

**HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD  
FULL BOARD SPECIAL MEETING  
June 24, 2021  
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:  
You are invited to a Zoom webinar.

When: June 24, 2021 05:00 PM Pacific Time (US and Canada)

Topic: HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD MEETING  
June 24, 2021

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84993200146>

Or One tap mobile :

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**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 [Bkong-brown@oaklandca.gov](mailto:Bkong-brown@oaklandca.gov).

## HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD SPECIAL MEETING

1. CALL TO ORDER
2. ROLL CALL
3. OPEN FORUM
4. CONSENT ITEMS
  - a. Approval of Board Minutes, 6/10/2021
5. APPEALS\*
  - a. T18-0311, Cervantes v. Fong
  - b. L19-0159, 378 Grand Avenue Associates, LP v. Tenants
  - c. T21-0019, Yu v. Bruins
6. INFORMATION AND ANNOUNCEMENTS
  - a. Board Training - The Brown Act
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, Cantones, 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.

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

**June 10, 2021**

**5:00 P.M.**

**VIA ZOOM CONFERENCE  
OAKLAND, CA**

**MINUTES**

**1. CALL TO ORDER**

The Board meeting was administered via Zoom by H. Grewal, Housing and Community Development Department. He explained the procedure for conducting the meeting. The HRRRB meeting was called to order at 5:02 p.m. by Board member A. Graham.

**2. ROLL CALL**

<b>MEMBER</b>	<b>STATUS</b>	<b>PRESENT</b>	<b>ABSENT</b>	<b>EXCUSED</b>
R. NICKENS	Tenant	X		
R. AUGUSTE	Tenant	X		
H. FLANERY	Tenant Alt.			X
Vacant	Tenant Alt.			
S. DEVUONO- POWELL	Undesignated			X
A. GRAHAM	Undesignated	X		
J. MA POWERS	Undesignated			X
Vacant	Undesignated Alt.			
Vacant	Undesignated Alt.			
K. FRIEDMAN	Landlord			X
T. WILLIAMS	Landlord	X*		
B. SCOTT	Landlord Alt.			X
K. SIMS	Landlord Alt.	X		

\*Member T. Williams left the meeting prior to the vote in item 5 a, the Appeal in Wheaton v. Ngo, assumingly due to technical difficulties. He did not return.

**Staff Present**

Kent Qian

Deputy City Attorney

Barbara Cohen  
Harman Grewal  
Briana Lawrence-McGowan

Acting Senior Hearing Officer (RAP)  
Business Analyst III (HCD)  
Administrative Analyst I (HCD)

### 3. OPEN FORUM

- a. 3 speakers spoke during open forum.

### 4. CONSENT ITEMS

- a. Approval of Board Minutes from May 27, 2021, Full Board Special Meeting  
K. Sims moved to approve the minutes. R. August seconded.

The Board voted as follows:

**Aye:** A. Graham, T. Williams, K. Sims, R. Auguste, R. Nickens, Jr.

**Nay:** None

**Abstain:** None

The motion was adopted.

### 5. APPEALS

- a. T20-0143 Wheaton v. Ngo

Appearances: Valarie Wheaton, Tenant

No appearance by Property Owner

The tenant appealed from a Hearing Decision denying her claims of decreased housing services on the ground that the decision was not supported by substantial evidence. Specifically, the tenant contended that:

- The hearing officer was biased;
- The owner never hired a plumber to fix the toilet;
- The owner did not replace the sewer line;
- The owner never contacted the tenant to arrange access to the unit to fix the Notice of Violation.

#### Appeal Decision

After questions to the tenant and Board discussion, K. Sims moved to overturn the Hearing Decision. R. Nickens seconded. A friendly amendment by R. Auguste to the motion was made to remand the Hearing Decision to

the Hearing officer with the instruction that the tenant did establish decreased services. After Board discussion the first motion was removed from consideration and K. Sims moved to remand the Hearing Decision on the grounds that there were decreased housing services as to the toilet and that the Hearing Officer should determine a calculation as to that loss. The Hearing Decision as to the tenant's second claim regarding the Notice of Violation is affirmed. R. Nickens seconded.

The Board voted as follows:

Aye: A. Graham, K. Sims, R. Nickens, Jr., R. Auguste

Nay: 0

Abstain: 0

The motion was approved.

b. T20-0054 McQuillion v. JJCM Investments

Appearances: Liz Hart, Rent Board Matters, Owner Representative  
Broderick Brown, Attorney for Tenant  
Fatima McQuillion, Tenant

The tenant appealed the Administrative Decision dismissing her case because of a settlement agreement on the following grounds:

- The decision is inconsistent with OMC Chapter 8.22, Rent Board Regulations or prior decisions of the Board;
- The decision violates federal, state or local law;
- The decision is not supported by substantial evidence;
- The was denied a sufficient opportunity to present my claim or respond to the petitioner's claim.

Specifically, the tenant argued that:

The settlement did not cover current conditions because the lawsuit was against the former owners, and the current owner was not party to the lawsuit and the settlement agreement did not make any determination as to the proper amount of rent. Since the prior owner was not a party to the prior case, the parties in the lawsuit could not have set the rent.

The owner representative argued that the settlement agreement, by its broad language, included the current property owner and future claims. She also argued that the Board should have been presented with the Settlement

Agreement which was attached to the Hearing Decision but was not in the Board packet.

Appeal Decision:

After both parties presented argument and questions to the parties, a motion was made by A. Graham to postpone this decision until the Board had the opportunity to review the Settlement Agreement. R. Auguste seconded the motion.

The Board voted as follows:

Aye: A. Graham, K. Sims, R. Auguste, R. Nickens, Jr.

Abstain: 0

Nays: 0

The motion was approved.

c. T19-0363/T19-0508 Gonzalez v. Huang et al

Appearances: Andrew Lo, Owner Representative  
Xavier Johnson, Attorney for Tenant  
Gloria Gonzalez, Tenant

Marci Valdevisio, Spanish Interpreter

The owner appealed the Hearing Decision that invalidating rent increases on the bases that the tenant established that no Spanish RAP Notice was provided to her despite the fact that the lease was negotiated in Spanish, on the grounds that the decision is not supported by substantial evidence.

Specifically, the owner argued that since the tenant never mentioned requesting a Spanish language contract, and communicated to the current owner in English, the rent increases should not be invalidated; further, that the tenant was limited to 120 days to file her petition and that the rules regarding the RAP Notice were not adequately communicated on the RAP website. Additionally, since the current owner purchased the property from the bank, there was never any reason for the owner to know that they were required to give a Spanish language contract.

The tenant argued that the Hearing Officer's decision should be upheld based on substantial evidence.

Appeal Decision:

After questions to the parties and Board discussion, A. Graham moved to affirm the Hearing Decision. R. Nickens, Jr. seconded.

The Board voted as follows:

Aye: A. Graham, K. Sims, R. Auguste, R. Nickens, Jr.

Abstain: 0

Nays: 0

The motion was approved.

## 6. Information and Announcements

- a. Barbara Cohen from the RAP gave a short presentation to the Board on the Hearings Unit Standardization Program that is ongoing. Two contractors, (including Richard Illgen, who used to be an attorney working in the Oakland City Attorneys' Office for the RAP) are writing a Hearing Officers' manual for the agency where the law is described in a way that will lead to more consistency in the Hearing Officer's legal analysis. The Hearing Officers will also be trained after the manual is complete.

## 7. Scheduling and Reports

- a. Board Recess: K Qian explained to the Board that the Board has the opportunity to take a summer recess in August. However, the Regulations require the Board to vote on the matter. In the past few years the Board has not taken a recess because of the case backlog, but the Board has no backlog at the moment.

A. Graham moved to take the recess in August. R. Auguste seconded.

The Board voted as follows:

Aye: A. Graham, K. Sims, R. Auguste, R. Nickens, Jr.

Abstain: 0

Nays: 0

The motion was adopted.

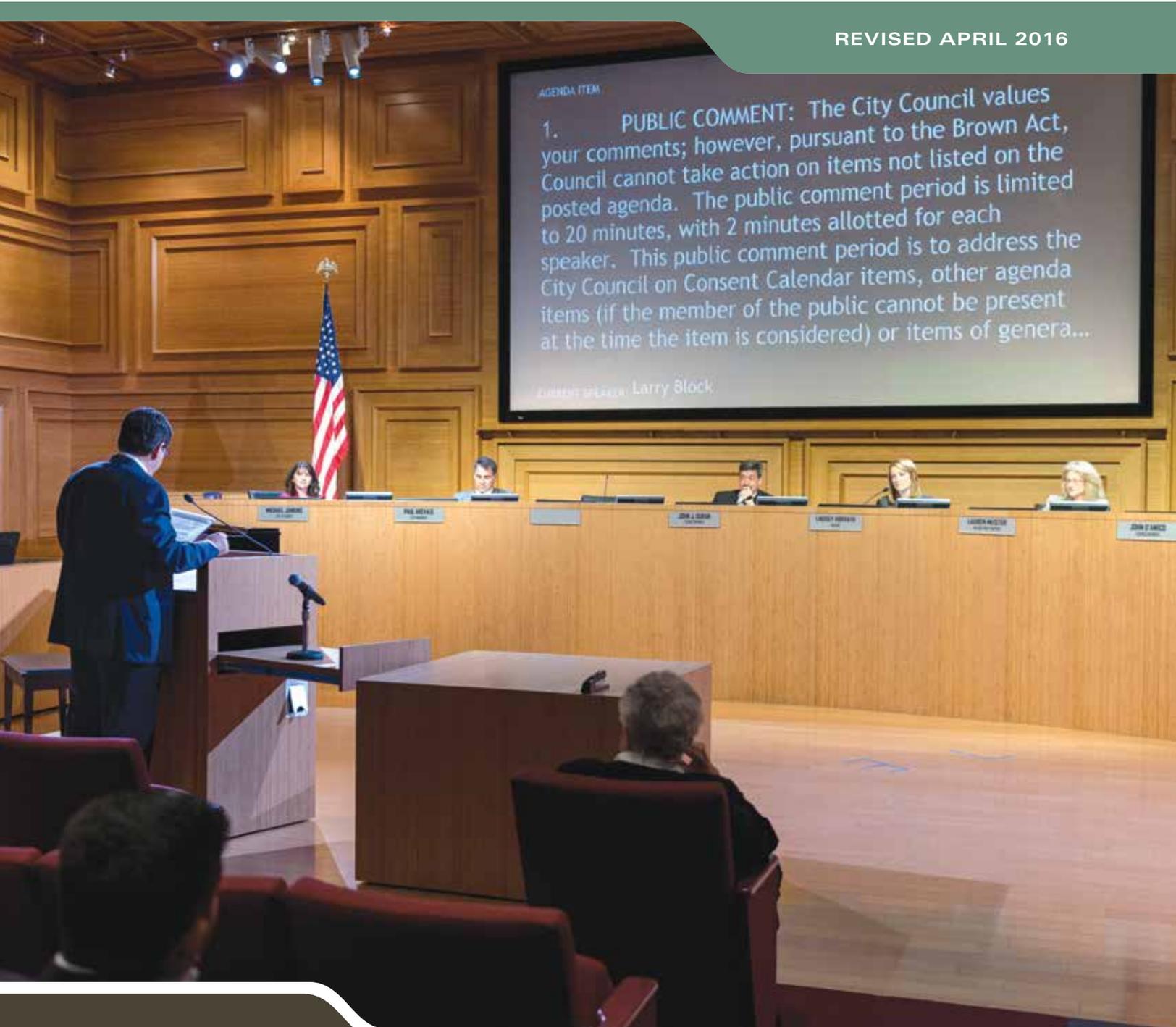
## 8. ADJOURNMENT

The meeting was adjourned at 7:00 p.m.

# Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016



AGENDA ITEM

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

CURRENT SPEAKER: Larry Block

**ACKNOWLEDGEMENTS**

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

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# Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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# Chapter 1

## IT IS THE PEOPLE’S BUSINESS

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# Chapter 1

## IT IS THE PEOPLE'S BUSINESS



### The right of access

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

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

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

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

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

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

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

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

### Broad coverage

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

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

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

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

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

### **Narrow exemptions**

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

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

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

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

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

### **Public participation in meetings**

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

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

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

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### Controversy

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

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

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

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

### Beyond the law — good business practices

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

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



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

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

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

## Achieving balance

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

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

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

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

## Historical note

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

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

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

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

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

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**ENDNOTES:**

- 1 California Government Code section 54950
- 2 California Constitution, Art. 1, section 3(b)(1)
- 3 California Government Code section 54953(a)
- 4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).
- 5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533
- 6 California Government Code section 54953.7

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



# Chapter 2

## LEGISLATIVE BODIES

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

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

# Chapter 2

## LEGISLATIVE BODIES

*The Brown Act applies to the legislative bodies of local agencies. It defines “legislative body” broadly to include just about every type of decision-making body of a local agency.<sup>1</sup>*



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

A “legislative body” includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ENDNOTES:

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

- 2 California Government Code section 54952(a) and (b)
- 3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362
- 7 California Government Code section 54952.1
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805
- 9 California Government Code section 54952(b)
- 10 79 Ops.Cal.Atty.Gen. 69 (1996)
- 11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793
- 12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)
- 13 California Government Code section 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)
- 14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App.4th 287, 300 fn. 5
- 15 "The Brown Act, Open Meetings for Local Legislative Bodies," California Attorney General's Office (2003), p. 7
- 16 California Government Code section 54952(d)
- 17 California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.
- 18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129
- 19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973)
- 20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879
- 21 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513
- 22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

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





# Chapter 3

## MEETINGS

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# Chapter 3

## MEETINGS



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

### Brown Act meetings

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

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

### Six exceptions to the meeting definition

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

#### *Individual Contacts*

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

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

### Conferences

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

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

### Community Meetings

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



**“I see we have four distinguished members of the city council at our meeting tonight,” said the chair of the Environmental Action Coalition. “I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?”**

*The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

- Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?
- A.** Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.



### Other Legislative Bodies

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

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside

from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

- Q.** The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?
- A.** *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*
- Q.** The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?
- A.** *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

### Standing Committees

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

- Q.** The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?
- A.** *She may attend, but only as an observer; she may not participate.*

### Social or Ceremonial Events

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

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

### Grand Jury Testimony

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

### Collective briefings

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

### Retreats or workshops of legislative bodies

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



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

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

### Serial meetings

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

The serial meeting may occur by either a “daisy chain” or a “hub and spoke” sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body’s subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members,



communicates with a majority of members (the spokes) one-by-one for for discussion, deliberation, or a decision on a proposed action.<sup>13</sup> Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members’ respective views is revealed. Each of these scenarios violates the Brown Act.

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

the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.”<sup>14</sup>

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

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

**The phone call was from a lobbyist. “Say, I need your vote for that project in the south area. How about it?”**

**“Well, I don’t know,” replied Board Member Aletto. “That’s kind of a sticky proposition. You sure you need my vote?”**

**“Well, I’ve got Bradley and Cohen lined up and another vote leaning. With you I’d be over the top.”**

**Moments later, the phone rings again. “Hey, I’ve been hearing some rumbles on that south area project,” said the newspaper reporter. “I’m counting noses. How are you voting on it?”**

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

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

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

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

**"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."**

**"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"**

**"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."**

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

- Q.** The agency's website includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A.** Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.
- Q.** A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?
- A.** No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.

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

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

### Informal gatherings

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

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

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

- Q.** The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?
- A.** *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*



### Technological conferencing

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

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

audio or video, or both.”<sup>21</sup> In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:<sup>22</sup>

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

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

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

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

### Location of meetings

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

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:<sup>24</sup>

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

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

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

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

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential

employee from another district.<sup>26</sup> A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

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

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

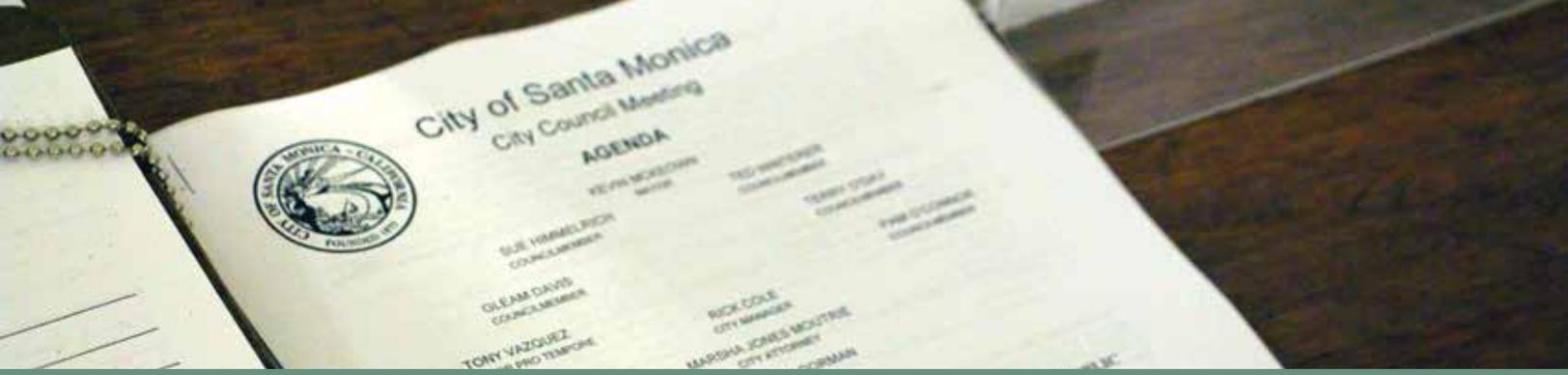


## Endnotes:

- 1 California Government Code section 54952.2(a)
- 2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 3 California Government Code section 54954(a)
- 4 California Government Code section 54956
- 5 California Government Code section 54956.5
- 6 California Government Code section 54955
- 7 California Government Code section 54952.2(c)
- 8 California Government Code section 54952.2(c)(4)
- 9 California Government Code section 54952.2(c)(6)
- 10 California Government Code section 54953.1
- 11 “*The Brown Act*,” California Attorney General (2003), p. 10
- 12 California Government Code section 54952.2(b)(1)
- 13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
- 14 California Government Code section 54952.2(b)(2)
- 15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 17 California Government Code section 54957.5(a)
- 18 California Government Code section 54952.2(b)(2)
- 19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)
- 20 California Government Code section 54953(b)(1)
- 21 California Government Code section 54953(b)(4)
- 22 California Government Code section 54953
- 23 California Government Code section 54954(b)
- 24 California Government Code section 54954(b)(1)-(7)
- 25 94 Ops.Cal.Atty.Gen. 15 (2011)
- 26 California Government Code section 54954(c)
- 27 California Government Code section 54954(d)
- 28 California Government Code section 54954(e)

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





# Chapter 4

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# Chapter 4

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



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

### Agendas for regular meetings

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

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.”<sup>1</sup> The courts have not definitively interpreted the “freely accessible” requirement. The California Attorney General has interpreted this

provision to require posting in a location accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.<sup>2</sup> This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.<sup>3</sup> While posting an agenda on an agency’s Internet website will not, by itself, satisfy the “freely accessible” requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.<sup>4</sup>

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

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

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

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

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

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

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

Are these descriptions adequate?

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

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

Is this permissible?

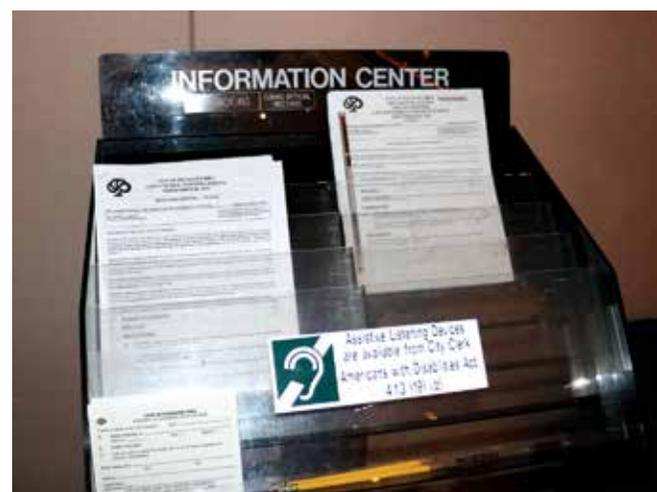
**A.** *Yes, so long as it does not result in extended discussion or action by the body.*

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

### **Mailed agenda upon written request**

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

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



### Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed.

Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

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

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

### Notices and agendas for adjourned and continued meetings and hearings

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

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

### Notice requirements for emergency meetings

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



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

### **Notice of compensation for simultaneous or serial meetings**

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

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

### **Educational agency meetings**

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

### **Notice requirements for tax or assessment meetings and hearings**

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

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



### Non-agenda items

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

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

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

**“I’d like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project,” said Chair Lopez.**

**“It’s not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I’d like to keep it that way. Do I hear a motion?”**

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

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

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

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

### Responding to the public

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

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

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



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

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

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

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

## **The right to attend and observe meetings**

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

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

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

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

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

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

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

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

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

### Records and recordings

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

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

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

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

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



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

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.<sup>37</sup>

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

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

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

### The public's place on the agenda

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

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

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

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



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

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

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

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

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



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

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

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

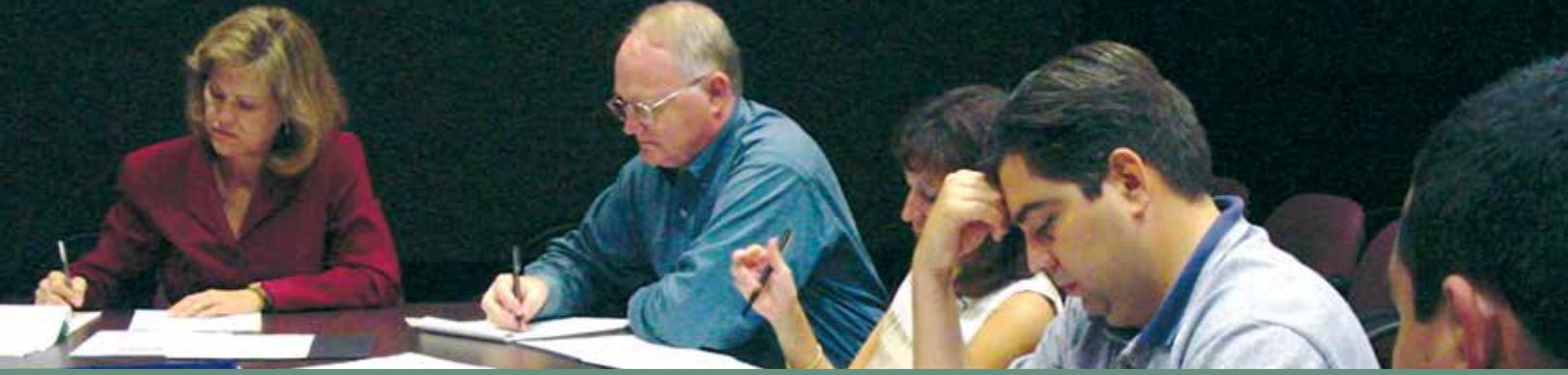
**Endnotes:**

- 1 California Government Code section 54954.2(a)(1)
- 2 78 Ops.Cal.Atty.Gen. 327 (1995)
- 3 88 Ops.Cal.Atty.Gen. 218 (2005)
- 4 California Government Code sections 54954.2(a)(1) and 54954.2(d)
- 5 California Government Code section 54960.1(d)(1)
- 6 \_\_\_ Ops.Cal.Atty.Gen.\_\_\_, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262
- 7 *North Pacific LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432
- 8 \_\_\_ Ops.Cal.Atty.Gen.\_\_\_, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8
- 9 California Government Code section 54954.2(a)(1)
- 10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

- 11 California Government Code section 54954.1
- 12 California Government Code sections 54956(a) and (c)
- 13 California Government Code section 54955
- 14 California Government Code section 54954.2(b)(3)
- 15 California Government Code section 54955.1
- 16 California Government Code section 54956.5
- 17 California Government Code section 54952.3
- 18 Education Code sections 35144, 35145 and 72129
- 19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196
- 20 California Education Code section 35145.5
- 21 California Government Code section 54954.6
- 22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)
- 23 California Government Code section 54954.2(b)
- 24 California Government Code section 54954.2(a)(2)
- 25 California Government Code section 54953.3
- 26 California Government Code section 54961(a); California Government Code section 11135(a)
- 27 California Government Code section 54952.2(c)(2)
- 28 California Government Code section 54953(b)
- 29 California Government Code section 54953(c)
- 30 California Government Code section 54953(c)(2)
- 31 California Government Code section 54957.9.
- 32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit “insolent” remarks by members of the public absent actual disruption).
- 33 California Government Code section 54957.9
- 34 California Government Code section 54957.5
- 35 California Government Code section 54957.5(d)
- 36 California Government Code section 54957.5(b)
- 37 California Government Code section 54957.5(c)
- 38 California Government Code section 54953.5(b)
- 39 California Government Code section 54957.5(d)
- 40 California Government Code section 54953.5(a)
- 41 California Government Code section 54953.6
- 42 California Government Code section 54954.3(a)
- 43 California Government Code section 54954.3(c)
- 44 California Government Code section 54954.3(b); *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)
- 45 California Government Code section 54954.3(a)
- 46 California Government Code section 54954.3(a)

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# Chapter 5

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# Chapter 5

## CLOSED SESSIONS

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



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

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

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

### Agendas and reports

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

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

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

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

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

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

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

## Litigation

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

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

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

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

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

**Existing litigation**

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

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

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local



agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.<sup>19</sup>

**Anticipated exposure to litigation against the local agency**

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on “existing facts and circumstances” as defined by the Brown Act.<sup>20</sup> The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the “existing facts and

circumstances” must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

**Anticipated initiation of litigation by the local agency**

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

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

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

### Real estate negotiations

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



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

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

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

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

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

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

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

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

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

## Public employment

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

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

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

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

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

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

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

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

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

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

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

**"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we've negotiated six months severance pay."**

**"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**

*This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

## Labor negotiations

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

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

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

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

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

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

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

### Labor negotiations — school and community college districts

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

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

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

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

### Other Education Code exceptions

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

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

### Joint Powers Authorities

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

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

## License applicants with criminal records

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

## Public security

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



## Multijurisdictional law enforcement agency

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

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

## Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.<sup>55</sup>

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

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

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.<sup>56</sup>



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

### Other legislative bases for closed session

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

concerning rates of payment,<sup>60</sup> and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.<sup>61</sup>

### Who may attend closed sessions

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

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

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

### The confidentiality of closed session discussions

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

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

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

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

**“I want the press to know that I voted in closed session against filing the eminent domain action,” said Council Member Chang.**

**“Don’t settle too soon,” reveals Council Member Watson to the property owner, over coffee. “The city’s offer coming your way is not our bottom line.”**

*The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.<sup>71</sup> The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

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

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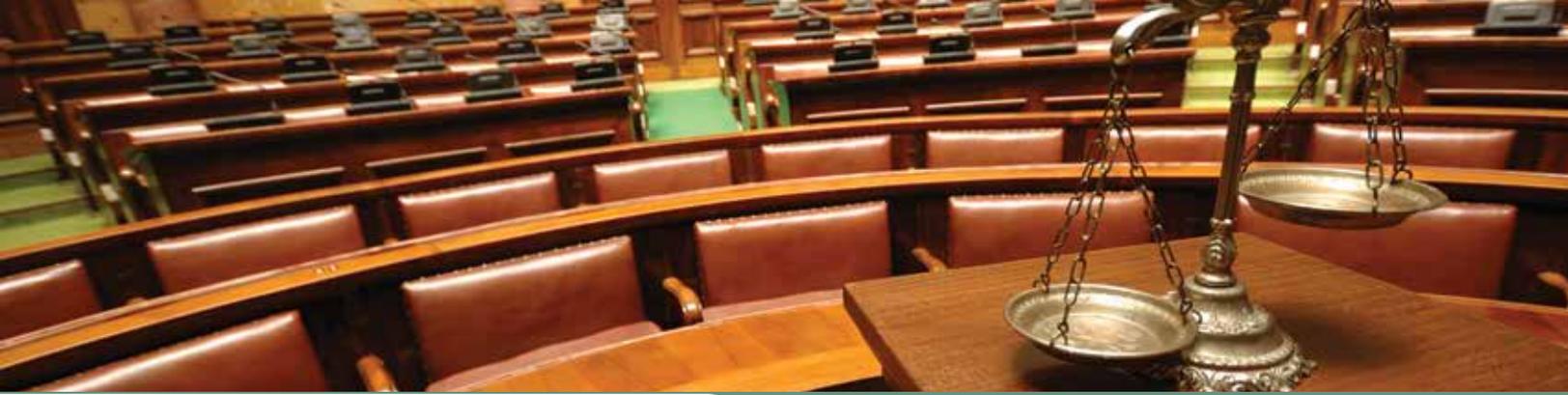
## ENDNOTES:

- 1 California Government Code section 54962
- 2 California Constitution, Art. 1, section 3
- 3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).
- 4 California Government Code section 54957.1
- 5 California Government Code section 54954.5
- 6 California Government Code section 54954.2
- 7 California Government Code section 54954.5
- 8 California Government Code sections 54956.9 and 54957.7
- 9 California Government Code section 54957.1(a)
- 10 California Government Code section 54957.1(b)
- 11 California Government Code section 54957.2
- 12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18707
- 13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
- 15 82 Ops.Cal.Atty.Gen. 29 (1999)
- 16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471
- 17 “*The Brown Act*,” California Attorney General (2003), p. 40
- 18 California Government Code section 54956.9(g)
- 19 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172
- 20 Government Code section 54956.9(e)
- 21 California Government Code section 54957.1
- 22 California Government Code section 54956.8
- 23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).
- 24 73 Ops.Cal.Atty.Gen. 1 (1990)
- 25 California Government Code sections 54956.8 and 54954.5(b)
- 26 California Government Code section 54957.1(a)(1)
- 27 California Government Code section 54957(b)
- 28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).
- 29 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)
- 30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

- 31 California Government Code section 54957(b)(3)
- 32 88 Ops.Cal.Atty.Gen. 16 (2005)
- 33 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860
- 34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).
- 35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87
- 36 *Moreno v. City of King* (2005) 127 Cal.App.4th 17
- 37 California Government Code section 54957
- 38 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165
- 39 California Government Code section 54957.1(a)(5)
- 40 California Government Code section 54957.6
- 41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not “employees” of the district).
- 42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)
- 43 California Government Code section 54957.1(a)(6)
- 44 California Government Code section 3549.1
- 45 California Government Code section 3540
- 46 California Government Code section 3547
- 47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).
- 48 California Education Code section 72122
- 49 California Education Code section 60617
- 50 California Government Code section 54956.96
- 51 California Government Code section 54956.7
- 52 California Government Code section 54957
- 53 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354
- 54 California Government Code section 54957.8
- 55 California Government Code section 54962
- 56 California Health and Safety Code section 32106
- 57 California Government Code section 54956.75
- 58 California Government Code section 54956.81
- 59 California Government Code section 54956.86
- 60 California Government Code section 54956.87
- 61 California Government Code section 54956.95
- 62 46 Ops.Cal.Atty.Gen. 34 (1965)
- 63 82 Ops.Cal.Atty.Gen. 29 (1999)

