”***

The requirements for a substantial rehabilitation exemption were set forth in former Oakland Municipal Code section 8.22.030, which read in pertinent part:

“Exemptions for Substantially Rehabilitated Buildings.

“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 and performed substantial work on each of the units in the building.

“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. . . .”

(Former Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(a)–(b).)

These requirements gave rise to the principle issue before us—whether a document the parties and the hearing officer referred to as “Table B” was a “table[] issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.”<sup>6</sup> (Former Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(b).)

This document is entitled “‘Quarterly Cost Indexes (1926=100).’” We discuss its specific attributes in subsequent paragraphs. At this point, we recount the record of its appearance in the administrative proceedings:

The parties were notified that they were required to disclose evidence seven days prior to the administrative hearing and cautioned that any evidence not disclosed could be excluded. Neither party disclosed Table B.

At the hearing, the Tenants called as their witness, David Harlan, an Engineering Manager with the city. Before counsel asked any questions, the hearing officer inquired about another document, which the parties and hearing officer referred to as “Table A” and is entitled “City of Oakland Building Services Construction Valuation For Building Permits Effective Aug. 1, 2009.” (Boldface & fns. omitted.)

The hearing officer (HO) began:

“[HO]: . . . [L]et me ask you first, and then Ms. Mira [(the Tenants’ counsel)] will be able to ask you questions, is the latest table put out by the City of Oakland [the] Construction Valuation dated August 1, 2009 [Table A]?”

“Harlan: Yes, that’s the table that we currently use.

“[HO]: Okay. Let me turn it over to Ms. Mira. . . .”

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<sup>6</sup> Solely for ease of reference, we continue to refer to this document, and others, by the labels given them by the parties, the hearing officer, and the trial court.

Counsel proceeded to ask Harlan a number of questions about applying for a building permit, including describing the scope of work and the value of the job, and the calculation of permit fees. The hearing officer finally asked counsel not to belabor points that had “nothing to do with the essential question that we’re looking to have answered,” namely whether Owner had made sufficient expenditures to qualify for the substantial rehabilitation exemption.

Counsel then asked Harlan how someone would figure out how much it would cost to build a residential structure, such as the small apartment building in question. This engendered the following colloquy:

“Mira: . . . How would I figure how much that would cost me?”

“Harlan: For permit fees?”

“Mira: Just the whole job, complete job, how much would it cost me for a 16-unit building with a square footage of 13,336? . . .”

“Harlan: So the City doesn’t play a role in that. I mean I can hazard a guess but—

“Mira: Mm-hmm.

“Harlan: —it’s not our—it’s not the City’s role to help people identify how to pay for something or how much it’s going to cost to build something. [¶] . . . [¶]

“[HO]: . . . [S]o you said it’s not the City’s role to determine—

“Harlan: Yeah.

“[HO]: —how much it would cost to build the building.

“Harlan: Yeah, that’s right. Yeah, that’s a relationship between the owner and the contractor. . . .”

Counsel then asked Harlan to “describe” Table A (the document entitled “City of Oakland Building Services Construction Valuation For

Building Permits Effective Aug. 1, 2009,” boldface & fns. omitted). Harlan replied, “It’s a valuation table used by staff to help assign permit valuations for the purpose of calculating the permit fee.” He agreed with counsel that was “just for the permit fee” and “not for how much actual construction would cost.”

Counsel again asked Harlan how “would you figure out what the actual construction costs are.” Harlan again replied that was “between the property owner and their licensed contractor.” Counsel then asked if there were “industry standards.” Harlan said, “[y]es,” and added “that’s where these numbers [on Table A<sup>7</sup>] c[o]me from.”

At this point, counsel, for the first time, mentioned Table B (the document entitled “Quarterly Cost Indexes (1926=100)”), stating she was not presenting it as evidence but “to help the expert get to [the] point.” She asked Harlan what the document was. He responded: “This is an index that just shows the variation in pricing for certain regions over a period of time. Generally, the trend is upward, but maybe it goes down sometimes.”

Owner’s counsel objected on grounds the document had not been disclosed. Mira repeated she was not asking to put it into evidence but was “just asking him if he knows what it is and if he can describe it.” Counsel again objected, and the hearing officer ruled it could be used only to refresh Harlan’s recollection.

Harlan proceeded to answer: “I’ve seen these indexes before and I don’t know if I’ve calculated anything off of them. . . . I’ve looked at this before and

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<sup>7</sup> It is clear Harlan was referring to Table A, as he was referring to “exhibit 138,” which was a copy of Table A. In addition, tenants’ counsel had not yet mentioned Table B.

you can pick out the indices for different years for the same region and come up with a differential.” This led to the following colloquy:

“Mira: So I guess what I’m trying to get to is, if I were to have built a building in . . . 2009, is it fair to say that that same cost in 2009 wouldn’t be the same cost in 2014?

“[Counsel for Owner]: Objection. I don’t think this witness has been qualified to talk about costs. . . . [¶] . . . [¶]

“[HO]: Well, let me ask you this: Are you generally familiar with the trends of construction costs either up or down in the past six years in the City of Oakland?

“Harlan: No. I really can’t say—it’s fluctuated is my understanding. So I’m sure it held flat for awhile and then it went down, maybe it went up.

“[HO]: Do you know—this is really the ultimate question: Do you know whether it would cost more to build the building [in question] today than it would in 2009?

“Harlan: I couldn’t speak to that.”

Tenants’ counsel then asked Harlan, “does inflation play a role in construction costs.” Another objection by Owner was overruled, and Harlan answered: “Well, I can speak to how it affects the cost indices in this source that we use, Marshall Swift. So it plays a role in—there’s materials and labor are the big components of these indices and so inflation plays a role in both of those to varying levels of degrees depending on what the description of work is, whether steel costs more. Everything is down to like bags of concrete and how many pounds of steel and how many hours it takes to do something and this thing [referring to Exhibit 138, which is Table A] is a summary of a binder that’s about this thick.”

Counsel then asked, as a “hypothetical,” whether it would cost more to remove stucco with asbestos underlying it, than without. Harlan replied: “I would think so.” When the hearing officer asked, “how much more,” Harlan could not provide a percentage “because there’s probably different concentrations . . . that might trigger a certain type of abatement . . . I’m not sure.” Counsel then asked a hypothetical about the cost of re-tiling a bathroom. Harlan answered: “I’d have to check with one of the counter staff people.” Counsel then asked about a “range” of costs for installing windows. Harlan again testified: “I’d have to check with one of our inspectors.” The hearing officer eventually interjected: “Look, I mean he has no control over the inspectors and let me tell you, I mean re-tiling a bathroom, I mean there are very expensive tiles; there are cheap tiles. I don’t see how this would be at all helpful.” Harlan then volunteered: “Well, I can say that generally, we would ask the applicant to tell us what their cost is for those types of small projects. Those are small projects and we would usually rely on that—on what they’ve presented to us.

With that, counsel stated she had no further questions for Harlan. Owner’s counsel asked no questions.

Table B (the document entitled “Quarterly Cost Indexes (1926=100)”) was not mentioned again until closing summation, when tenants’ counsel argued: “So the second reason why the exemption should be denied is because the City of Oakland, the Rent Adjustment Program, actually uses the cost indexes to adjust the cost for when the actual construction happened,” and cited to three hearing decisions.<sup>8</sup> She continued, “I believe that in this case it would be unfair to use a 2009 building cost [(Table A)] when the

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<sup>8</sup> These were *Weinberg v. Tenant*, *Promes v. Fehr*, and *Young v. Beasley*, which we discuss in subsequent paragraphs.

[rehabilitation] construction happened in 2014 and 2013.” Counsel acknowledged “Mr. Harlan couldn’t testify to that,” but asserted “it’s common knowledge that inflation affects things.” “So,” counsel went on, “based on how calculations have been done in these previous cases, new construction based on the cost indexes for 2009 and for 2014, new construction has increased by 1.1%.”

The hearing officer expressed some difficulty in following counsel. Counsel then referred the hearing officer to Table B, stating “you don’t use . . . [the] valuation chart [(Table A),] but I’m sure you’re familiar with these, the quarterly indexes [(Table B)].” Counsel proceeded with a detailed, step by step argument as to how the hearing officer should use Table B to calculate a 2014 comparative cost number.

When Owner objected that Table B was not in evidence, the hearing officer now stated he would take “official notice of the documents that I’m supposed to use to do the computation.” When Owner again objected, the hearing officer stated, “I think I could always use the Building Department tables.” He then told Owner’s representative, “So if you would like, I won’t allow this into evidence, if you object because it wasn’t submitted seven days before but I will take judicial notice of it.” At this point, Owner’s representative said “Sure,” and the hearing officer said he would give her an opportunity to look at the document.

Counsel for the tenants then turned to the receipts, invoices, and other documents evidencing expenditures and argued they did not add up to 50 percent of the comparative 2014 construction cost determined, according to counsel, by adjusting the Table A numbers with a ratio derived from Table B.

At the outset of Owner's summation, the hearing officer asked Owner's representative (Hart) to address the "new quarterly cost indexes" and the "propriety of using [them]." She responded:

"Hart: Well, I think that there is a standard that's been adopted by the Rent Board and used, not only for the convenience but also so that you're not going to have people running to the Building Department who don't actually know what they're looking for and asking the Building Department to tell them these calculations. In fact, I have another case where they went directly to the building department and there's an email trail and they weren't given that, they were given the Table A.

"[HO]: Well, what does that have to do with the propriety of my using this in my decision?

"Hart: I'm saying that there's a standard of evidence that the Board has adopted historically and that I could appreciate that this would seem more current[,] but at the same time I think it's not necessarily information that's generally available or that the Building Department, who is the source of this department [*sic*], provides in terms of these calculations."

Hart then asked for leave to file a post-hearing brief on the issue, since "it wasn't brought up earlier" and "was only brought up here in summary and now you're going to be using it as a—to bolster her evidence." The hearing officer responded, "I'm using it because this is what I'm supposed—one of the documents I'm supposed to be using," adding "I hadn't known about it before

today but anyway I'm going to use it." <sup>9</sup> Without a definitive response on the briefing request, the hearing officer closed "the record."

A week later, Owner filed a post-hearing brief. Owner first pointed out that then operative Oakland Municipal Code section 8.22.030 specified, "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" (Oak. Mun. Code, ch. 8.22, § 8.22.030, subd. (B)(2)(b), italics added), and maintained that while Table A was such a table, Table B was not. To illustrate and reinforce this point, Owner attached copies of not only what the parties had referred to as Tables A and B, but also a document Owner referred to as "Table C," entitled "Residential Building Minimum Valuation Data," effective February 1, 2001, and bearing the official signature of a city building official. Owner went on to assert "no evidence" had been presented to either authenticate or lay a foundation that the document being referred to as Table B (entitled "Quarterly Cost Indexes (1926=100)") was a table "issued by the chief building inspector." Further, because Tenants had not provided this document prior to the hearing, and because the tenants' counsel, while examining Harlan, stated several times she was not seeking to introduce the document into evidence, Owner had been deprived of the opportunity both to cross-examine Harlan and present additional evidence on the issue. Finally, Owner asserted taking "notice" of the document during closing summation

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<sup>9</sup> The hearing officer did not explain why he concluded Table B was a document he was "supposed to be using." But presumably it was in light of the three hearing decisions to which the tenants' counsel had referred. There is no indication in the record that the hearing officer read these decisions, or that the Owner's representative or attorney had been able to review them.

had been improper, as the document was being used for its evidentiary value and it did not constitute a “fact or matter that is commonly agreed upon.”

A little more than two weeks later, the hearing officer issued his decision. Under a sub-heading entitled “Building Services Evaluation Tables,” (underscoring omitted) the decision stated:

“The tenant requested the attendance of the City Building Services supervisor to testify with regard to how the City determines the present cost of new construction for the issuance of building permits. David Harlan, the Engineering Manager of the Bureau of Building appeared and testified at the Hearing. Mr. Harlan testified that his duties include oversight of all permit issuance, records management, and plan checking. He further testified that the City currently uses the table that was effective on August 1, 2009. A copy of this document is attached as Table ‘A.’ Official Notice is taken of two other documents issued by the City Building Services agency: ‘Quarterly Cost Indexes (1926=100),’ a copy of which is attached as Table ‘B,’ and ‘Residential Building Minimum Evaluation Data,’ a copy of which is attached as Table ‘C.’” (Fn. Omitted.)