- 64 Government Code section 54963
- 65 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also California Government Code section 54963.
- 66 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 67 80 Ops.Cal.Atty.Gen. 231 (1997)
- 68 76 Ops.Cal.Atty.Gen. 289 (1993)
- 69 California Government Code section 54963
- 70 California Government Code section 54963
- 71 California Government Code section 54957.1

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



# Chapter 6

## REMEDIES

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# Chapter 6

## REMEDIES



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

### Invalidation

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

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

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

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

### Applicability to Past Actions

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

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

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

### Civil action to prevent future violations

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

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

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

---



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

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

### Costs and attorney's fees

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

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

### Criminal complaints

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

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

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

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

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

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

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

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

## Voluntary resolution

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

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

## ENDNOTES:

- 1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54956.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.
- 2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198
- 3 California Government Code section 54960.1 (b) and (c)(1)
- 4 *McKee v. Orange Unified School District* (2003) 110 Cal. App.4th 1310, 1318-1319
- 5 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561
- 6 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118
- 7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)
- 8 Government Code Sections 54960.2(a)(1), (2)
- 9 Government Code Section 54960.2(b)



- 10 Government Code Section 54960.2(a)(4)
- 11 Government Code Section 54960.2(c)(2)
- 12 Government Code Section 54960.2(c)(1)
- 13 Government Code Section 54960.2(c)(3)
- 14 Government Code Section 54960.2(d)
- 15 Government Code Section 54960.2(e)
- 16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6
- 17 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36
- 18 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein
- 19 California Government Code section 54960.5
- 20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
- 21 California Government Code section 54959
- 22 California Government Code section 54952.6
- 23 61 Ops.Cal.Atty.Gen.283 (1978)
- 24 California Government Code section 54959
- 25 California Government Code section 1222 provides that “[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.”
- 26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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





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



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**000071**

## CHRONOLOGICAL CASE REPORT

Case No.: Case T18-0311

Name: Property Cervantes v. Fong

Address: 1791 28<sup>th</sup> Avenue, Oakland CA 94601

Parties: May & Grant Fong (Property Owners)  
Maria & Luis Cervantes (Tenants)  
Xavier Johnson, (Tenant Representative)

### OWNER APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	June 12, 2018
Owner Response filed	November 13, 2018
Hearing Decision mailed	October 3, 2019
Owner Appeal filed	October 9, 2019
Corrected Hearing Decision mailed	October 17, 2019
Panel Appeal Decision mailed	March 10, 2020
Remand Decision mailed	December 18, 2020
Owner Appeal filed	December 29, 2020

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CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For date stamp.

JUN 12 PM 3:56

**TENANT PETITION**

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

**Please print legibly**

Your Name Maria Amezcuita and Luis Ayala Cervantes	Rental Address (with zip code) 1791 28th Ave Oakland, CA 94601	Telephone: <b>510-927-1332</b>
		E-mail:
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) May Lee Fong and Grant Wai Fong	Mailing Address (with zip code) 358 Cerro Ct. Daly City, CA 94015	Telephone: <b>650-757-2988</b>
		Email:
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 6

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

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

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

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<input checked="" type="checkbox"/> (a) The CPI and/or banked rent increase notice I was given was calculated incorrectly.
--

	rent increase.
X	(d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
X	(e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
	(f) The rent increase notice(s) was (were) not given to me in compliance with State law.
X	(g) The increase I am contesting is the second increase in my rent in a 12-month period.
X	(h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
X	(i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
	(j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
X	(k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
	(l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake (OMC 8.22, Article I)
	(m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
	(n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: August 2015 Initial Rent: \$ 945 /month

When did the owner first provide you with the RAP NOTICE, a written NOTICE TO TENANTS of the existence of the Rent Adjustment Program? Date: 8/24/17. If never provided, enter "Never."

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
<u>4/26/18</u>	<u>4/26/18</u>	\$ 1200	\$ 1400	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<u>8/24/17</u>	<u>10/3/2017</u>	\$ 945	\$ 1200	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>8/24/17</u>	<u>9/5/2017</u>	\$ 945	\$ 1233	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes  
 No

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

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

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

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

Yes  No

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

Yes  No

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

Yes  No

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

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

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

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

Maria Amezquita  
Tenant's Signature

6-7-18  
Date

Luis AYA LA SERVANTES

6-7-18

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

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

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

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

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

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

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

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

### **File Review**

Your property owner(s) will be required to file a response to this petition within 35 days of notification by the Rent Adjustment Program. You will be sent a copy of the Property Owner's Response. The petition and attachments to the petition can be found by logging into the RAP Online Petitioning System and accessing your case once this system is available. If you would like to review the attachments in person, please call the Rent Adjustment Program office at (510) 238-3721 to make an appointment.

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

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

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Tenant Petitioner

**Addendum A-Decrease in Services**

Description of Decreased Service	Approximate Date this Service was Lost	Date Tenant Notified Landlord and how	Date fixed, if any	Estimated Value to Loss of Service
Electric wiring malfunction; You can see the sparks when you use electric	August 2015	September 2015	N/A	30%
Windows; they do not close in the bedroom and in the living room it is not properly installed	August 2015	September 2015	N/A	20%
Bathroom; the sink has mold, is rotten, and has a bad smell. The bathtub has mold or some kind of black right around it.	August 2015	September 2015	N/A	20%
Kitchen drawers and cabinets; they do not open and close properly	August 2015	September 2015	N/A	8%

Tenant Petitioner  
Maria Amezquita  
Luis Ayala Cervantes  
1791 28<sup>th</sup> Ave.  
Oakland, CA 94601

### **Addendum A- Changed Conditions**

1. Since their move in July 2015 the rent included the water bill. In June of 2017 the landlord discontinued their water services and tenants were forced to place the water in their name.

PLEASE NOTE: Tenant Petitioner is a monolingual Spanish speaker and requests an interpreter.

**000078**





CITY OF OAKLAND

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

Planning and Building Department

(510) 238-6402

Bureau of Building

FAX:(510) 238-2959

Building Permits, Inspections and Code Enforcement Services

TDD:(510) 238-3254

[inspectioncounter@oaklandnet.com](mailto:inspectioncounter@oaklandnet.com)

## NOTICE OF VIOLATION

4/25/18

*Certified and Regular mail*

To: Fong Grant W & May L  
358 Cerro Ct  
Daly City CA 94015

Code Enforcement Case No.: 1801330

Property: 1791 28<sup>th</sup> Ave

Parcel Number: 25-733-12

Re-inspection Date/Correction Due Date: 6/5/18

Code Enforcement Services inspected your property on 4/23/18 and confirmed:

- that the violations of the Oakland Municipal Code (OMC) identified below are present and need to be addressed as specified under "Required Actions". Photographs of the violations are enclosed where applicable.
- that work was performed without permit or beyond the scope of the issued permit and you are receiving this Notice of Violation because you did not get the required permit within three (3) days of receiving the Stop Work Order. You must contact the inspector indicated below before the Re-inspection Date to stop further code enforcement action.
- Investor Owned Program - Per OMC 8.58
- Foreclosed and Defaulted Properties--Per OMC 8.54

At this point, no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations and contact Inspector Hugo Barron, who is assigned to your case, before the re-inspection date shown above to schedule an inspection. Your inspector is available by phone at 510-238-6612 and by email at [hbarron@oaklandnet.com](mailto:hbarron@oaklandnet.com).

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

**Note: If a complaint is filed regarding the same or similar violation(s) and it is confirmed within 24 months from the date of this notice an immediate assessment of \$1,176.00 will be charged as a Repeat Violation. In addition, if violation(s) remain uncorrected after you receive a 30-day Notice of Violation, further enforcement action(s) will include additional fees.**

- If you do not contact your inspector to discuss why you cannot comply or if applicable, complete the Property Owner Certification form and the re-inspection verifies that all violations have not been corrected, you may be charged for inspection and administrative costs, which can total \$2,665.00.
- The City may also abate the violations and charge you for the contracting and administrative costs, which can also total over \$1,000.00.
- Priority Lien fees in the amount of \$1,349.00 may be assessed if fees are not paid within 30 days from the date of the invoice. Charges may be collected by recording liens on your property and adding the charges to your property taxes or by filing in Small Claims Court.
- The Notice of Violation may be recorded on your property with associated fees for processing and recording.

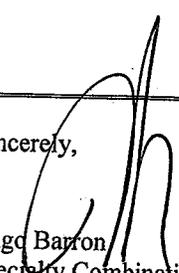
**You have a right to appeal** this Notice of Violation. You must complete the enclosed appeal form and return it with supporting documentation in the enclosed envelope. If Code Enforcement Services does not receive your written Appeal within the appeal deadline dated: **6/5/18** you will waive your right for administrative review. *Note: Incomplete appeals including, but not limited to an oral notification of your intention to appeal, a written appeal postmarked but not received by us within the time prescribed or a written appeal received by us without a filing fee are not acceptable and will be rejected.*

Note: The appeal period may be reduced based on prior noticing i.e., Courtesy notice, Repeat Violation and the Property Owner Certification on record.

If you choose to file an appeal no further action can be taken by Code Enforcement Inspectors until you have had the opportunity to be heard by an independent Administrative Hearing Examiner pursuant to the Oakland Municipal Code Section 15.08.380 (B)(3) and a Final Decision is determined. An appeal will be scheduled within **60** days from the end of the appeal period. A filing fee in the amount of **\$110.00** is due at the time of submittal. Payments may be made in person at the Bureau of Building, 250 Frank Ogawa Plaza, 2<sup>nd</sup> Floor, or by phone by calling 510-238-4774 (**Please include the receipt number and date on your appeal**). MasterCard and Visa are accepted.