Under a sub-heading entitled, “The Calculation,” (underscoring omitted) the decision stated in pertinent part:

“. . . The Tables referenced in this Decision were all issued by the City Building Services agency.

“Table ‘A’ lists square foot construction costs, effective August 1, 2009. However, since the construction in this case occurred in the year 2014, and costs have risen since that time, it is proper to increase the cost shown on the 2009 Table. The Building Services agency has recognized this fact, and therefore issued a document entitled ‘Quarterly Cost Indexes (1926=100)’ (Table ‘B’).

“These tables are used as follows: (1) On Table ‘B,’ determine the number for the year of construction, geographical district, and type of construction; (2) Divide this number by the number in the same category for the year 2009. The resulting fraction 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 hearing officer alternatively ruled that even if the “square footage cost on the 2009 Table were used,” the expenditures still did not meet the 50 percent requirement. He arrived at this conclusion based on a total square footage of 14,338, a number that included the square footage of the balconies. He then used a single construction cost number for the entire square footage, thus equating the cost of reconstructing the balconies with that of reconstructing interior living spaces.

Owner timely filed an administrative appeal raising, among other issues, the hearing officer’s evidentiary use of Table B, and his total square footage number and use of a single per square foot construction cost number. In support, Owner attached several documents to its appeal notice, including an additional document Owner referred to as “Table E,” entitled “City of Oakland Building Services Construction Valuation For Building Permits Effective February 5, 2007.” (Fn. omitted.)

The Board affirmed on the ground “any error in considering the document addressing inflation adjustments to be applied to the table . . . would not change the result.”

Owner timely filed an administrative writ proceeding. The trial court granted the petition.

The court (Judge Kimberly Colwell) first ruled the document the parties and the hearing officer referred to as Table B was not a table “issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” It further ruled that even if the language of the ordinance allowed its use, the city had not made the document readily accessible to the public and thus the document could not be used to essentially sandbag owners who had made substantial property

improvements. The court (Judge Jeffery Brand) reaffirmed these rulings in the course of denying a motion for reconsideration.

We agree that the document referred to as Table B is not a table “issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” This is illustrated by a comparison of the documents Owner attached to its post-administrative hearing brief and referred to as Tables A, B and C, and which the hearing officer, in turn, attached to his decision, as well as the document referred to as Table E, which Owner attached to its administrative appeal notice.

Table A bears the following heading:

“City of Oakland	Community Economic Development Agency
“Building Services	Dalziel Administration Building
“Construction Valuation	250 Frank Ogawa Plaza–2nd Floor
“For Building Permits	Oakland, CA 94612
“Effective Aug. 1, 2009	510-238-3891.” (Fns. omitted.)

At the bottom of the document there is a website address for direct access to the document: \\Ceda=servers\ Building Permit Counter\COUNTER FORMS\Forms 2009\_2010(Building valuation) Aug 1 2009. Thus, this document bears all the indicia of a city document and, specifically, of a table “issued by the chief building inspector.” And Harlan confirmed, “Yes, that’s the table that we currently use.”

Notably, Table A also includes a footnote, footnote 1, in its heading, following “Construction Valuation.” This footnote states: “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).” Other footnotes to column headings also provide for specific adjustments. For example, footnote 2 states: “Hillside construction=slope >20%; multiply by

additional 1.3 multiplier.” Footnote 3 states: “Remodel Function of New Construction is a 0.52 multiplier.” In addition, Table A includes a column on its far right side entitled “Marshall & Swift 3Q 7’09 [¶] Section pg (Class/Type).” Below that is a column of several dozen references, such as “Section 12 pg 25 (C/e).” It is therefore apparent the building services department, indeed, makes use of data from private sources, such as Marshall & Swift. But, as Table A also reflects, the department goes on to determine and specify exactly what multipliers are to be used for city purposes.

Table E bears a heading nearly the identical to that of Table A, but specifying an earlier effective date:

“City of Oakland	Community Economic Development Agency
“Building Services	Dalziel Administration Building
“Construction Valuation	250 Frank Ogawa Plaza–2nd Floor
“For Building Permits	Oakland, CA 94612
“Effective February 5, 2007	510-238-3891.” (Fns. omitted.)

It also bears, at the foot of the document, a website address for direct access to the document: \\Ceda-server3\building\Permit Counter\Permit FY06\Building valuation. Thus, like Table A, Table E bears all the indicia of a table “issued by the chief building inspector.”

Although Table E also has footnotes, none make reference to any multiplier. Nor does Table E contain an additional column of references to Marshall & Swift.

Table C is similarly entitled “City of Oakland Residential Building Minimum Valuation Data.” Immediately below the heading, the document is expressly “Approved by” a signature by Calvin N. Wong, “Building Official,” and specifically states it was “effective February 1, 2001.” It also bears, at

the foot of the document, a web address for direct access to the document: “CARR\My documents\Forms\valuation-residential.” Thus, Table C again bears all the indicia of a table “issued by the chief building inspector.”

Table C also includes a prefatory paragraph similar to footnote one in Table A, stating: “The following building valuation data are based on cost and value reported in ‘Marshal Valuation Services’ published by Marshall and Swift and dated December 2000 with cost multiplier of 1.07 and local multiplier of 1.32.” This again reflects that the building services department does use data from private sources, such as Marshall & Swift, but also determines and specifies exactly what multiplier is appropriate and is to be used for city purposes.

In contrast to Tables A (effective 2009), E (effective 2007) and C (effective 2001), Table B bears the caption “Quarterly Cost Indexes (1926=100)” and states in the upper right hand corner it is “Section 98 Page 7,” followed by the date “October 2014.” The footer states: “Marshall Valuation Service,” (capitalization omitted) followed by a disclaimer that the “the data included on this page becomes obsolete after update delivery, scheduled for January 2015.” (Italics omitted.) Below that is a copyright symbol, identifying “2014 CoreLogic,® Inc. and its licensors, all rights reserved.” Plainly, this is not a city document.

Tenants maintain the language of the rent adjustment ordinance—“tables issued by the chief building inspector”—should be read to mean any document that can be characterized as a “table” and is “used” by the building department. Not only would such a construction be a departure from the plain language of the ordinance (see *MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083 [words of a statute are generally to be given “‘a plain and commonsense meaning’”]),

such a construction would embrace any number of outside resources, an untenable reading given the specific language of the ordinance. (*Ibid.* [courts are to “ “interpret legislation reasonably and . . . attempt to give effect to the apparent purpose of the statute” ’”].)

It is also understandable why the City specified that the comparative construction cost number was to be “determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.” This provided a standard measure for construction costs that was easily applied. It also avoided the problem to which Harlan testified, that the exact cost of construction is ultimately a matter between the owner/developer and the contractor(s)/supplier(s), and not something in which the building services department gets involved. Rather, for its purposes, the department uses its own construction valuation table, which it periodically updates and which often, but not always, reflects the use of data from privately published sources.

Tenants claim it makes no sense and would be unfair to use Table A, effective August 1, 2009, to determine a 2014 comparative building cost number. As we have discussed, the record reflects that the building services department regularly updated its construction valuation table—in 2001, 2007, and 2009. It is not our role to effectively rewrite a local rent control ordinance because the department assertedly failed to update its 2009 table sooner than it did.<sup>10</sup> (See *In re I.A.* (2019) 40 Cal.App.5th 19, 23 [appellate court may not “ “rewrite the clear language of [a] statute to broaden the

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<sup>10</sup> We note that attached to a declaration by Harlan—submitted by the City in opposition to the writ petition but excluded by the trial court under section 1094.5, subdivision (e)—is another table identical in format to Table A, but with an effective date of May 1, 2015. Tenants have not challenged the trial court’s evidentiary ruling excluding the declaration.

statute's application" ' '); *L.G. v. M.B.*, *supra*, 25 Cal.App.5th at p. 227 ["court may not disregard the plain language of a statute just because the consequences of a literal interpretation are 'troubling' or because the court believes that a different approach would be better"].)

Further, Tenants have simply assumed, without any *evidentiary* basis, that using Table A would yield an unfairly skewed comparative construction cost number. Their witness, Harlan, refused to offer any such opinion, and no other *evidence* was presented on the issue. We also observe that since the department's construction valuation table is a revenue generating publication, as it determines building permit fees, it is equally reasonable to assume the department had, and continues to have, every incentive to ensure the version of the table in use is reasonably current and, at the time, had concluded no update was warranted.

Finally, Tenants refer to five administrative hearing decisions, copies of which were provided to the trial court by the City, in which varying versions of the Marshall & Swift quarterly indices were used. As we have recounted, during summation in the administrative hearing, the tenants' attorney referred to three of these decisions.

On appeal, Tenants characterize these hearing decisions as an administrative interpretation of what constitutes a "table[] issued by the chief building inspector" that should be given deference.

Four of these hearing decisions were issued by a single hearing officer. In each, the hearing officer used a city construction valuation table (e.g., Tables A, E, C) that was *not* in effect for the period during which the rehabilitation work was done, but was in effect during a *later* period of time.<sup>11</sup>

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<sup>11</sup> In *Young v. Beasley* (a decision dated June 13, 2008), the construction work was done between 1998 and 2000, but the hearing officer

Stating this was “unfair” to the owner because costs had increased, the hearing officer then used varying versions of the Marshall & Swift quarterly cost indices to adjust the construction costs set forth in the more recent tables downward. What is immediately clear is that the hearing officer used the incorrect construction valuation table to begin with—as the ordinance required use of the table “issued by the chief building inspector *applicable for the time period when the substantial rehabilitation was completed,*” not a version of the table applicable during a later time period. The record before us does not reflect why this occurred. Nor does it indicate whether, given the use of plainly inapplicable valuation tables, the parties agreed to using indices to adjust the cost number derived from these inapplicable tables downward.

The remaining decision is one by the hearing officer who decided the instant administrative matter, issued a little over two weeks after he issued his decision in this matter. In short, the hearing officer reemployed, almost verbatim, the approach he had used only weeks earlier here.

Accordingly, these hearing decisions carry little weight as an interpretative matter. “How much weight to accord an agency’s construction is “situational,” and greater weight may be appropriate when an agency has a “comparative interpretive advantage over the courts,” as when “the legal

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used the version of the department’s valuation table dated February 5, 2007. In *Weinberg v. Tenant* (a decision dated December 3, 2013), the construction work was done in 1991-1992, but the hearing officer used the version of the department’s valuation table dated August 1, 2009. In *Promes v. Fehr* (a decision dated December 16, 2013), the construction work was done between 2003-2004, but the hearing officer used the version of the department’s valuation table dated February 1, 2007. In *Cordaro v. Tenants* (a decision dated July 18, 2017), the construction work was done in 2010, but the hearing officer used a version of the department’s valuation table dated February 1, 2017.

text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.’ ” ’ ” ( *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 911 (*Boling*)). The ordinance language at issue here is not technical, obscure, or complex. Furthermore, the four decisions by the one hearing officer all involved a set of circumstances unlike that here, and in the absence of the records in those matters, we are at a loss as to why the hearing officer used versions of the City’s construction valuation table that were *not in effect* at the time of the reconstruction work but were in effect for a later time period. We likewise have no way of knowing what the hearing officer and the parties may have discussed in terms of adjusting the cost numbers using Marshall & Swift indices. The fifth decision, by the same hearing officer who presided here, barely two weeks after his decision in this case, likewise is of scant interpretative significance.

In any case, the interpretation of a local ordinance is a question of law, ultimately committed to the courts. (*Boling, supra*, 5 Cal.5th at p. 911.) And for the reasons we have discussed, we agree with the trial court that the privately published Marshall & Swift quarterly cost indices are not “tables issued by the chief building inspector,” and that the hearing officer erred in using what has been referred to as Table B for evidentiary purposes to determine the comparative building cost.<sup>12</sup>

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<sup>12</sup> We therefore need not, and do not, consider the trial court’s additional ruling that even if the ordinance did permit utilization of such document, its use, on this record, impinged on the Owner’s due process rights. That said, the manner in which tenants’ counsel deployed and then argued the evidentiary value of Table B was improper. Likewise, the hearing officer’s about-face from its prior ruling, allowing use of Table B only to refresh Harlan’s recollection, and belated acceptance of Table B for

In their appellant's opening brief, Tenants made no follow-up argument that even if the trial court's ruling as to Table B was correct, reversal is nevertheless required because even if Table A were used to determine the comparative construction cost (and even if different square footage costs were used for the interior and balcony spaces), Owner's rehabilitation costs did not meet the 50 percent requirement. However, in their reply brief, Tenants devoted four pages to advancing this argument. It is well-established that an appellate court generally will not consider arguments raised for the first time in a reply brief, and we decline to do so here. (See *WorldMark, The Club v. Wyndham Resort Development Corp.* (2010) 187 Cal.App.4th 1017, 1030, fn. 7 ["Arguments raised for the first time in the reply brief are untimely and may be disregarded."])

Indeed, Tenants have not, in advancing this new argument in support of reversal, been candid about the record. This new argument turns on the total amount Owner spent on rehabilitation costs. As the following procedural recitation reflects, it is apparent to us that the trial court viewed the cost issue that had been raised by Owner as having been resolved by a concession by the City.

In its administrative appeal, Owner asserted the hearing officer had made a "calculation error"—specifically, that the total amount paid to the principal contractor (Martin Gallagher Construction, Inc.) set forth in the hearing officer's decision was off by \$26,000, and that the correct amount paid to the contractor, as shown by invoices and proofs of payment, was \$857,596, rather than \$831,597 as stated in the decision. The Board did not address the issue, since it upheld the decision on another ground.

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evidentiary use during summation after evidence was concluded, is also of significant concern.

Owner continued to raise the asserted \$26,000 calculation error in the trial court.

In their opposition to the writ petition, Tenants included a half-page argument that the hearing officer had “considered” the invoices pertaining to that contractor’s work, pointing out the hearing officer’s decision “listed” the pertinent exhibits. Tenants did not respond, however, to the Owner’s point—that the amounts set forth in those exhibits did not add up to the number in the hearing officer’s decision, and that that number was short by \$26,000.<sup>13</sup>

The City, however, did address the Owner’s claim of a computational error and conceded “the invoices that the hearing officer used to reach this amount actually total \$857,597—as Hyde Street argues. (Tab 26 AR 122 (footnote 4).)”

The trial court, under a separate heading entitled “\$26,000 IN INVOICES,” then stated in its decision: “The City acknowledges that the Hearing Officer and Board appear to have made a calculation error.” It observed “[t]his error did not affect the Board’s decision.” Likewise, “[t]he apparent \$26,000 calculation error does not affect the court’s decision on the petition.”

It would have made no sense for the trial court to have spent many pages addressing the merits of the principle issues—the use of Table B and

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<sup>13</sup> This is basically the same argument they have belatedly advanced in their reply brief—that the hearing officer identified the pertinent invoices and thus “considered” them. They then baldly assert he “found (correctly)” total expenditures of \$850,441 and point out half of this amount is less than 50 percent of the Table A comparative cost number. They never, however, address the real issue—that the hearing officer made a mistake in adding up these invoices. Rather, they quibble over the Owner’s use of the word “disallowed,” claiming the contractor’s work was not “disallowed,” pointing out, again, that the hearing officer identified and thus “considered” the pertinent invoices.

the use of a single construction cost number for the entire square footage—and to have issued a remand order, if this was all simply an academic exercise, as Tenants now belatedly claim, because the total rehabilitation costs do not meet the statutory requirement even assuming use of Table A and use of different cost numbers for the interior and balcony square footages.

Appellant Garcia then moved for “reconsideration.” In his 20-page, supporting memorandum, he addressed the following: the trial court’s ruling that the hearing officer had improperly used Table B, the court’s grant of the motion to augment the administrative record with the missing “Brief on Appeal” , and the ruling that the hearing officer, and Board, had improperly applied a single construction cost number to the entire square footage (i.e., both interior spaces and balconies). The memorandum concluded with an assertion that if the trial court persisted in its rulings, it would “cause the court to be disqualified” under Code of Civil Procedure section 170.1. Notably, the motion for reconsideration also did not advance the claim that even if the challenged rulings were all accepted as correct, no writ should issue because Owner’s total rehabilitation costs still did not meet the exemption requirement.

As Owner pointed out in opposition, the motion for reconsideration did not comply with statutory requirements, as Garcia was merely taking issue with the merits of the trial court’s decision and rearguing the case. (Code Civ. Proc., § 1008; *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255 [motion for reconsideration must be “ ‘ ‘based upon new or different facts, circumstances, or law” ’ ’].).

The trial court denied the motion for reconsideration as procedurally improper (no “new law or fact”), and further ruled that even if the court reconsidered the issues, it would reach the same conclusions.

In sum, in light of the above, and in light of the trial court’s broad remand order, it seems apparent to us that the trial court viewed the computational error issue as having been resolved by the City’s concession and thus of no consequence to its order remanding the matter for reconsideration in light of its rulings.<sup>14</sup>

### DISPOSITION

The trial court’s judgment is AFFIRMED.

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<sup>14</sup> We note that in the “Statement of the Facts” (some capitalization omitted) in its respondent’s brief, Owner discussed the evidence supporting its exemption petition and stated the hearing officer “understated the amount spent by the owner,” specifically the amount paid to Martin Gallagher Construction Inc., by \$26,000. (Italics & boldface omitted.) Given our recitation above, this statement is understandable. Owner made no further mention of the point and devoted the “Argument” section of its respondent’s brief to addressing the Table B ruling and augmentation order challenged by Tenants.

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Banke, J.

We concur:

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Margulies, Acting P.J.

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Sanchez, J.

A156463, Hyde Street CNML Props., LLP et al. v. City of Oakland's  
Department of Housing and Community Development Rent Adjustment  
Program

CITY OF OAKLAND



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

Department of Housing and Community Development  
Rent Adjustment Program

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**HEARING DECISION**

**RECONSIDERATION OF BOARD APPEAL DECISION  
AFTER COURT JUDGMENT**

**CASE NUMBER:** L14-0065  
**CASE NAME:** 525, 655 Hyde Street CNML Properties, LLC v. Tenants  
**PROPERTY ADDRESS:** 3921 Harrison St., Oakland, CA

**PROCEDURAL BACKGROUND**

A Hearing Decision in this case was issued on May 29, 2015, denying the owner's petition for a Certificate of Exemption based on substantial rehabilitation. The owner appealed.

An Appeal Hearing was held on December 8, 2016. The Housing, Residential, Rent and Relocation Board (the Board) affirmed the Hearing Decision, and separately affirmed the portion of the Hearing Decision that included the decks and balconies in the "building area" when performing the substantial rehabilitation calculation. The Appeal Decision in L14-0065 was issued on March 7, 2017. The owner filed a Petition for Writ of Administrative Mandamus in the Alameda County Superior Court (Case No. RG17-862841) challenging the Board's Appeal Decision.

On December 12, 2018, the Superior Court entered a Judgment Granting the Writ of Administrative Mandamus, setting aside and vacating the Appeal Decision and the Hearing Decision in L14-0065. The Superior Court ordered the City of Oakland Rent Adjustment Program to "**reconsider the Appeal Decision L14-0065 in its entirety in light of the Court's Opinions, Order and this Judgment.**" (Emphasis added.)

The tenants filed a motion for reconsideration. The motion was denied. The tenants appealed the Superior Court's Judgment and, on February 26, 2021, the Court of Appeals issued an Opinion affirming the Superior Court's Judgment of December 12, 2018.

The original Hearing Officer retired and this case was re-assigned to a different Hearing Officer. This Hearing Decision is issued based on the case record and in

conformity with the Superior Court's Opinions, Order, and Judgment of December 12, 2018.

### **SUMMARY OF DECISION**

The Owner's Petition is granted. The subject property is exempt from the Rent Adjustment Ordinance as substantially rehabilitated.

### **EVIDENCE**

#### **Background**

On November 14, 2014, the owner filed a Petition for Certificate of Exemption on the ground of substantial rehabilitation. The subject property is a residential building consisting of a total of sixteen (16) residential units and the current owner acquired the property in November of 2013.<sup>1</sup> The rehabilitation project occurred in 2014.

#### **Square Footage**

The public property profile and the Alameda County Assessor's Office Property Characteristics for the subject property and APN 12-929-11 shows that the square footage is 13,336 square feet.<sup>2</sup>

Martin Gallagher, a general contractor whose firm did most of the work on the construction project, testified that the total square footage of the building (13,336) does not include the 16 decks on the building, which were part of the construction project and expense. He testified that 15 of the decks are 12 x 4.5 square feet (totaling 810 square feet) and the penthouse deck is about 16 x 12 square feet (192). The total square footage of the decks and balconies is 1,002 square feet.

#### **Type of Construction**

Gallagher testified that the subject building is of wood frame construction, which corresponds to Type V-1 identified on the City of Oakland Certificate of Occupancy issued for the subject building.<sup>3</sup>

#### **Construction Expenses**

The original Hearing Officer calculated a total of \$850,441.00 as the cost of the rehabilitation project. The Court stated, and the City of Oakland admitted, that the Hearing Officer made a calculation error by about \$26,000 when he added up the eligible expenses. Accordingly, the submitted invoices and proofs of payments are recalculated in this Hearing Decision to correct the calculation error.

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<sup>1</sup> Exhibits 1-3 (Grant Deed)

<sup>2</sup> Exhibits 4 and 5

<sup>3</sup> Exhibit 6

The amounts the owner spent on the rehabilitation project, as stated by the prior Hearing Officer, based on the submitted invoices and proofs of payments, broken down by each contractor, are as follows:

Martin Gallagher Construction, Inc.	\$857,956.66 <sup>4</sup>
Kelly-Moore Paint	738.87 <sup>5</sup>
Bay Area Carpets	1,623.31 <sup>6</sup>
Craig Bull Construction	2,964.25 <sup>7</sup>
Advocate Painting	2,030.00 <sup>8</sup>
Raynard's Appliance Repair	194.32 <sup>9</sup>
Just Plumbing	9,660.00 <sup>10</sup>
Globe Plumbing Supply Co.	438.58 <sup>11</sup>
Oak Leaf Painting	1,195.00 <sup>12</sup>
TOTAL:	<u>\$876,800.99</u>

The total amount of \$876,800.99 is a recalculation of the sums of the amounts listed above, which leads to the correct figure of \$876,800.99.

In addition, the record also included invoices and proofs of payments for certain expenses that the owner submitted, but are not considered part of the rehabilitation project. As stated by the prior Hearing Officer, those expenses include routine cleaning and maintenance of the common areas, replacement of light bulbs in the common areas, repairs or replacement of broken appliances, snaking out clogged drains, vandalized copper pipes, and tree cutting. These expenses total \$9,541.89<sup>13</sup> and are not included in the total amount above.

The total amount of eligible expenses the owner spent on the rehabilitation project is \$876,800.99.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Substantial Rehabilitation

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

<sup>4</sup> Exhibits 18, 19, 28, 29, 43-54, 57-81, 96-98, 117-129, 132, 133

<sup>5</sup> Exhibits 20-23, 90-92, 107-109

<sup>6</sup> Exhibits 24, 25, 84, 85

<sup>7</sup> Exhibits 37 and 38

<sup>8</sup> Exhibits 41 and 42

<sup>9</sup> Exhibits 86 and 87

<sup>10</sup> Exhibits 35, 36, 88, 89, 99, 100, 112-114, 130, 131

<sup>11</sup> Exhibits 101, 102, 110, 111

<sup>12</sup> Exhibits 105 and 106

<sup>13</sup> Exhibits 26, 27, 30-36, 39, 40, 55, 56, 82, 83, 93, 95, 103, 104, 115, 116, 134-137

- 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.<sup>14</sup>

At the original hearing the Hearing Officer and the Board incorporated Table B - Quarterly Cost Indexes (Table "B") from Marshall Valuation Services - in the calculation of the cost of the rehabilitation project. This is not a table issued by the Chief Building Inspector as mandated by the Ordinance.