Investor-Owned Residential Property OMC 8.58	Foreclosed and Defaulted OMC 8.54
<p>Administrative/Civil penalties will be Assessed for failure to abate (OMC Sections 8.24.020, 1.08.60, 1.12). Penalties may be assessed for up to 21 days at \$1,000 a day. You will be notified separately if penalties have accrued.</p> <p><b>Nuisance Abatement Lien (Notice of Violation)</b> A Nuisance Abatement Lien may be filed with the Alameda County Clerk-Recorder for recordation on the property title which shall have the force, effect and priority of a Judgment Lien. The Nuisance Abatement Lien may be foreclosed by an action brought by the City of Oakland for a money judgment.</p> <p><b>(Priority Lien) (OMC 8.58.430)</b> A Constructive notice of the pendency of a collection action for an Assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder</p>	<p>Civil penalties will be Assessed for failure to abate (OMC Sections 8.24.020.1.08.601.12). Penalties may be assessed for up to 21 days at \$1,000 a day. You will be notified separately if penalties have accrued.</p> <p><b>(Priority Lien) (OMC 8.54.430)</b> A Constructive notice of the pendency of a collection action for an Assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder</p>

Sincerely,

  
Hugo Barron  
Specialty Combination Inspector  
Planning and Building Department

Enclosures as applicable:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Blight brochure              | <input type="checkbox"/> Residential Code Enforcement brochure | <input type="checkbox"/> Vehicular Food Vending brochure |
| <input type="checkbox"/> Property Owner Certification | <input type="checkbox"/> Mold and Moisture brochure            | <input type="checkbox"/> Pushcart Food Vending brochure  |
| <input type="checkbox"/> Lead Paint brochure          | <input type="checkbox"/> Undocumented Dwelling Units brochure  | <input type="checkbox"/> Smoke Alarms brochure           |
| <input type="checkbox"/> Photographs                  | <input type="checkbox"/> Stop Work brochure                    | <input type="checkbox"/> Condominium Conversion brochure |

cc:

Administrative Hearing Fees	
Filing Fee	\$ 110.00
Conduct Appeals Hearing	Actual Cost Appeal (Fee charged only if Appellant loses appeal)
Processing Fee	\$ 931.00
Reschedule Hearing	\$ 329.00
<i>Fee Includes 9.5% Records Management Fee and 5.25% Technology Enhancement Fee</i>	

Property Address: 1791 28<sup>th</sup> Ave

Complaint #: 1801330

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

Description of Violation	Required Action	OMC Section
Trash, debris, building materials, recyclable items, indoor furniture, overgrown vegetation. Remove.	Remove	8.24.020.D
Vehicles parked on the rear lawn. Remove	Remove	8.24.020.F.3

**Building Maintenance (Housing)**

Description of Violation	Required Action	OMC Section
1.- Drawers of kitchen base cabinets do not open/close properly.	Repair in approved manner	15.08.230.O
2.- Some receptacles in the living room and bathroom do not work.	Repair in approved manner	15.08.260.C
3.- Windows in the bedroom do not open/close properly.	Repair in approved manner.	15.08.230.O

**Zoning**

Description of Violation	Required Action	OMC Section

## Description of Property Maintenance Violations

Property Address:

Complaint #:

### Property Maintenance- OMC 8.24.020

#### Abandoned building or structure (OMC 8.24.020 A)

- A building or structure which is not occupied, inhabited, used, or secured; a building or structure is unsecured when it is unlocked or the public can gain entry without the consent of the owner. OMC 8.24.020 (1)
- Any partially constructed, reconstructed or demolished building or structure upon which work is abandoned - No valid and current building or demolition permit or no substantial work on the project for six months. OMC 8.24.020 (2)

#### Attractive Nuisance (OMC 8.24.020 B)

- Property which is in an unsecured state so as to potentially constitute an attraction to children, harbor vagrants, criminals, or other unauthorized persons.

#### A building or structure which is in a state of disrepair (OMC 8.24.020 C)

- Any building or structure which by reason of rot, weakened joints, walls, floors, underpinning, roof, ceilings, or insecure foundation, or other cause has become dilapidated or deteriorated. OMC 8.24.020 (1)
- Any building or structure with exterior walls and/or roof coverings which have become so deteriorated as to not provide adequate weather protection and be likely to, or have resulted in, termite infestation or dry rot. OMC 8.24.02 (2)
- Buildings or structures with broken or missing windows or doors which constitute a hazardous condition or a potential attraction to trespassers. OMC 8.24.020 (3) Violation Location:  Front  Side  Rear/Backyard
- Buildings or structures including but not limited to, walls, windows, fences, signs, retaining walls, driveways, or walkways which are obsolete, broken, deteriorated, or substantially defaced to the extent that the disrepair visually impacts on neighboring property or presents a risk to public safety i.e. writings, inscriptions, figures, scratches, or other markings referred to as "graffiti" and peeling, flaking, blistering, or otherwise deteriorated paint. OMC 8.24.020 (4)

#### Property inadequately maintained (OMC 8.24.020 D) Violation Location: Front Side Rear/Backyard

- Property which is not kept clean and sanitary and free from all accumulations of offensive matter or odor including, but not limited to, overgrown or dead or decayed trees, weeds or other vegetation, rank growth, dead organic matter, rubbish, junk, garbage animal intestinal waste and urine, and toxic or otherwise hazardous liquids and substances and material - Combustible and noncombustible waste materials, residue from the burning of wood, coal, coke, and other combustible material; paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, hay, straw, tin cans, metal mineral matter, glass, crockery, and dust; animal feed and the products of and residue from animal quarters. OMC 8.24.020 (1)
- Property which constitutes a fire hazard or a condition considered dangerous to the public health, safety and general welfare. OMC 8.24.020(2)
- Property which is likely to or does harbor rats or other vectors, vermin, feral pet, or other non-domesticated animal nuisances OMC 8.24.020 (3)
- Property which substantially detracts from the aesthetic and economic values of neighboring properties including, but not limited to, personal property and wares and foodstuffs, premises garbage and refuse receptacles, and commercial and industrial business activities which are inadequately buffered from any street, sidewalk, or other publicly trafficked area or such buffering which is inadequately maintained. OMC 8.24.020 (4) and OPC Chapter 17.110  
Violation Location:  Front  Side  Rear/Backyard
- Landscaping which is inadequately maintained or which is not installed as required by city codes or any permit issued in accordance with such codes. OMC 8.24.020 (5) Violation Location:  Front  Side  Rear/Backyard
- Matter including but not limited to smoke, odors, dust, dirt, debris, fumes, and sprays which is permitted to be transported by wind or otherwise upon any street, course, alley, sidewalk, yard, park, or other public or private property and which is determined to be a violation of federal, state, regional, or local air quality regulations. OMC 8.24.020 (6)  
Violation Location:  Front  Side  Rear/Backyard
- Property including, but not limited to building facade, window, doorway, driveway, walkway, fence, wall, landscaped planter or area, sidewalk, curb, and gutter, and edge of street pavement on which dirt, litter, vegetation, garbage refuse, debris, flyers, or circulars have accumulated. OMC 8.24.020 (7) Violation Location:  Front  Side  Rear/Backyard
- Property on which a swimming pool, pond, stream, or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained, resulting in the water becoming polluted. OMC 8.24.020 (8)

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## Property Maintenance (cont'd)

- Parking lots, driveways, paths, and other areas used or intended to be used for commercial and industrial business activities including, but not limited to, selling, manufacturing, processing, packaging, fabricating, treating, dismantling, processing, transferring, handling, transporting, storing, compounding, or assembling which are inadequately maintained and pose a risk of harm to public health or safety including, but not limited to, unpaved surfaces which generate fugitive dust and paved surfaces with cracks, potholes, or other breaks. OMC 8.24.020 (9)
- Property on which recyclable materials (goods, vehicles, machinery, appliances, product or article, new or used), are openly stored (not in an enclosed building). OMC 8.24.020 (10) Violation Location:  Front  Side  Rear/Backyard
- Property which is not securely fenced or adequately lighted to prevent illegal access and activity related to the dumping of garbage, waste, debris and litter. OMC 8.24.020 (11)

### Property which creates a dangerous condition (OMC 8.24.020 E)

- Property having a topography, geology, or configuration which, as a result of grading operations, erosion control, sedimentation control work, or other improvements to said property, causes erosion, subsidence, unstable soil conditions, or surface or subsurface drainage problems as to harm or pose a risk of harm to adjacent properties. OMC 8.24.020 (1)
- Property where any condition or object obscures the visibility of public street intersections to the public so as constitute a hazard including, but not limited to, landscaping, fencing, signs, posts, or equipment. OMC 8.24.020 (2)
- Conditions which due to their accessibility to the public pose a hazard including, but not limited to, unused and broken equipment, abandoned wells, shafts, or basements, hazardous or unprotected pools, ponds, or excavations structurally unsound fences or structures, machinery which is inadequately secured or protected, lumber, trash, fences or debris that may pose a hazard to the public, storage of chemicals, gas, oil, or toxic or flammable liquids OMC 8.24.020 (3)

### Parking, Storage or Maintenance of Areas Zoned for Residential Use (OMC 8.24.020 F)

- Any construction or commercial equipment, machinery, material, truck or tractor or trailer or other vehicle have a weight exceeding 7,000 pounds, or recyclable materials, except that such items may be temporarily kept within or upon residential property for the time required for the construction of installation of improvements or facilities on the property. OMC 8.24.020 (1) Violation Location:  Front  Side  Rear/Backyard
- Trailers, campers, recreational vehicles, boats, and other mobile equipment for a period of time in excess of 72 consecutive hours in front or side yard area. OMC 8.24.020 (2) Violation Location:  Front  Side  Rear/Backyard
- Any parking, keeping or storing of items in the side or rear yard areas shall be either in an accessory building constructed in accordance with the provisions of this code or in an area which provides for a 5-foot setback from any property line. OMC 8.24.020 (2a) Violation Location:  Front  Side  Rear/Backyard
- 1500 sq. feet or at least 60 percent of the remaining rear yard, whichever is less, must be maintained as usable outdoor recreational space. 8.24.020 (2b)
- No item shall be parked, stored or kept within 5 feet of any required exit, including existing windows. OMC 8.24.020 F. (2c)
- Any motor vehicle which has been wrecked, dismantled or disassembled, or any part thereof, or any motor vehicle which is disabled or which may not be operated because of the need for repairs or for any other reason for a period of time in excess of 72 hours. OMC 8.24.020 (3) Violation Location:  Front  Side  Rear/Backyard
- Any refrigerator, washing machine, sink, stove, heater, boiler, tank or any other household equipment, machinery, furniture, or other than furniture designed for outdoor activities, appliances, or any parts of any of the listed items for a period of time in excess of 72 hours. OMC 8.24.020 (4) Violation Location:  Front  Side  Rear/Backyard
- Storing or keeping packing boxes, lumber, dirt and other debris, except a allowed by this code for the purpose or construction, in any setback areas visible from public property or neighboring properties for a period of time in excess of 72 hours. OMC 8.24.020 (5) Violation Location:  Front  Side  Rear/Backyard
- No item covered by this section shall be parked, stored, or kept between the front lot line and the front wall of the facility, including the projection of the front wall across the residential property lot line, except where such item is located in an approved driveway or approved parking space. OMC 8.24.020 (6) Violation Location:  Front  Side  Rear/Backyard

### Activities Prohibited in Areas Zoned for Residential Uses (OMC 8.24.020 G)

- Wrecking, dismantling, disassembling, manufacturing, fabricating, building, remodeling, assembling, repairing, painting, washing, cleaning or servicing, in any setback area of any airplane, aircraft, motor vehicle, boat, trailer, machinery, equipment, appliance or appliances, furniture or other personal property. OMC 8.24.020 (1)
- Any owner, leasee or occupant of residential property may repair, wash, clean or service any personal property which is owned, leased or rented by such owner, lease or occupant of such property. Any such repairing or servicing performed in any such areas shall be completed within a 72 hours period. OMC 8.24.020 (1a)
- A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property. OMC 8.24.020 (1b)
- A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer or a junkyard which is a legal nonconforming use. OMC 8.24.020 (2c)

- The use of any trailer, camper, recreational vehicle or motor vehicle for living or sleeping quarters in any place in the city, outside of a lawfully operated mobile home park or travel trailer park OMC 8.24.020 (2)
- Guests occupying a trailer, camper, or recreational vehicle upon a residential premise exceeding 72 hours. OMC 8.24.020 (2a)
- Trailer, camper, or recreational vehicles shall not discharge any waste or sewage into the city's sewage system except through the residential discharge connection of the residential premises on which it is parked. OMC 8.24.020 (2b)

**Permit Requirement OMC 8.24.020 (H)**

- Any use of property which does not have all required permits pursuant to city codes or where such permits have expired or been revoked.

**General Conditions (OMC 8.24.020 I)**

- Any condition which is detrimental to the public health, safety or general welfare or which constitutes a public nuisance. OMC 8.24.020 (1)
- Any condition of deterioration or disrepair which substantially impacts on the aesthetic or economic value of neighboring properties OMC 8.24.020 (2)

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RENT ADJUSTMENT PROGRAM  
OAKLAND

City of Oakland Rent Adjustment Program

Owner Response

Case T18-0311  
Property Address 1791 28th Avenue

Party	Name	Address	Mailing Address
Tenant	Maria & Luis Cervantes (510) 927-1332	1791 28th Avenue Oakland, CA 94601	
Owner	May & Grant Fong 650-757-2988	358 Cerro Court Daly City, CA 94015	

Business Information

Date of which you aquired the building	1-30-2015
Total Number of Units	6
Is there more than one street address on the parcel?	No
Type of Unit	Apartment, Room or Live-work
Is the contested increase a capital improvements increase?	No

Rent History

The tenant moved into the rental unit on	8-24-2017
Initial monthly rent	1233
Have you (or a previous Owner) given the City of Oakland's form entitled Notice to Tenants of Residential Rent Adjustment Program ("RAP Notice") to all of the petitioning tenants?	Yes
On what date was the notice first given?	8-24-2017
Is the tenant current on the rent?	No

Exemption

The unit is a single family residence or condominium exempted by the Costa Hawkins Rental Housing Act (California Civil Code 1954.50, et seq.). If claiming exemption under Costa-Hawkins, please answer the following questions:	No
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City of Oakland

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**City of Oakland Rent Adjustment Program**

**Owner Response**

Case **T18-0311**  
Property Address **1791 28th Avenue**

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The rent for the unit is controlled, regulated or subsidized by a governmental unit, agency or authority other than the City of Oakland Rent Adjustment Ordinance.	No
The unit was newly constructed and a certificate of occupancy was issued for it on or after January 1, 1983.	No
On the day the petition was filed, the tenant petitioner was a resident of a motel, hotel, or boarding house for less than 30 days.	No
The subject unit is in a building that was rehabilitated at a cost of 50% or more of the average basic cost of new construction.	No
The unit is an accommodation in a hospital, convent, monastery, extended care facility, convalescent home, non-profit home for aged, or dormitory owned and operated by an educational institution.	No
The unit is located in a building with three or fewer units. The owner occupies one of the units continuously as his or her principal residence and has done so for at least one year.	No

City of Oakland

2 / 2

Received 600 8/21/17

OAKLAND RENTAL AGREEMENT AND/OR LEASE

Landlord/Lessor/Agent: Mav Fong Apartment Number 1791
Tenant(s)/Lessee: Maria Amezcua Arce, Luis Cervantes, Jovani Ayala Amezcua
Apartment Number: 1791
Apartment Address: 1791-28th Avenue
City: Oakland State Ca Zip 94601
Monthly Rental Rate: \$1700
Rental Due Date: 1st of month
Security Deposit: \$3500
Late Charge: \$75 if not paid by 3rd
Parking Space: 1
Storage Space: 0

81400 from 12/1/17 M.A

- 1. This Rental Agreement and/or Lease shall evidence the complete terms and conditions under which the parties whose signatures appear below have agreed.
2. PAYMENTS: Rent and/or other charges are to be paid at the office or apartment of the manager of the building or at such other place designated in writing by OWNER.
3. LATE CHARGE/FEE: The late charge amount noted above, not to exceed 6% of the monthly rent, shall be added to any payment of rent not made on the rental due date or for which a deficient (bounced) check shall have been given.
4. SECURITY DEPOSITS: The Security Deposit shall not exceed two times the monthly rent for unfurnished apartments or three times the monthly rent for furnished apartments.
5. UTILITIES: RESIDENT agrees to pay for all utilities and/or services based upon occupancy of the premises except garbage.
6. OCCUPANTS: Guest(s) staying over 14 days cumulative or longer during any 12-month period, without the OWNER'S written consent, shall be considered a breach of this agreement.
7. PETS AND FURNISHINGS: Furnishings - No liquid-filled furniture of any kind may be kept on the premises.
8. PARKING/STORAGE: When and if RESIDENT is assigned a parking space on OWNER'S property, the parking space shall be used exclusively for parking of passenger automobiles and/or those approved vehicles listed on RESIDENT'S 'Application to Rent/Lease' or attached hereto.
9. NOISE: RESIDENT agrees not to cause or allow any noise or activity on the premises that might disturb the peace and quiet of another RESIDENT.
10. LOITERING AND PLAY: Lounging, playing, or unnecessary loitering in the halls, on the front steps, or in the common areas in such a way as to interfere with the free use and enjoyment, passage or convenience of another RESIDENT is prohibited.
11. DESTRUCTION OF PREMISES: If the premises become totally or partially destroyed during the term of this Agreement so that RESIDENT'S use is seriously impaired, RESIDENT or OWNER may terminate this Agreement immediately upon three-day written notice to the other.
12. CONDITION OF PREMISES: RESIDENT acknowledges that he has examined the premises and that said premises, all furnishings, fixtures, furniture, plumbing, heating, electrical facilities, all items listed on the attached inventory sheet, if any, and/or all other items provided by OWNER are all clean, and in good satisfactory condition except as may be indicated elsewhere in this Agreement.

Can Also Deposit to Bank of America Account

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be returned to OWNER in clean and good condition except for reasonable wear and tear; the premises shall be free of all personal property and trash not belonging to OWNER. It is agreed that all dirt, holes, tears, burns, or stains of any size or amount in the carpets, drapes, walls, fixtures, and/or any other part of the premises, do not constitute reasonable wear and tear.

**13. MAINTENANCE AND ALTERATIONS:** RESIDENT shall not paint, wallpaper, alter or redecorate, change or install locks, install antenna or other equipment, screws, fastening devices, excessively large nails, or adhesive materials, place signs, displays, or other exhibits, on or in any portion of the premises without the written consent of the OWNER except as may be provided by law. RESIDENT shall deposit all garbage and waste in a clean and sanitary manner into the proper receptacles as provided and shall cooperate in keeping the garbage area neat and clean. RESIDENT shall be responsible for disposing of items of such size or nature as is not normally acceptable by the garbage hauler for the building. RESIDENT shall be responsible for keeping the garbage disposal clean of chicken bones, toothpicks, match sticks, celery, pits, grease, metal vegetable ties, and all other items that may tend to cause stoppage of the mechanism. RESIDENT shall pay for the cleaning out of any plumbing fixture that may need to be cleared of stoppage and for the expense or damage caused by the stopping of waste pipes or overflow from bathtubs, washbasins, toilets, or sinks, if caused by negligence or misuse by RESIDENT or their guests. Tenant must notify landlord with a written notice stating what item(s) need service or repair and give landlord a reasonable opportunity to service or repair that item(s). Should any charges be incurred by the City as a result of not notifying the Landlord in writing of such needed service or repairs, tenant shall be responsible for a minimum of \$201.50 for each occurrence plus any additional fines or inspection fees imposed by a government office as a result of RESIDENT not notifying OWNER in writing of any deficiencies with the residence.

**14. SMOKE/CARBON MONOXIDE DETECTORS:** The rental unit is equipped with properly functioning smoke and carbon monoxide detectors. Resident agrees to test the smoke and carbon monoxide detectors in the rental unit monthly for proper function. Resident agrees not to interfere with their normal function or disable any detectors in any manner.

**15. HOUSE, POOL, AND LAUNDRY RULES:** RESIDENT shall comply with all house, pool, pet, and laundry rules attached to this agreement which may be changed from time to time. These rules shall apply to, but are not limited to, noise, odors, disposal of trash, pets, parking, use of common areas, and storage of toys, bicycles, tools, and other personal items (including signs and laundry), which must be kept inside and out of view. OWNER shall not be liable to RESIDENT for any violation of such rules by any other RESIDENTS or persons. Rights of usage and maintenance of the laundry room and/or pool and pool area are gratuitous and subject to revocation by OWNER at any time.

**16. CHANGE OF TERMS:** The terms and conditions of this agreement are subject to future change by OWNER after the expiration of the agreed lease period upon 30 days written notice setting forth such change and delivered to RESIDENT. Any changes are subject to laws in existence at the time of the Notice Of Change Of Terms.