The Court found that the Board erred as a matter of law by incorporating Table B into the Ordinance as the substantive standard when Table B was not "issued by the chief building inspector." Additionally, the Court held that Table B was not an "other definable source" the public used and that the Ordinance did not give the owner a fair warning that Table A was not the standard against which the evidence of expense would be measured and that Table A would be modified by Table B.

The Court held that the record showed that Table A, issued August 1, 2009, was issued by the chief building inspector. City Engineering Manager Harlan testified that Table A was the latest table issued by the City of Oakland and was then the most recent and currently used Table. Accordingly, only Table A should have been used in the calculation and is used in the calculation in this Hearing Decision.

#### Square Footage

The Court held that the Board made a legal error when it treated both the building space (13,336) and the deck/balcony space (1,002) the same as Apartment space and applied the same cost of construction per square foot. The Court found that the original Hearing Officer and the Board both misapplied the law by focusing on potential use of the balconies rather than their cost of construction and by not giving effect to the specific description for "Elevated Decks & Balconies."

Therefore, this Hearing Decision corrects this error and calculates the Apartment building space and the deck/balcony space separately and for the cost of construction amount specified for each category.

#### Calculation

The attached Table A states that effective August 1, 2009, the cost of new construction of Apartment buildings of more than 2 units, Type V – wood frame

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<sup>14</sup> O.M.C. Section 8.22.030(B)(2)

construction, is \$127.00 per square foot. Table A also states that the cost of newly constructed "Elevated Decks and Balconies" is \$41.16 per square foot.

To determine if the owner is entitled to the exemption, the following calculation is necessary: multiply the building square footage (13,336) by \$127.00, then multiply the square footage of the decks/balconies (1,002) by \$41.16. Add these amounts together, and divide that result by two (2). The calculation is as follows:

$$\begin{aligned}
 13,336 \times \$127.00 &= \$1,693,672.00 \\
 1,002 \times \$ 41.16 &= \$ \underline{41,242.32} \\
 \text{Total: } & \$1,734,914.32 \text{ divided by } 2 = \$867,457.16
 \end{aligned}$$

If the owner spent at least \$867,457.16 on the construction rehabilitation project, the building is exempt from the Rent Ordinance.

The owner provided invoices and proof of payments of eligible expenses showing that he spent \$876,800.99 on the rehabilitation project. Therefore, the subject property has been "substantially rehabilitated" and the rental units in the building are exempt from the Rent Ordinance.

**ORDER**

1. Petition L14-0065 is granted.
2. The subject property is exempt from the Rent Adjustment Program as a "substantially rehabilitated" building.
3. The subject property is not exempt from the Rent Adjustment Program Service Fee because it is still subject to the Just Cause for Eviction Ordinance.
4. The Certification of Exemption will be issued after expiration of the appeal period.

Right to Appeal: This decision is the final decision of the Rent Adjustment Program (RAP). Either party may appeal by filing a properly completed RAP appeal form that must be filed within 15 days after service of the decision.<sup>15</sup> The date of service is shown on the attached Proof of Service.

Dated: September 30, 2021



\_\_\_\_\_  
Linda M. Moroz, Hearing Officer  
Rent Adjustment Program

<sup>15</sup> O.M.C. §8.22.120(A)(1)

## Building Services

Construction Valuation<sup>1</sup>For Building Permits<sup>4</sup>

Effective Aug. 1, 2009

Community Economic Development Agency

Dalziel Administration Building

250 Frank Ogawa Plaza - 2nd Floor

Oakland, CA 94612

510-238-3891

TABLE A

Occ.	Description <sup>3</sup>	Construction Type	Level Ground <sup>2</sup>		Hillside Construction		Marshall & Swift 3Q 7'09 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 (100s/avg)
	Elevated Decks & Balconies	V	\$41.16	\$21.40	\$53.51	\$27.82	Section 66 pg 2 (100s/+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)

<sup>1</sup> 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)<sup>2</sup> Hillside construction = slope >20%; multiply by additional 1.3 multiplier<sup>3</sup> Remodel Function of New Construction is a 0.52 multiplier.<sup>4</sup> Separate structures or occupancies valued separately.<sup>5</sup> Separate fees assessed for E/P/M permits, R.O.W. improvements, Fire Prevention Bureau, Grading Permits, technology enhancement, records management, Excav. & Shoring.



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**

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

For Rent Adjustment Program date stamp.

**PROOF OF SERVICE**

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

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

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

I served a copy of: RESPONDENT'S RESPONSE TO APPEAL  
 (insert name of document served)  
 And Additional Documents

and (write number of attached pages) 58 attached pages (not counting the Petition or Response served or the Proof of Service) to each opposing party, whose name(s) and address(es) are listed below, by one of the following means (check one):

- a. United States mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- b. Deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as listed below.
- c. Personal Service. (1) By Hand Delivery: I personally delivered the document(s) to the person(s) at the address(es) listed below; or (2) I left the document(s) at the address(es) with some person not younger than 18 years of age.

**PERSON(S) SERVED:**

Name	Julie E. Amberg
Address	3921 Harrison Street, Unit 302,
City, State, Zip	Oakland, CA 94611

Name	Todd McMahon
Address	3921 Harrison Street, Unit 304
City, State, Zip	Oakland, CA 94611

Name	Mari Oda
Address	3921 Harrison Street, Unit 304
City, State, Zip	Oakland, CA 94611

Name	Fernando Garcia
Address	3921 Harrison Street, Unit 202
City, State, Zip	Oakland, CA 94611

Name	Kate Garcia
Address	3921 Harrison Street, Unit 202
City, State, Zip	Oakland, CA 94611

Name	Stanley L. Amberg
Address	4115 Kendal Way
City, State, Zip	Sleepy Hollow, NY 10591

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 11/23/21 (insert date served).

**Fabienne Lopez**

PRINT YOUR NAME

DocuSigned by:  
*Fabienne Lopez*

2DB42B3ADB114CF...  
SIGNATURE

11/23/21  
DATE

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**525, 655 Hyde Street CNML Properties, LLC v. Tenants**  
**Case No. L14-0065**

**TENANT AMBERG REPLY TO OWNER’S RESPONSE TO APPEAL**

This is tenant/appellant Julie E. Amberg (“Tenant”) Reply to Mandana Properties (“Owner”) Response To Appeal.

A principal issue in Tenant’s appeal is whether the September 30, 2021 Hearing Decision deprives Tenant of due process of law. A principal fact question underlying the due process issue is whether the proper construction cost for 15 balconies is \$127 per square foot or \$41.16 per square foot. If the proper cost is \$127, the property was not substantially rehabilitated. The supporting calculation is set forth in Tenant’s Explanation of Grounds For Appeal, at page 3. Owner’s Response To Appeal (“Response”) does not challenge that calculation and conclusion.

Instead, Owner’s Response asserts, at page 7, that Tenants have not been deprived of due process because their “arguments and evidence” have “already been considered” by the trial court and the RAP.

“Any arguments and evidence Appellants wish to now introduce has already been considered by the trial court and the RAP. Thus, Appellants have not been denied their due process rights.”

Owner’s statement that Tenant’s arguments and evidence have already been considered is not correct. Owner’s statement is contradicted by the following undisputed facts of record.

- In the original hearing of this case, the owner never challenged \$127 per square foot as being the proper construction cost for the balconies. The owner did not assert that \$41.16 was the correct cost.
- In the owner’s appeal of the original Hearing Decision, the owner never served Tenant with a brief or any other document that asserted \$41.16 as the correct cost.
- In the RAP’s files of the owner’s appeal of the original Hearing Decision, there is no brief or other document filed by the owner that asserted \$41.16 as the correct cost.

- At the oral argument of the owner's appeal, owner did not argue that \$41.16 was the correct cost.

Thus, throughout the RAP's proceedings, Tenant had no knowledge that \$41.16 was an issue in the case. Tenant had a justifiable belief that owner was *not* asserting \$41.16 as the balconies construction cost. Tenant therefore had no need or reason to offer arguments or evidence in the RAP in support of \$127 as being the correct construction cost.

Having lost in the RAP, the owner filed a petition in the Superior Court of California for a writ of mandamus against the City of Oakland. The petition asserted, for the first time, that \$41.16 per square foot was the proper construction cost for the balconies.

The City of Oakland, and Tenant, argued to the Superior Court that the owner was precluded, in court, from asserting \$41.16 because the owner had not made such assertion in the RAP.

The Superior Court agreed with the City and Tenant, and the court issued a tentative opinion on July 25, 2018 which stated:

“The [RAP] Decision treated all the building space as unit space. Table A differentiated among different types of space. Table A included "R2 Apartment space" at \$127 sqft and "R3 Elevated Decks and Balconies" space at \$41.16 sqft. Petitioner argues that the Board erred as a matter of law by treating the deck space as "R2 Apartment space." **Petitioner has waived this argument.** At the hearings before the Hearing Officer and the Board, Petitioner took an all or nothing approach and argued that the calculations should exclude the deck space. **Petitioner has not identified where it argued that the deck space should have the lower \$41.16 per sqft rate.** A party cannot take an all or nothing approach in an initial factual hearing and then on review argue that the initial decision-maker failed or neglected to consider an alternative that was never proposed or argued.” (Emphasis added)

In response to the tentative opinion, the owner “found”, and offered to the court, a brief which owner alleged it had filed in the RAP on May 4, 2016 in owner's appeal of the original hearing decision. The brief purported to bear the date stamp of the RAP. The brief purported to argue that \$41.16 was the proper construction cost for the balconies.

However, and significantly, **Owner admitted to the court that Owner had not served the brief on Tenants.** This substantially prejudiced Tenant. Owner's June 18, 2015 “Appeal” document (on RAP form dated 5/29/09 and attached hereto) in L14-0065 expressly commanded, “You must serve a copy of your appeal on the opposing party(ies) or your appeal may be

dismissed.” Owner ignored that command. Owner did not serve Tenant with Owner’s May 4, 2016 appeal brief.

Moreover, **the brief was not in the RAP’s files. Nor was it logged into RAP’s activity log.** At the request of the City of Oakland, officials at the RAP conducted a search of the RAP’s files of case L14-0065 to determine whether or not the newly-found brief was in those files or had been logged into those files. After conducting the search, the RAP officials filed Declarations with the court, stating the results of the search. (Declaration of Ester Kelly Rush, August 16, 2018, attached hereto; Declaration of Keith Mason, August 16, 2018, attached hereto)

The May 4, 2016 brief was **not** in the RAP files of case L14-0065. (Rush Decl., paras. 5. 15). The May 4, 2016 brief was **not** listed in the activity log for case L14-0065. (Rush Decl., paras. 8, 11, 12, 15; Mason Decl., para. 6). Owner did not in 2018, and does not now, contest the authenticity or accuracy of those Declarations.

In short, the May 4 brief (which asserted \$41.16) was not served on Tenant and the brief was not in the RAP’s files. Those uncontroverted facts fully substantiate Tenant’s justifiable contemporaneous belief that \$41.16 was **not** an issue in the RAP proceedings in L14-0065.

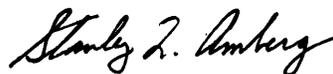
Unaware of the May 4 brief, and its assertion of \$41.16, Tenant had no need or reason to present argument or evidence in the RAP against \$41.16 and in support of \$127. Therefore, Owner is wrong when it asserts that Tenant’s argument and evidence “has already been considered” by the RAP.