**17. TERMINATION:** After expiration of the leasing period, this agreement is automatically renewed from month-to-month, but may be terminated by either party. The owner giving a 60-day notice and the resident giving a 30-day written notice of intention to terminate. Where laws require "just cause," such just cause shall be so stated on said notice. The premises shall be considered vacated only after all areas including storage areas are clear of all RESIDENT'S belongings, and keys and other property furnished for RESIDENT'S use are returned to OWNER. Should the RESIDENT hold over beyond the termination date or fail to vacate all possessions on or before the termination date, RESIDENT shall be liable for additional rent and damages, which may include damages due to OWNER'S loss of prospective new RENTERS.

**18. POSSESSION:** If OWNER is unable to deliver possession of the Apartment to RESIDENT on the agreed date, because of the loss or destruction of the Apartment or because of the failure of the prior RESIDENT to vacate or for any other reason, the RESIDENT and/or OWNER may immediately cancel and terminate this agreement upon written notice to the other party at their last known address, whereupon neither party shall have liability to the other, and any sums paid under this Agreement shall be refunded in full. If neither party cancels, this Agreement shall be pro-rated and begin on the date of actual possession.

**19. INSURANCE:** RESIDENT acknowledges that OWNER'S insurance does not cover personal property damage caused by fire, theft, rain, war, acts of God, acts of others, and/or any other causes, nor shall OWNER be held liable for such losses. RESIDENT HEREBY AGREES TO OBTAIN HIS OWN INSURANCE POLICY TO COVER ANY PERSONAL LOSSES. This does not waive OWNER'S duty to prevent personal injury or property damage where that duty is imposed by law, however, RESIDENT'S failure to maintain said policy shall be a complete waiver of RESIDENT'S rights to seek damages against OWNER for above stated losses.

**20. RIGHT OF ENTRY AND INSPECTION:** OWNER or OWNER'S Agent by themselves or with others, may enter, inspect and/or repair the premises at any time in case of emergency or suspected abandonment. OWNER shall give 24 hours advance notice and may enter for the purpose of showing the premises during normal business hours to prospective renters, buyers, lenders, for smoke alarm inspections, and/or for normal inspection and repairs. OWNER is permitted to make all alterations, repairs and maintenance that in OWNER'S judgment is necessary to perform. In addition, OWNER has the right to enter pursuant to Civil Code Section 1954. If the work performed requires that RESIDENT temporarily vacate the unit, then RESIDENT shall vacate for this temporary period upon being served a 7-day notice by OWNER. RESIDENT agrees that in such event RESIDENT will be solely compensated by a corresponding reduction in the rent for those many days that RESIDENT was temporarily displaced. No other compensation shall be due to the RESIDENT. If the work to be performed requires the cooperation of the RESIDENT to perform certain tasks, then RESIDENT shall perform those tasks upon receiving a 24-hour written notice. (EXAMPLE: removing food items from cabinets so that the unit may be sprayed for pests.) Upon 24 hours notice, RESIDENT hereby agrees to lend OWNER the keys to the premises for the purpose of having a duplicate made for OWNER'S use.

**21. ASSIGNMENT:** RESIDENT agrees not to transfer, assign or sublet the premises or any part thereof and hereby appoints and authorizes the OWNER as his agent and/or by OWNER'S own authority to evict any person claiming possession by way of any alleged assignment or subletting.

**22. PARTIAL INVALIDITY:** Nothing contained in this Agreement shall be construed as waiving any of RESIDENT'S or OWNER'S rights under the law. If any part of this Agreement shall be in conflict with the law, that part shall be void to the extent that it is in conflict, but shall not invalidate this Agreement nor shall it affect the validity or enforceability of any other provision of this Agreement.

**23. NO WAIVER:** OWNER'S acceptance of rent with knowledge of any default by RESIDENT or waiver by OWNER of any breach of any term or condition of this Agreement shall not constitute a waiver of subsequent breaches. Failure to require compliance or to exercise any right shall not be construed as a waiver by OWNER of said term, condition, and/or right, and shall not affect the validity or enforceability of any other provision of this Agreement.

**24. ATTORNEY'S FEES:** If any legal action or proceeding be brought by either party to this agreement, the prevailing party shall be reimbursed for all reasonable attorneys' fees up to but not more than \$500 in addition to other damages awarded.

**25. ABANDONMENT:** California Civil Code Section 1951.2 shall govern Abandonment. If any rent has remained unpaid for 14 or more consecutive days and the OWNER has a reasonable belief of abandonment of the premises, OWNER shall give 18 days written notice to RESIDENT at any place (including the rented premises) that OWNER has reason to believe RESIDENT may receive said notice of OWNER'S intention to declare the premises abandoned. RESIDENT'S failure to respond to said notice as required by law shall allow OWNER to reclaim the premises.

**26.** The undersigned RESIDENTS are jointly and severally responsible and liable for all obligations under this agreement and shall indemnify OWNER for liability caused by the actions (omission or commission) of RESIDENTS, their guests and invitees.

**27.** Pursuant to Section 1785.26 of the California Civil Code, as required by law, you are hereby notified that a negative credit report reflecting on your credit history may be submitted to a credit reporting agency, if you fail to fulfill the terms of your credit obligation. RESIDENT expressly authorizes OWNER/AGENT (including a collection agency) to obtain Resident's consumer credit report, which OWNER/AGENT may use if attempting to collect past due rent payments, late fees, or other charges from Resident, both during the term of the Agreement and thereafter.

**28. Lead Warning Statement:** Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, OWNERS must disclose the presence of known lead-based paint hazards in the dwelling. RESIDENTS must also receive a federally approved pamphlet on lead poisoning prevention.

**OWNER/AGENT DISCLOSURE (Initial)**

*AK* OWNER'S initials (on left) mean OWNER has no knowledge of lead-based paint and/or lead-based hazards in or on the Premises and OWNER has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in or on the Premises, and *OK* RENTER'S initial (on left) indicate that RENTER has received a copy of a "Protect Your Family from Lead in Your Home", and that RENTER shall notify OWNER promptly in writing of any deteriorating and/or peeling paint.

**29. MOLD:** The OWNER/AGENT has inspected the unit prior to lease and knows of no damp or wet building materials and knows of no mold contamination. Resident agrees to accept full responsibility and maintain the premises in a manner that prevents the occurrence of an infestation of mold in the premises. Resident also agrees to immediately report to the OWNER/AGENT any evidence of water leaks, excessive moisture or lack of proper ventilation and evidence of mold that cannot be removed by cleaning.



30. ADDITIONS AND EXCEPTIONS: TENANT is responsible for all repairs and replacements of all appliances including refrigerator, stove, and microwave.

31. NOTICES: All notices to RESIDENT shall be served at RESIDENT'S apartment / house whether or not RESIDENT is present at the time of delivery and all notices to OWNER / AUTHORIZED PERSON shall be served by first class mailing to:

Person Authorized To Manage Property:  
 Name \_\_\_\_\_ Address \_\_\_\_\_  
 Phone Number \_\_\_\_\_

Owner of property or a person who is authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for all notices and demands.

Name \_\_\_\_\_ Address \_\_\_\_\_  
 Phone Number \_\_\_\_\_

Person or Entity Authorized to Receive Payment of Rent:  
 Name \_\_\_\_\_ Address \_\_\_\_\_  
 Phone Number \_\_\_\_\_

32. INVENTORY: The Apartment contains the following items for use by RESIDENT: stove, refrigerator

RESIDENT further acknowledges that the subject premises are furnished with the additional furnishings listed on the attached inventory and that said attached inventory is hereby made part of this agreement.

33. Proposition 65 Notice: Warning: Some areas may contain chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.  
 34. Notice is hereby given of the existence of the Residential Rent Arbitration Board (RRAB) and the Rent Arbitration Program of the City of Oakland, the office of which is located at 250 Frank H. Ogawa Plaza, 5<sup>th</sup> Floor, Oakland, CA, 94612, phone number (510) 238-3721. The Rent Arbitration Program (Oakland Municipal Code, Chapter 8.22) lease addendum is attached to this lease and acknowledged in number 35 below as a lease addendum notifying tenants of the Notice to Tenants regarding Oakland's Rent Adjustment Program. In the event that Owner/Agent elects not to implement an annual rent adjustment, the Owner/agent hereby advises Tenant that Owner/agent elects to bank any such rent adjustment to future year(s) pursuant to the provisions of the Oakland Rent Arbitration Ordinance.

Note: Tenant and Landlord has adopted, and agree to comply with Measure EE "Just Cause Eviction" Ordinance for the City of Oakland, CA, which requires landlords of specified residential properties, the right to evict a tenant only for reasons specified in the measure, such as non-payment of rent, breach of lease, damaging premises, drug or other illegal activity, disorderly conduct, rehabilitation of unit, landlord or relative occupancy, except in certain circumstances where the tenant is disabled, elderly or catastrophically ill. Further, the ordinance provides for damages, penalties and attorneys' fees against landlords who violate this law. Should Tenant violate any portion of the ordinance, Landlord may exercise his/her right to evict tenant for damages, penalties and attorneys' fees.

35. RESIDENT acknowledges receipt of the following, which shall be deemed a part of this Agreement: (Please check)

- House Rules
- Laundry Rules
- Mailbox Keys
- Pet Agreement
- Pool Rules
- Apartment Keys
- Garage Door Opener \_\_\_\_\_
- Notice to Tenants: Oakland's Rent Adjustment Program
- Information About Bed Bugs Sheet

36. ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between OWNER and RESIDENT. No oral agreements have been entered into, and all modifications or notices shall be in writing to be valid. The undersigned Residents are jointly and severally responsible for all obligations under this agreement and shall indemnify Owner for liability caused by the actions (omission or commission) of residents, their guests and invitees. Renter has relied on his own judgment in entering into this agreement.

37. NOTICE: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

38. RECEIPT OF AGREEMENT: The undersigned RESIDENT hereby certifies that he/she is fluent in the English language and has read and completely understands this Agreement and hereby acknowledges receipt of a copy of this "Rental Agreement and/or Lease." (\_\_\_\_\_) RESIDENT'S Initials:  
 OR Pursuant to California Civil Code 1632, which requires translation of specified contracts or agreements that are negotiated in Spanish, Chinese, Vietnamese, Tagalog or Korean:

(Maria A.) Resident's Initials on left hereby acknowledge that this agreement was translated and interpreted in their foreign language of: Spanish  
Jovani Ayala Signature of Interpreter, 08/24/17 Date

Mav Fong Owner/Agent, 8/24/17 Date  
 \_\_\_\_\_ Owner/Agent, \_\_\_\_\_ Date  
 \_\_\_\_\_ Owner/Agent, \_\_\_\_\_ Date

Maria Amezcua Resident, 8-24-17 Date  
Luis Ramirez Resident, \_\_\_\_\_ Date  
Jovani Ayala Resident, 8-24-17 Date

NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR THE ADEQUACY OF ANY PROVISION IN THIS AGREEMENT. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.