Respectfully, Tenant now requests the opportunity to present such argument and evidence in the RAP. Tenant will be substantially prejudiced if it is not permitted to do so.

**CONCLUSION**

For the above-stated reasons, the Board should stay or reverse the September 30, 2021 Hearing Decision and remand the case to a hearing officer for a further hearing.

Respectfully submitted,

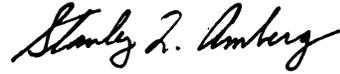


Stanley L. Amberg,  
4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
Representative for Tenant Amberg

December 6, 2021

L14-0065 Tenant Amberg Reply

I, Stanley L. Amberg, declare under penalty of perjury under the laws of the State of California that on December 6, 2021, I placed a copy of Tenant Amberg Reply To Owner's Response To Appeal, and attachments thereto, 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: Clifford E. Fried, Fried & Williams LLP, 1901 Harrison Street, 13<sup>th</sup> Floor, Oakland, CA 94612; and to the current owner of the property Ray McFadden, Mandana Properties, 4200 Park Boulevard, #130, Oakland, CA 94602.

A handwritten signature in black ink that reads "Stanley L. Amberg". The signature is written in a cursive style with a large, stylized initial 'S'.

Stanley L. Amberg

<b>City of Oakland</b> <b>Residential Rent Adjustment Program</b> 250 Frank Ogawa Plaza, Suite 5313 Oakland, California 94612 (510) 238-3721		2015 JUN 18 PM 4:52  <b>APPEAL</b>	
<b>Appellant's Name</b> 525, 655 Hyde St. CNML Properties LLC		<input checked="" type="checkbox"/> <b>Landlord</b> <input type="checkbox"/> <b>Tenant</b>	
<b>Property Address (Include Unit Number)</b> 3921 Harrison Street Oakland, CA 94611			
<b>Appellant's Mailing Address (For receipt of notices)</b> 4844 Telegraph Avenue Oakland, CA 94609		<b>Case Number</b> L14-0065  <b>Date of Decision appealed</b> 5/29/15	
<b>Name of Representative (if any)</b> Clifford E. Fried Esq. Elizabeth Hart		<b>Representative's Mailing Address (For notices)</b> Fried & Williams LLP 480 Ninth St. 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 [ 14 ]. 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 June 18, 2015, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	See attached list of 25 opposing parties along with their representative.
<b>Address</b>	
<b>City, State Zip</b>	
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	June 18, 2015
<b>SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

**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.

1 BARBARA J. PARKER, City Attorney, SBN 069722  
OTIS McGEE, JR., Chief Assistant City Attorney, SBN 071885  
2 JAMILAH A. JEFFERSON, Senior Deputy City Attorney, SBN 219027  
One Frank H. Ogawa Plaza, 6th Floor  
3 Oakland, California 94612  
Telephone: (510) 238-7686  
4 Facsimile: (510) 238-6500  
Email: jjefferson@oaklandcityattorney.org  
5 X04443: 2521188

6 Attorneys for Defendant  
CITY OF OAKLAND

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

11 525-655 HYDE STREET CNML PROPS., LLP,

12 Petitioner,

13 vs.

14 CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
15 DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 through 25,

16 Respondents.  
17

Case No. RG17862841

ASSIGNED FOR ALL PURPOSES TO  
JUDGE KIMBERLY COLWELL  
DEPARTMENT 511

**DECLARATION OF ESTHER KELLY**  
**RUSH** IN SUPPORT OF  
**RESPONDENT CITY OF OAKLAND'S**  
**OPPOSITION TO PETITIONER'S**  
**MOTION TO AUGMENT**  
**ADMINISTRATIVE RECORD**

Date: August 23, 2018  
Time: 9:00 a.m.  
Place: Dept 511

18  
19  
20 Jileun Eglin, Lexie Eglin, Angelique Johnson-  
Martinez, Suzanne Miller, Fernando Garcia,  
21 Kate Flick Garcia, Bianca Penaloza, David  
Preciado, Julie Amberg, Tyler Ritter, Marie Oda,  
22 Todd McMahon, Andrew Simkin, Jessica  
Simkin, and DOES 26 through 40,

23 Real Parties in Interest.  
24  
25  
26  
27  
28

1 I, Esther Kelly Rush, hereby declare:

2 1. I am an employee for the City of Oakland. I am currently an Administrative Assistant  
3 I for the City's Rent Adjustment Program. I have been in this position for 2.5 years. The matters  
4 set forth herein are personally known to me to be true, and if called upon, I would competently  
5 testify thereto.

6 2. My duties as an Administrative Assistant for the Rent Adjustment Program include  
7 managing incoming eviction notices, sending out copies of owner/tenant responses, managing  
8 appeal hearing scheduling before the Rent Board, receiving and completing subpoenas, and  
9 completing public record requests.

10 3. When the City Attorney's Office requested a copy of the Rent Adjustment Program  
11 file for this case, L14-0065, a staff member from our office copied the entire case file for the City  
12 Attorney's Office.

13 4. On July 26, 2018, a paralegal from the City Attorney's Office contacted me about a  
14 missing brief in the Rent Adjustment Program case L14-0065. The paralegal, Melinda Ochoa,  
15 emailed a copy of the missing brief for my review.

16 5. I immediately searched through the case file to determine if the missing brief had been  
17 submitted. I checked the file by looking at the date of the documents in the file. I did not locate the  
18 missing brief in the case file for L14-0065.

19 6. Documents from parties arrive in the Rent Adjustment Program in one of two ways. A  
20 party can bring a document directly into the housing resource center. If a party comes in person with  
21 a document, he or she date stamps the document and submits it in a drop box that the office uses to  
22 collect submissions to the record.

23 7. A staff member from the Rent Adjustment Program retrieves the drop box and distributes  
24 the submitted documents to the analyst assigned to the particular case identified on the documents.

25 8. Once the analyst receives the document, he or she reviews the document, enters it in an  
26 activity log for the case, and inserts the document into the appropriate case file. If applicable, a  
27 copy of the document is mailed to the opposing party. Typically, owner or tenant responses are  
28 mailed to the opposing party.

1           9. A party can also mail a document directly to the Rent Adjustment Program for  
2 submission. Documents that arrive through the mail are date stamped by the administrative  
3 assistant designated to receive incoming mail on a particular day.

4           10. The mailed documents are then distributed to the analyst assigned to the particular  
5 case in the same manner that documents deposited in the drop box are distributed.

6           11. Once an analyst receives a document from the mail distribution, he or she logs it in the  
7 activity log and inserts it into the appropriate case file in the same manner that he or she logs in  
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9 mailed to the opposing party. Typically, owner or tenant responses are mailed to the opposing  
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12 a particular case file. For example, an administrative assistant logs when the case file is opened  
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14 decisions, etc.) in the activity log. An analyst records any activity that they have with the case  
15 file (such as receipt of owner or tenant responses and additional documentation, etc.) in the  
16 activity log.

17           13. In 2015, at the time of the appeal in L14-0065, the Rent Adjustment Program only  
18 required appeals to be served on opposing parties. Other documentation, such as the missing  
19 brief, had to be filed in the Rent Adjustment no later than seven (7) days prior to a hearing but did  
20 not have to be served on the opposing party.

21           14. The administrative hearing for L14-0065 was on April 27, 2015. The Rent Board  
22 appeal hearing was on December 8, 2016. Between the administrative hearing and the appeal  
23 hearing, the owner (or his representative) in L14-0065 filed four documents including:

- 24           • Post Hearing Brief on Building Services Tables – May 7, 2015
- 25           • Appeal – June 18, 2015
- 26           • Owner Request to Change the Date of Appeal Hearing – May 10, 2016
- 27           • Clifford Fried Request to Change the Date of Appeal Hearing – May 10, 2016.

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**PROOF OF SERVICE**  
**525-655 Hyde St., CNML Props., v. City of Oakland Department of Housing & Community**  
**Development Rent Adjustment Program**  
**Alameda County Superior Court Case No. RG17862841**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

**DECLARATION OF ESTHER KELLY RUSH IN SUPPORT OF RESPONDENT CITY OF OAKLAND'S OPPOSITION TO PETITIONER'S MOTION TO AUGMENT ADMINISTRATIVE RECORD**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below.
- by causing personal delivery by messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing such envelope to be sent via overnight delivery by **Federal Express/** Express Mail.

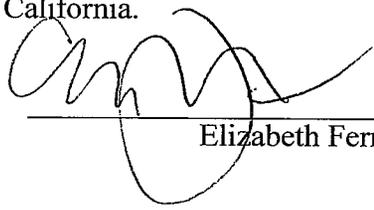
Clifford E. Fried, Esq.  
Fried & Williams, LLP  
480 9<sup>th</sup> Street  
Oakland, CA 94607  
Telephone: (510) 625-0100

*Attorney for Petitioner, 525-655 Hyde Street.*  
**CNML PROPS., LLP**

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with 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 foregoing is true and correct.

Executed on August 16, 2018, at Oakland, California.

  
\_\_\_\_\_  
Elizabeth Ferrel

1 BARBARA J. PARKER, City Attorney, SBN 069722  
OTIS McGEE, JR., Chief Assistant City Attorney, SBN 071885  
2 JAMILAH A. JEFFERSON, Senior Deputy City Attorney, SBN 219027  
One Frank H. Ogawa Plaza, 6th Floor  
3 Oakland, California 94612  
Telephone: (510) 238-7686  
4 Facsimile: (510) 238-6500  
Email: jjefferson@oaklandcityattorney.org  
5 X04443: 2521243

6 Attorneys for Defendant  
CITY OF OAKLAND  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**  
10

11 525-655 HYDE STREET CNML PROPS., LLP,

12 Petitioner,

13 vs.

14 CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
15 DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 through 25,

16 Respondents.  
17

Case No. RG17862841

ASSIGNED FOR ALL PURPOSES TO  
JUDGE KIMBERLY COLWELL  
DEPARTMENT 511

**DECLARATION OF KEITH MASON**  
**IN SUPPORT OF RESPONDENT CITY**  
**OF OAKLAND'S OPPOSITION TO**  
**PETITIONER'S MOTION TO**  
**AUGMENT ADMINISTRATIVE**  
**RECORD**

Date: August 23, 2018  
Time: 9:00 a.m.  
Place: Dept 511

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20 Jileun Eglin, Lexie Eglin, Angelique Johnson-  
Martinez, Suzanne Miller, Fernando Garcia,  
21 Kate Flick Garcia, Bianca Penaloza, David  
Preciado, Julie Amberg, Tyler Ritter, Marie Oda,  
22 Todd McMahon, Andrew Simkin, Jessica  
Simkin, and DOES 26 through 40,

23 Real Parties in Interest.  
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1 I, Keith Mason, hereby declare:

2 1. I am an employee for the City of Oakland. I am currently a Program Analyst II for the  
3 City's Rent Adjustment Program. I have been in this position for 21 years. The matters set forth  
4 herein are personally known to me to be true, and if called upon, I would competently testify  
5 thereto.

6 2. My duties as Program Analyst for the Rent Adjustment Program include receiving  
7 incoming documents and telephone calls regarding assigned cases, logging in submissions to case  
8 files, and answering questions from the public during drop in hours or telephone hours.

9 3. Recently, I spoke to Esther Kelly Rush, an administrative assistant in our office, about  
10 a missing brief in the L14-0065 Rent Adjustment Program case file. I reviewed a copy of the  
11 missing brief.

12 4. I immediately searched the activity log for this case file. The activity log is used by the  
13 Rent Adjustment Program staff members who work on a particular case file. For example, an  
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17 tenant responses and additional documentation, etc.) in the activity log. For example, once I  
18 receive a document, I review it, enter it in the activity log for the case, and insert the document into  
19 the appropriate case file.

20 6. I did not see a notation for the missing brief in the activity log for L14-0065.

21  
22 I declare under penalty of perjury under the laws of the State of California and the United  
23 States of America that the foregoing is true and correct.

24 Executed this 16th day of August, 2018 in Oakland, California.

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26 \_\_\_\_\_  
27 KEITH MASON  
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**Development Rent Adjustment Program**  
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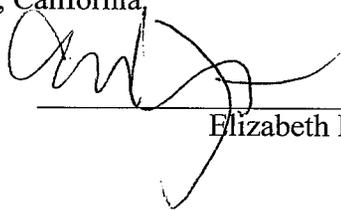
Clifford E. Fried, Esq.  
Fried & Williams, LLP  
480 9<sup>th</sup> Street  
Oakland, CA 94607  
Telephone: (510) 625-0100

***Attorney for Petitioner, 525-655 Hyde Street.***  
***CNML PROPS., LLP***

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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.

Executed on August 16, 2018, at Oakland, California,

  
\_\_\_\_\_  
Elizabeth Ferrel

**CITY OF OAKLAND**  
**Department of Housing and Community Development**

**RENT ADJUSTMENT PROGRAM**

**525, 655 Hyde Street CNML Properties, LLC v. Tenants**  
**Case No. L14-0065**

**TENANT McMAHON-ODA REPLY TO OWNER'S RESPONSE TO APPEAL**

This is tenant/appellant Todd McMahon and Mari Oda ("Tenant") Reply to Mandana Properties ("Owner") Response To Appeal.

A principal issue in Tenant's appeal is whether the September 30, 2021 Hearing Decision deprives Tenant of due process of law. A principal fact question underlying the due process issue is whether the proper construction cost for 15 balconies is \$127 per square foot or \$41.16 per square foot. If the proper cost is \$127, the property was not substantially rehabilitated. The supporting calculation is set forth in Tenant's Explanation of Grounds For Appeal, at page 3. Owner's Response To Appeal ("Response") does not challenge that calculation and conclusion.

Instead, Owner's Response asserts, at page 7, that Tenants have not been deprived of due process because their "arguments and evidence" have "already been considered" by the trial court and the RAP.

"Any arguments and evidence Appellants wish to now introduce has already been considered by the trial court and the RAP. Thus, Appellants have not been denied their due process rights."

Owner's statement that Tenant's arguments and evidence have already been considered is not correct. Owner's statement is contradicted by the following undisputed facts of record.

- In the original hearing of this case, the owner never challenged \$127 per square foot as being the proper construction cost for the balconies. The owner did not assert that \$41.16 was the correct cost.
- In the owner's appeal of the original Hearing Decision, the owner never served Tenant with a brief or any other document that asserted \$41.16 as the correct cost.
- In the RAP's files of the owner's appeal of the original Hearing Decision, there is no brief or other document filed by the owner that asserted \$41.16 as the correct cost.

- At the oral argument of the owner's appeal, the owner did not argue that \$41.16 was the correct cost.

Thus, throughout the RAP's proceedings, Tenant had no knowledge that \$41.16 was an issue in the case. Tenant had a justifiable belief that owner was *not* asserting \$41.16 as the balconies construction cost. Tenant therefore had no need or reason to offer arguments or evidence in the RAP in support of \$127 as being the correct construction cost.

Having lost in the RAP, the owner filed a petition in the Superior Court of California for a writ of mandamus against the City of Oakland. The petition asserted, for the first time, that \$41.16 per square foot was the proper construction cost for the balconies.

The City of Oakland, and Tenant, argued to the Superior Court that the owner was precluded, in court, from asserting \$41.16 because the owner had not made such assertion in the RAP.

The Superior Court agreed with the City and Tenant, and the court issued a tentative opinion on July 25, 2018 which stated:

“The [RAP] Decision treated all the building space as unit space. Table A differentiated among different types of space. Table A included "R2 Apartment space" at \$127 sqft and "R3 Elevated Decks and Balconies" space at \$41.16 sqft. Petitioner argues that the Board erred as a matter of law by treating the deck space as "R2 Apartment space." **Petitioner has waived this argument.** At the hearings before the Hearing Officer and the Board, Petitioner took an all or nothing approach and argued that the calculations should exclude the deck space. **Petitioner has not identified where it argued that the deck space should have the lower \$41.16 per sqft rate.** A party cannot take an all or nothing approach in an initial factual hearing and then on review argue that the initial decision-maker failed or neglected to consider an alternative that was never proposed or argued.” (Emphasis added)

In response to the tentative opinion, the owner “found”, and offered to the court, a brief which owner alleged it had filed in the RAP on May 4, 2016 in owner's appeal of the original hearing decision. The brief purported to bear the date stamp of the RAP. The brief purported to argue that \$41.16 was the proper construction cost for the balconies.

However, and significantly, **Owner admitted to the court that the owner had not served the brief on Tenants.** This substantially prejudiced Tenant. Owner's June 18, 2015 “Appeal” document (on RAP form dated 5/29/09 and attached hereto) in L14-0065 expressly commanded, “You must serve a copy of your appeal on the opposing party(ies) or your appeal

may be dismissed.” Owner ignored that command. Owner did not serve Tenant with Owner’s May 4, 2016 appeal brief.

Moreover, **the brief was not in the RAP’s files. Nor was it logged into RAP’s activity log.** At the request of the City of Oakland, officials at the RAP conducted a search of the RAP’s files of case L14-0065 to determine whether or not the newly-found brief was in those files or had been logged into those files. After conducting the search, the RAP officials filed Declarations with the court, stating the results of the search. (Declaration of Ester Kelly Rush, August 16, 2018, attached hereto; Declaration of Keith Mason, August 16, 2018, attached hereto)

The May 4, 2016 brief was **not** in the RAP files of case L14-0065. (Rush Decl., paras. 5. 15). The May 4, 2016 brief was **not** listed in the activity log for case L14-0065. (Rush Decl., paras. 8, 11, 12, 15; Mason Decl., para. 6). Owner did not in 2018, and does not now, contest the authenticity or accuracy of those Declarations.

In short, the May 4 brief (which asserted \$41.16) was not served on Tenant and the brief was not in the RAP’s files. Those uncontroverted facts fully substantiate Tenant’s justifiable contemporaneous belief that \$41.16 was **not** an issue in the RAP proceedings in L14-0065.

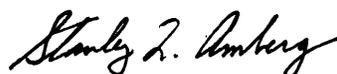
Unaware of the May 4 brief, and its assertion of \$41.16, Tenant had no need or reason to present argument or evidence in the RAP against \$41.16 and in support of \$127. Therefore, Owner is wrong when it asserts that Tenant’s argument and evidence “has already been considered” by the RAP.

Respectfully, Tenant now requests the opportunity to present such argument and evidence in the RAP. Tenant will be substantially prejudiced if it is not permitted to do so.

### CONCLUSION

For the above-stated reasons, the Board should stay or reverse the September 30, 2021 Hearing Decision and remand the case to a hearing officer for a further hearing.

Respectfully submitted,

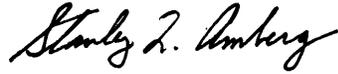


Stanley L. Amberg,  
4115 Kendal Way, Sleepy Hollow, NY 10591  
T: 914-238-4921, M: 914-263-7341  
Representative for Tenant McMahon-Oda

December 6, 2021

L14-0065 Tenant McMahon-Oda Reply

I, Stanley L. Amberg, declare under penalty of perjury under the laws of the State of California that on December 6, 2021, I placed a copy of Tenant McMahon-Oda Reply To Owner's Response To Appeal, and attachments thereto, 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: Clifford E. Fried, Fried & Williams LLP, 1901 Harrison Street, 13<sup>th</sup> Floor, Oakland, CA 94612; and to the current owner of the property Ray McFadden, Mandana Properties, 4200 Park Boulevard, #130, Oakland, CA 94602.

A handwritten signature in black ink that reads "Stanley L. Amberg". The signature is written in a cursive style with a large initial 'S'.

Stanley L. Amberg

2015 JUN 18 PM 4:52

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

2015 JUN 18 PM 4:52  
**APPEAL**

**Appellant's Name**  
525, 655 Hyde St. CNML Properties LLC

**Landlord**       **Tenant**

**Property Address (Include Unit Number)**  
3921 Harrison Street  
Oakland, CA 94611

**Appellant's Mailing Address (For receipt of notices)**  
4844 Telegraph Avenue  
Oakland, CA 94609

**Case Number** L14-0065

**Date of Decision appealed** 5/29/15

**Name of Representative (if any)**  
Clifford E. Fried Esq.  
Elizabeth Hart

**Representative's Mailing Address (For notices)**  
Fried & Williams LLP  
480 Ninth St.  
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 [ 14 ]. 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 June 18, 2015, I placed a copy of this form, and all attached pages, in the United States mail or deposited it with a commercial carrier, using a service at least as expeditious as first class mail, with all postage or charges fully prepaid, addressed to each opposing party as follows:

<b>Name</b>	See attached list of 25 opposing parties along with their representative.
<b>Address</b>	
<b>City, State Zip</b>	
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

 <b>SIGNATURE OF APPELLANT or DESIGNATED REPRESENTATIVE</b>	June 18, 2015 <b>DATE</b>
--	------------------------------

**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.

1 BARBARA J. PARKER, City Attorney, SBN 069722  
OTIS McGEE, JR., Chief Assistant City Attorney, SBN 071885  
2 JAMILAH A. JEFFERSON, Senior Deputy City Attorney, SBN 219027  
One Frank H. Ogawa Plaza, 6th Floor  
3 Oakland, California 94612  
Telephone: (510) 238-7686  
4 Facsimile: (510) 238-6500  
Email: jjefferson@oaklandcityattorney.org  
5 X04443: 2521188

6 Attorneys for Defendant  
CITY OF OAKLAND

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

11 525-655 HYDE STREET CNML PROPS., LLP,

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16 Respondents.

Case No. RG17862841

ASSIGNED FOR ALL PURPOSES TO  
JUDGE KIMBERLY COLWELL  
DEPARTMENT 511

**DECLARATION OF ESTHER KELLY**  
**RUSH** IN SUPPORT OF  
**RESPONDENT CITY OF OAKLAND'S**  
**OPPOSITION TO PETITIONER'S**  
**MOTION TO AUGMENT**  
**ADMINISTRATIVE RECORD**

Date: August 23, 2018  
Time: 9:00 a.m.  
Place: Dept 511

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22 Todd McMahon, Andrew Simkin, Jessica  
Simkin, and DOES 26 through 40,

23 Real Parties in Interest.  
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1 I, Esther Kelly Rush, hereby declare:

2 1. I am an employee for the City of Oakland. I am currently an Administrative Assistant  
3 I for the City's Rent Adjustment Program. I have been in this position for 2.5 years. The matters  
4 set forth herein are personally known to me to be true, and if called upon, I would competently  
5 testify thereto.

6 2. My duties as an Administrative Assistant for the Rent Adjustment Program include  
7 managing incoming eviction notices, sending out copies of owner/tenant responses, managing  
8 appeal hearing scheduling before the Rent Board, receiving and completing subpoenas, and  
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20 not have to be served on the opposing party.

21           14. The administrative hearing for L14-0065 was on April 27, 2015. The Rent Board  
22 appeal hearing was on December 8, 2016. Between the administrative hearing and the appeal  
23 hearing, the owner (or his representative) in L14-0065 filed four documents including:

- 24           • Post Hearing Brief on Building Services Tables – May 7, 2015
- 25           • Appeal – June 18, 2015
- 26           • Owner Request to Change the Date of Appeal Hearing – May 10, 2016
- 27           • Clifford Fried Request to Change the Date of Appeal Hearing – May 10, 2016.

28

1           15. The missing brief has a date stamp for May 4, 2016. However, based on the activity  
2 log and a review of the case file, no documents other than those listed in paragraph 14 were filed  
3 in the case file for L14-0065 between April 27, 2015 and December 8, 2016. The missing brief  
4 was not included in the file or activity log.

5           16. The Rent Board commissioners receive a packet before each Rent Board hearing that  
6 contains the documents for the cases on the agenda. I reviewed the Rent Board packet that the  
7 commissioners received in advance of the December 8, 2016 Rent Board hearing. The missing  
8 brief was not in the packet.

9           17. In an abundance of caution, I also reviewed the case file for L15-0073, a case  
10 involving the same tenants and property as in L14-0065. The missing brief was not in the case  
11 file for L15-0073.

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13           I declare under penalty of perjury under the laws of the State of California and the United  
14 States of America that the foregoing is true and correct.

15           Executed this 16th day of August, 2018 in Oakland, California.

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19           ESTHER KELLY RUSH

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**PROOF OF SERVICE**  
**525-655 Hyde St., CNML Props., v. City of Oakland Department of Housing & Community**  
**Development Rent Adjustment Program**  
**Alameda County Superior Court Case No. RG17862841**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

**DECLARATION OF ESTHER KELLY RUSH IN SUPPORT OF RESPONDENT CITY OF OAKLAND'S OPPOSITION TO PETITIONER'S MOTION TO AUGMENT ADMINISTRATIVE RECORD**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below.
- by causing personal delivery by messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing such envelope to be sent via overnight delivery by **Federal Express/ Express Mail**.

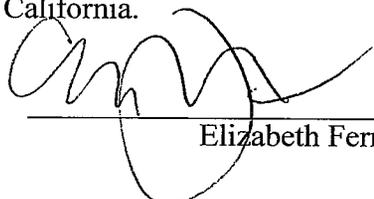
Clifford E. Fried, Esq.  
Fried & Williams, LLP  
480 9<sup>th</sup> Street  
Oakland, CA 94607  
Telephone: (510) 625-0100

***Attorney for Petitioner, 525-655 Hyde Street.***  
***CNML PROPS., LLP***

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with 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 foregoing is true and correct.

Executed on August 16, 2018, at Oakland, California.

  
\_\_\_\_\_  
Elizabeth Ferrel

1 BARBARA J. PARKER, City Attorney, SBN 069722  
OTIS McGEE, JR., Chief Assistant City Attorney, SBN 071885  
2 JAMILAH A. JEFFERSON, Senior Deputy City Attorney, SBN 219027  
One Frank H. Ogawa Plaza, 6th Floor  
3 Oakland, California 94612  
Telephone: (510) 238-7686  
4 Facsimile: (510) 238-6500  
Email: jjefferson@oaklandcityattorney.org  
5 X04443: 2521243

6 Attorneys for Defendant  
CITY OF OAKLAND

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

11 525-655 HYDE STREET CNML PROPS., LLP,

12 Petitioner,

13 vs.

14 CITY OF OAKLAND'S DEPARTMENT OF  
HOUSING AND COMMUNITY  
15 DEVELOPMENT RENT ADJUSTMENT  
PROGRAM, and DOES 1 through 25,

16 Respondents.

Case No. RG17862841

ASSIGNED FOR ALL PURPOSES TO  
JUDGE KIMBERLY COLWELL  
DEPARTMENT 511

**DECLARATION OF KEITH MASON**  
**IN SUPPORT OF RESPONDENT CITY**  
**OF OAKLAND'S OPPOSITION TO**  
**PETITIONER'S MOTION TO**  
**AUGMENT ADMINISTRATIVE**  
**RECORD**

Date: August 23, 2018  
Time: 9:00 a.m.  
Place: Dept 511

17 Jileun Eglin, Lexie Eglin, Angelique Johnson-  
18 Martinez, Suzanne Miller, Fernando Garcia,  
19 Kate Flick Garcia, Bianca Penaloza, David  
20 Preciado, Julie Amberg, Tyler Ritter, Marie Oda,  
21 Todd McMahon, Andrew Simkin, Jessica  
22 Simkin, and DOES 26 through 40,

23 Real Parties in Interest.

1 I, Keith Mason, hereby declare:

2 1. I am an employee for the City of Oakland. I am currently a Program Analyst II for the  
3 City's Rent Adjustment Program. I have been in this position for 21 years. The matters set forth  
4 herein are personally known to me to be true, and if called upon, I would competently testify  
5 thereto.

6 2. My duties as Program Analyst for the Rent Adjustment Program include receiving  
7 incoming documents and telephone calls regarding assigned cases, logging in submissions to case  
8 files, and answering questions from the public during drop in hours or telephone hours.

9 3. Recently, I spoke to Esther Kelly Rush, an administrative assistant in our office, about  
10 a missing brief in the L14-0065 Rent Adjustment Program case file. I reviewed a copy of the  
11 missing brief.

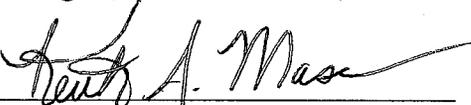
12 4. I immediately searched the activity log for this case file. The activity log is used by the  
13 Rent Adjustment Program staff members who work on a particular case file. For example, an  
14 administrative assistant logs when the case file is opened and when mailings have been sent (such  
15 as notices of hearings/mediations, orders, hearing decisions, etc.) in the activity log.

16 5. I record any activity that I may have with the case file (such as receipt of owner or  
17 tenant responses and additional documentation, etc.) in the activity log. For example, once I  
18 receive a document, I review it, enter it in the activity log for the case, and insert the document into  
19 the appropriate case file.

20 6. I did not see a notation for the missing brief in the activity log for L14-0065.

21  
22 I declare under penalty of perjury under the laws of the State of California and the United  
23 States of America that the foregoing is true and correct.

24 Executed this 16th day of August, 2018 in Oakland, California.

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27 KEITH MASON  
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**PROOF OF SERVICE**  
**525-655 Hyde St., CNML Props., v. City of Oakland Department of Housing & Community**  
**Development Rent Adjustment Program**  
**Alameda County Superior Court Case No. RG17862841**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within documents:

**DECLARATION OF KEITH MASON IN SUPPORT OF RESPONDENT CITY OF OAKLAND'S OPPOSITION TO PETITIONER'S MOTION TO AUGMENT ADMINISTRATIVE RECORD**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California, addressed as set forth below.
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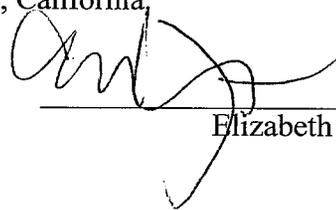
Clifford E. Fried, Esq.  
Fried & Williams, LLP  
480 9<sup>th</sup> Street  
Oakland, CA 94607  
Telephone: (510) 625-0100

***Attorney for Petitioner, 525-655 Hyde Street.***  
***CNML PROPS., LLP***

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with 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 foregoing is true and correct.

Executed on August 16, 2018, at Oakland, California,



Elizabeth Ferrel



## **MEMORANDUM**

**Date:** March 7, 2022  
**To:** Members of the Housing, Residential & Relocation Board (HRRRB)  
**From:** Braz Shabrell, Deputy City Attorney  
**Re:** Appeal Summary in L19-0253, 37 Moss LLC v. Tenants  
**Appeal Hearing Date:** March 10, 2022

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**Property Address:** 37 Moss Ave., Oakland, CA  
**Appellant/Tenant:** Waleed Sabrah  
**Respondent/Owner:** 37 Moss LLC c/o The Lapham Company Inc.

### **BACKGROUND**

On November 4, 2019, the property owner filed a Petition for Approval of Rent Increase based on capital improvements. The claimed improvements included structural retrofitting, interior and exterior painting, window replacement, mailbox replacement, sewer lateral work, interior carpeting, lighting installation, and balcony work. The subject property is a residential building containing 12 units.

Several tenants filed responses contesting the rent increase. Among other things, tenants claimed that the work was unnecessary and not requested nor desired by the tenants, and that the seismic retrofit was due to deficiency in building design and did not provide benefit to the tenants.

### **RULING ON THE CASE**

A hearing took place on August 9, 2021. A Hearing Decision was issued on September 17, 2021, granting the owner's Petition. The Hearing Officer found that all the claimed expenses primarily benefited the tenants, and the owner submitted adequate proof of payments. Therefore, the owner was entitled to increase rents according to an amortization schedule set forth in the Hearing Decision. A copy of the Decision was mailed to the parties on September 24, 2021.

## **GROUND FOR APPEAL**

On October 14, 2021, tenant Waleed Sabrah filed an appeal of the Hearing Decision on the following grounds: the decision is inconsistent with the Rent Adjustment Ordinance, regulations, or prior decisions; the decision raises a new policy issue that has not been decided by the Board; the decision is not supported by substantial evidence; the tenant was denied a sufficient opportunity to present their claims; and “other.”

Specifically, the tenant appellant claims that they were denied due process because when they asked the owner representative at the hearing about having received a discount on the sale price of the building to offset the cost of the retrofit, the representative would not answer the question and the Hearing Officer would not require them to respond. Secondly, the tenant argues that the decision fails to specify the “maintenance necessity” for the carpet, lights, mailboxes, and paint, and these should not have been granted because they were only aesthetic improvements. Finally, the tenant argues that he objected to the installation of the windows in his unit, and therefore they did not primarily benefit him, but were instead for the benefit of the owner.

The owner filed a response to the tenant’s appeal, claiming that the tenant has not raised valid grounds for appeal, the decision is consistent with the law and supported by substantial evidence, and the tenant was not denied due process. The owner also argues that tenant’s appeal was untimely, because it was filed one day after the deadline without good cause.

## **ISSUES**

1. Was the tenant’s appeal timely?
2. Is the sale price of a building relevant to the analysis for a capital improvement rent increase? Was the tenant denied due process by the owner representative failing to respond to the tenant’s question about the sale price of the building?
3. For purposes of a capital improvement pass-through, does work that is “aesthetic” in nature qualify, or must the claimed improvements be work that is “necessary”?
4. Must a tenant consent to the claimed improvements? If a tenant objects to certain improvements to their unit, does that have any bearing on the pass-through calculation?

## APPLICABLE LAW AND PAST BOARD DECISIONS

### I. APPEAL PROCEDURE

#### A. Filing Requirements

An appeal of a Hearing Officer's decision must be filed within 20 days (15 days plus five for service) after service of the notice of decision. O.M.C. 8.22.120(A)(1).

### II. DUE PROCESS

#### A. Generally

Due process generally requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. Procedural due process is meant to protect persons from mistaken or unjustified deprivation of life, liberty, or property. Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. *Carey v. Piphus* (1978) 435 U.S. 247, 259. The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination and an opportunity to be represented by counsel.

### III. CAPITAL IMPROVEMENTS

#### A. Definition

An owner may petition the Rent Adjustment Program to increase a tenant's rent above CPI on the basis of "capital improvement costs, including financing of capital improvement costs." O.M.C. 8.22.070(C)(1)(a). Capital improvement costs are those improvements that "**materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes.**" O.M.C. 8.22 Regulations, Appendix A, sec. 10.2.

#### B. Primary Benefit to Tenant

The improvements must **primarily benefit the tenant** rather than the landlord. "For example, the remodeling of a lobby would be eligible as a capital improvement, while the construction of a sign advertising the rental complex would not be eligible. However, the complete painting of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs." O.M.C. 8.22 Regulations, Appendix A, sec. 10.2.2.1.

Repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements. O.M.C. 8.22 Regulations, Appendix A, sec. 10.2.2.3.

**The standard for evaluating benefit to the tenant is objective, not subjective.**

C. Ineligible Expenses

Work does not qualify for a capital improvement pass-through if it primarily benefits the owner versus the tenants, or if it is a result of deferred maintenance, such as required repairs to correct a Priority 1 or 2 condition (as set out in O.M.C. 8.22 Regulations, Appendix A).

D. Seismic Retrofit

Several past Board decisions have affirmed that seismic retrofitting is an eligible capital improvement.

E. Relevant Past Board Decisions

- L18-0034, *Leapfrog Properties c/o Beacon Properties v. Tenants*: Board affirmed Hearing Decision on the basis of substantial evidence that granted owner's capital improvement petition for work on decks and balconies and installation of new mailboxes despite the tenants' contention that the work constituted basic maintenance/repair and was unnecessarily expensive. The Hearing Decision held that tenants are not allowed to decide who performs the work, that making the balconies safer meets the benefits test and prolongs the useful life of the building, and that new mailboxes are not a routine repair/maintenance item.
- T06-0093, *Bernhardt v. Gee Realty*: The standard for evaluating the benefit to tenant that is required by Regulations, Appendix A, Sections 10.2-0.2.2 is objective not subjective. Work was done to wall heater, roof, and bathroom.
- T09-0387, *Marquardt et al. v. Regency Tower Apts.*: There was substantial evidence that landscaping, swimming pool, garage repair, and window replacements provide a benefit to the tenants & extends the life of the building so these costs qualify as capital improvements. Qualified improvements may be aesthetic.



**MEMORANDUM**

**Date:** March 7, 2022  
**To:** Members of the Housing, Rent Residential & Relocation Board (HRRRB)  
**From:** Braz Shabrell, Deputy City Attorney  
**Re:** Appeal Summary in L14-0065, 525, 655 Hyde Street CNML Properties, LLC v. Tenants  
**Appeal Hearing Date:** March 10, 2022

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Property Address: 3921 Harrison St., Oakland, CA  
Appellant/Tenants: Todd McMahon and Mari Oda  
Julie Amberg  
Respondent/Owner: Mandana Properties LLC (current)

**BACKGROUND**

On November 14, 2014, the property owner filed a Petition for Certificate of Exemption on the basis of substantial rehabilitation. The subject property is a building containing sixteen units. The owner acquired the property in November of 2013. The rehabilitation project took place in 2014.

Several tenants filed responses to the owner Petition. A hearing on the Petition took place on April 27, 2015.

**ORIGINAL HEARING (2015)**

On May 29, 2015, the Hearing Officer issued a Hearing Decision denying the owner's Petition. In order to qualify for exemption based on substantial rehabilitation, an owner must demonstrate that a certain threshold of money was spent "rehabilitating" the building. The amount must be more than 50% of what it would have cost to build *new*

construction of an equal square footage. The cost of new construction is determined “using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.”<sup>1</sup>

In this case, the Hearing Officer found that the dollar amount of the qualifying repairs and improvements did not meet the minimum threshold for the exemption. To determine the average cost of new construction, the Hearing Officer considered three tables: Table A, Table B, and Table C. Table A was a City-issued schedule published in 2009. Table A listed the average cost of new construction for an apartment building in 2009 as \$127 per square foot. Since this schedule was published in 2009 and the project took place in 2014, the Hearing Officer took judicial notice of a Table B (“Quarterly Cost Indexes (1926=100)”), which was used to adjust the amounts in Table A for inflation. The \$127 listed in Table A was adjusted by 1.18%, to arrive at an average cost of \$149.86 per square foot.

The total square footage of the apartment building was determined to be 14,338, which included deck/balcony areas. This number was then multiplied by the average cost of new construction per square foot, to arrive at a total of \$2,148,694 for new construction of a similarly-sized building. Since the threshold amount for the substantial rehabilitation exemption is 50% of the cost of new construction, the owner would have had to spend at least \$1,074,347 to qualify for the exemption.

The Hearing Decision found that the owner had spent \$850,441 in qualifying costs. Since this was less than the required amount, the Petition was denied. The Hearing Decision stated that even if the amount in Table A was used (\$127) without using Table B to adjust for inflation, the amount still would not meet the required expense threshold ( $14,338 \times \$127 = \$1,820,926$ , 50% of which is \$910,463).

### **BOARD APPEAL (2016)**

The owner appealed the Hearing Decision on several grounds. First, the owner claimed that it was improper for the Hearing Officer to consider Table B in determining the average cost of new construction, since Table B had not been properly entered into evidence and was not issued by the chief building inspector. Therefore, the cost for new construction had been calculated incorrectly. Second, the owner argued that the balcony areas should not have been included in the overall square footage, and the cost per square foot of balcony area should have been calculated at a different rate than the interior work.

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<sup>1</sup> Formerly O.M.C. 8.22.030(B)(2)(b). The exemption for substantial rehabilitation has since been removed from the Rent Adjustment Ordinance.

An Appeal Hearing was held on December 8, 2016. The Board issued an Appeal Decision on March 7, 2017, affirming the Hearing Decision. While deliberating, the Board decided to address the two issues raised on appeal separately. Regarding the balconies, the Board voted to affirm their inclusion in the total square footage calculation on the basis that there was no abuse of discretion by the Hearing Officer and the balcony area was useable space that extended the tenants' living area, and this interpretation was consistent with past practices and policy of the Board.

Regarding the use of Table B and whether the amount in Table A should have been adjusted for inflation, the Board discussed the issue, and although motions were made, the motions either did not pass or were inadvertently not voted on. Therefore, the portion of the Hearing Decision relating to the use of Table B was affirmed by default.

### **JUDICIAL REVIEW**

The owner filed a Petition for Writ of Administrative Mandamus in the Alameda County Superior Court (Case No. RG17-862841), contesting the Board's Appeal Decision. On December 12, 2018, the Superior Court entered a Judgment Granting the Writ of Administrative Mandamus, **setting aside and vacating the Appeal Decision**. The Superior Court ordered the Rent Adjustment Program to "[r]econsider the Appeal Decision in its entirety in Case No. L14-0065 in light of the Court's opinions, Order and Judgment."<sup>2</sup>

Among other things, the Court found that the Hearing Officer, and in turn the Board, erred in using a single construction cost number for the entirety of the square footage (i.e., by not treating the balcony area as separate from the indoor apartment area). The Court found that the Board misapplied O.M.C. 8.22.030(B)(2)(b) by "focusing on the *potential* use of the balconies rather than the cost of building or rehabilitating the balconies" [emphasis added].<sup>3</sup> The Court reasoned that Table A differentiates among different "Descriptions" of construction, and included different categories for "Apartment space" and "Elevated Decks and Balconies." Therefore, the Board should apply Table A "based on whether the Description reasonably describes the physical structure to be constructed."<sup>4</sup> The Court stated that the focus should be on the cost of construction, rather than the potential use of the space.<sup>5</sup>

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<sup>2</sup> Judgment Granting Writ of Administrative Mandamus (December 12, 2018).

<sup>3</sup> Order Granting Motion to Augment the Record and Granting Petition for Writ of Mandate (August 23, 2018), 13:12-13.

<sup>4</sup> *Id.* at 13:10.

<sup>5</sup> *Id.* at 13:18-25.

The Court also found that it was improper to incorporate Table B because there is no indication that it was “issued by the chief building inspector” as required by the Ordinance.<sup>6</sup> As a matter of due process, Table B was not a document that was readily accessible to the public and therefore the developer was not given fair warning that Table A was not the standard against which the evidence of expense would be measured.<sup>7</sup>

In ordering the Board to reconsider the case in light of the Court’s opinion, the Court noted that the judgment “**shall not limit or control in any way the discretion legally vested**” in the Board, and that if permitted, the Board “**may direct the Hearing Officer to conduct a further hearing**” [emphasis added].<sup>8</sup> The Order further provides that the Board “**may reconsider either the entire matter or only the issues implicated by this order**” [emphasis added].<sup>9</sup> The Court stated that it “expressly does not direct the Rent Board to grant the petition for a Certificate of Exemption.”<sup>10</sup>

The tenants filed a motion for reconsideration. The motion was denied. The tenants then filed an appeal. On February 26, 2021, the Court of Appeals issued an opinion affirming the Superior Court’s Judgment. The Court of Appeals also agreed with the owner that the Hearing Officer had made a computational error in adding up the total costs submitted by the owner, and found that that number should have been \$857,597, rather than the amount stated in the Hearing Decision.

Pursuant to the Court’s order, the case was then remanded back to the Hearing Officer<sup>11</sup> for reconsideration in light of the Court’s judgment.

### **RECONSIDERATION DECISION (2021)**

On September 30, 2021, a new Hearing Decision was issued (“Reconsideration of Board Appeal Decision After Court Judgment”), granting the owner’s Petition. The Decision was issued without a hearing.

The new Decision found that the owner had made qualifying expenditures in an amount totaling \$876,800.99 (as opposed to \$850,441 as was stated in the 2015 Decision).

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<sup>6</sup> *Id* at 9:4-10.

<sup>7</sup> *Id.* at 11:4-13.

<sup>8</sup> *Id.* at 15:3-4.

<sup>9</sup> *Id.* at 15:4-7.

<sup>10</sup> *Id.* at 15:6-8.

<sup>11</sup> The original Hearing Officer who heard the case in 2015 retired, so the case was re-assigned to a different Hearing Officer.

In determining the average cost of new construction, the Hearing Officer declined to consider Table B, which was previously used to account for inflation (since Table A was published in 2009 and the project took place in 2014). The Hearing Officer relied solely on Table A, since Table B was not issued by the chief building inspector. Table A lists \$127 as the cost per square foot for new construction of apartment buildings. The Decision found that the square footage of the deck/balcony areas should be calculated separately, as noted by the Court. Table A lists \$41.16 as the cost per square foot for “Elevated Decks and Balconies.” The Decision therefore made the following calculation:

Cost of New Construction

Building area: 13,336 sq. ft. x \$127=	\$1,693,672
Balcony area: 1,002 sq. ft. x \$41.16=	<u>\$41, 242.32</u>

Total: \$1,734,914.32

Since the substantial rehabilitation exemption requires expenditure of at least 50% of this cost ( $\$1,734,914.32 \div 2 = \$867,457.16$ ), and the owner’s expenditures were found to total \$876,800.99, the owner qualified for the exemption and the Petition was granted.

**GROUND FOR APPEAL**

The tenants filed an appeal requesting that the matter be scheduled for a hearing to allow the tenants to introduce evidence regarding whether \$127 or \$41.16 is the “factually and legally correct multiplier” for determining the average basic cost for new construction for the balconies, which are “structurally integral” to the apartments, as opposed to falling under the category of new “elevated” decks and balconies. The tenants argue that allowing a hearing on the limited issue of costs related to the balconies is consistent with the Court’s order, which stated that the “Rent Board may direct the Hearing Officer to conduct a further hearing,” and the burden on the City of allowing another hearing is minimal. Tenants argue that it was improper to issue a new decision without notice to the tenants and without providing the tenants an opportunity to call witnesses or present evidence.

**ISSUES**

- 1) Should the parties be given an opportunity to present additional evidence and arguments on the limited issue of the balcony calculations?

## APPLICABLE LAW AND PAST BOARD DECISIONS

### I. **RECONSIDERATION**

#### A. Effect of Mandamus

Cal. Civ. Proc. Code § 1094.5(f): “The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent [government agency].”

#### B. Reconsideration of Administrative Adjudication

Cal. Govt. Code 11521(b): “The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.”

#### C. Hearing Procedure

The Rent Adjustment Ordinance does not contain specific guidelines on the procedure to be followed after a Court has ordered reconsideration.

### II. **EVIDENTIARY HEARINGS**

#### A. Board Authority

“Appeals shall be based on the record as presented to the Hearing Officer unless the Appeal Body determines that an evidentiary hearing is required. If the Appeal Body deems an evidentiary hearing necessary, the case will be continued and the Appeal Body shall issue a written order setting forth the issues on which the parties may present evidence. All evidence submitted to the Appeal Body must be submitted under oath.”  
O.M.C. 8.22.120(C)(4).

#### B. Official Notice of Evidence

“In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency’s special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the agency.” Cal. Govt. Code 11515.

### III. **SUBSTANTIAL REHABILITATION EXEMPTION**

#### A. Qualifying for Exemption

O.M.C. 8.22.030(B)(2)<sup>12</sup>

“Exemptions for Substantially Rehabilitated Buildings.

- 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.”

O.M.C. 8.22.030(B)(3) Regulations<sup>13</sup>

“Substantially rehabilitated buildings. a. In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years. b. For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units.”

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<sup>12</sup> As of the date the original Petition was filed (2014). This section/exemption has since been removed from the Rent Adjustment Ordinance.

<sup>13</sup> As of the date the original Petition was filed (2014). This section/exemption has since been removed from the Regulations.