P.O. BOX 70243, OAKLAND, CA 94612-2043  
 Department of Housing and Community Development  
 Rent Adjustment Program

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

**NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM**

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. For more information on which units are covered, contact the RAP office.
- Starting on February 1, 2017, an owner must petition the RAP for any rent increase that is more than the annual general rent increase ("CPI increase") or allowed "banked" rent increases. These include capital improvements and operating expense increases. For these types of rent increases, the owner may raise your rent only after a hearing officer has approved the increase. No annual rent increase may exceed 10%. You have a right to contest the proposed rent increase by responding to the owner's petition. You do not have to file your own petition.
- **Contesting a Rent Increase:** You can file a petition with the RAP to contest unlawful rent increases or decreased housing services. To contest a rent increase, you must file a petition (1) within ninety (90) days of the notice of rent increase if the owner also provided this Notice to Tenants with the notice of rent increase; or (2) within 120 days of the notice of rent increase if this Notice to Tenants was not given with the notice of rent increase. If the owner did not give this Notice to Tenants at the beginning of your tenancy, you must file a petition within ninety (90) days of first receiving this Notice to Tenants. Information and the petition forms are available from the RAP drop-in office at the Housing Assistance Center: 250 Frank H. Ogawa Plaza, 6th Floor, Oakland and at: <http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment>.
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. If the increase is approved and you did not pay the increase, you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Tenants in subsidized units are not required to pay the tenant portion of the fee.
- Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords (O.M.C. 8.22.600). (City Council Ordinance No. 13265 C.M.S.)
- The owner  is  is not permitted to set the initial rent on this unit without limitations (such as pursuant to the Costa-Hawkins Act). If the owner is not permitted to set the initial rent without limitation, the rent in effect when the prior tenant vacated was 1791.

**TENANTS' SMOKING POLICY DISCLOSURE**

- Smoking (circle one) IS or IS NOT permitted in Unit 1791, the unit you intend 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 tenant's building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on 8-24-17 (Date)

Maria Amezcua  
 (Tenant's signature)

此份屋審(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.



P.O. BOX 70243, OAKLAND, CA 94612-2043  
 Departamento de Desarrollo Comunitario y Vivienda  
 Programa de Ajustes en el Alquiler

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

**AVISO A LOS INQUILINOS DEL PROGRAMA DE AJUSTES EN EL ALQUILER RESIDENCIAL**

- Oakland tiene un Programa de Ajustes en el Alquiler (Rent Adjustment Program, RAP) que limita los aumentos en el alquiler (Capítulo 8.22 del Código Municipal de Oakland) y cubre a la mayoría de las unidades residenciales en alquiler construidas antes de 1983. Para más información sobre las viviendas cubiertas, contacte a la oficina del RAP.
- A partir del 1º de febrero de 2017, un propietario debe presentar una petición ante el RAP para todo aumento en el alquiler que sea mayor que el aumento general anual en el alquiler ("aumento CPI") o permitido que los aumentos en el alquiler sean "invertidos". Estos incluyen mejoras de capital y aumentos en los gastos operativos. En lo que respecta a este tipo de aumentos, el propietario puede aumentar su alquiler sólo después de que un funcionario de audiencia haya autorizado el incremento. Ningún aumento anual en el alquiler podrá exceder el 10%. Usted tiene derecho a disputar el aumento en el alquiler propuesto respondiendo a la petición del propietario. No es indispensable que usted presente su propia petición.
- **Cómo disputar un aumento en el alquiler:** Puede presentar una petición ante el RAP para disputar aumentos ilícitos en el alquiler o la disminución de servicios en la vivienda. Para disputar el aumento en el alquiler, debe presentar una petición (1) en un plazo de (90) días a partir de la fecha del aviso de aumento en el alquiler si el propietario también proporcionó este Aviso a los Inquilinos con la notificación del aumento en el alquiler; o (2) en un plazo de 120 días a partir de la fecha de recepción del aviso de aumento en el alquiler si este Aviso a los Inquilinos no fue entregado con la notificación de aumento en el alquiler. Si el propietario no entregó este Aviso a los Inquilinos al inicio del periodo de arrendamiento, deberá presentar una solicitud en un plazo de (90) días a partir de la fecha en que recibió por primera vez este Aviso a los Inquilinos. Encontrará información y formularios disponibles en la oficina del RAP en el Centro de Asistencia de Vivienda: 250 Frank H. Ogawa Plaza, 6º Piso, Oakland; también puede visitar: <http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment>.
- Si usted disputa un aumento en el alquiler, debe pagar su alquiler con el aumento disputado hasta que presente la petición. Si el aumento es aprobado y usted no lo pagó, adeudará la suma del incremento retroactivo a la fecha de inicio de vigencia del aumento.
- Oakland tiene controles de desalojo (Ordenanza de Desalojo por Causa Justa y Reglamentos, O.M.C. 8.22) que limitan los motivos de desalojo en las viviendas cubiertas. Para más información contacte la oficina RAP.
- Oakland les cobra a los propietarios una Tarifa de Servicio del Programa de Alquiler (Rent Program Service Fee) por vivienda al año. Si la tarifa se paga a tiempo, el propietario tiene derecho a cobrar la mitad del costo de esta tarifa al inquilino. No se requiere que los inquilinos de viviendas subsidiadas paguen la porción del inquilino de la tarifa.
- Oakland posee una Ordenanza de Protección al Inquilino (Tenant Protection Ordinance, TPO) para impedir el comportamiento abusivo por parte de propietarios y para ofrecerles a los inquilinos recursos legales en instancias donde han sido víctimas de comportamiento abusivo por parte de propietarios (O.M.C. 8.22.600). (Ordenanza del Concejo Municipal No. 13265 C.M.S.)
- El propietario  tiene  no tiene permitido establecer el alquiler inicial de esta vivienda sin limitaciones (por ejemplo, de conformidad con la Ley Costa-Hawkins). Si el propietario no tiene permitido establecer el alquiler inicial sin limitaciones, el alquiler vigente cuando el inquilino anterior desalojó la vivienda era de 2016.

**INFORMACIÓN A LOS INQUILINOS SOBRE LAS POLÍTICAS PARA FUMADORES**

- Fumar (encierre en un círculo) ESTÁ o **NO ESTÁ** permitido en la Vivienda \_\_\_\_\_, la vivienda que usted pretende alquilar.
- Fumar (encierre en un círculo) ESTÁ o **NO ESTÁ** permitido en otras viviendas de su edificio. (Si hay disponibilidad de ambas viviendas, fumador y no fumador, en el edificio del inquilino, adjunte una lista de las viviendas en donde se permite fumar.)
- (Encierre en un círculo), HAY o **NO HAY** un área designada al aire libre para fumar. Se encuentra en \_\_\_\_\_.

Recibí una copia de este aviso el

8-24-17  
(Fecha)

Maria Amezcua  
(Firma del inquilino)

此份屋崙 (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.

**PROOF OF SERVICE**  
**Case Number T18-0311**

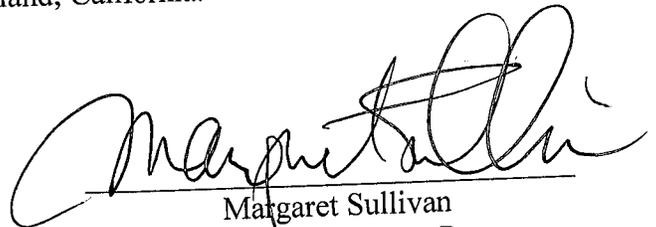
I am a resident of the State of California at least eighteen years of age. I am not a party to the Residential Rent Adjustment Program case listed above. I am employed in Alameda County, California. My business address is 250 Frank H. Ogawa Plaza, Suite 5313, 5<sup>th</sup> Floor, Oakland, California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

Today, I served the attached **PROPERTY OWNER RESPONSE in the above-referenced case** 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, 5<sup>th</sup> Floor, Oakland, California, addressed to:

Maria Amezcua and Luis Ayala Cervantes  
1791 28<sup>th</sup> Ave.  
Oakland, CA 94601

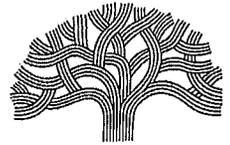
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **December 4, 2018** in Oakland, California.



Margaret Sullivan  
Oakland Rent Adjustment Program

000096



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND.

Housing and Community Development  
Department Rent Adjustment Program

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

## **HEARING DECISION**

**CASE NUMBER:** T18-0311 Cervantes v. Fong  
**PROPERTY ADDRESS:** 1791 28<sup>th</sup> Avenue, Oakland, CA  
**DATE OF HEARING:** June 3, 2019  
**DATE OF DECISION:** October 3, 2019  
**APPEARANCES:** Xavier Johnson, Attorney for Tenant  
Luis Ayala Cervantes, Tenant  
Maria Amezquita, Tenant  
Abigail Romero, Interpreter  
May Fong, Owner

### **SUMMARY OF DECISION**

The tenant's petition is partly granted.

### **CONTENTIONS OF THE PARTIES**

On June 12, 2019, the tenant filed a petition contesting two (2) rent increases, and alleging that her housing services have decreased. The basis for the tenant's petition includes the following:

- The CPI and/or banked rent increase notice I was given was calculated incorrectly;
- The increases exceed the CPI Adjustment and are unjustified or are greater than 10%;
- I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such as increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase;
- No written notice of Rent Program was given to me together with the notice of increases I am contesting;
- The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increases;

- The increase I am contesting is the second increase in my rent in a 12-month period;
- There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance;
- The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner; and
- The proposed rent increase would exceed an overall increase of 30% in 5 years.

The owner filed a timely response denying the allegations.

### THE ISSUES

- (1) When, if ever, did the tenant receive the form Notice to Tenants (RAP Notice)?
- (2) Are the contested rent increases valid?
- (3) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

### EVIDENCE

#### Rent History and RAP Notice

On her petition, the tenant stated that she moved into the subject unit in August of 2015, at an initial monthly rent of \$945.00. She did not sign a lease at that time but paid rent directly to the owner. On August 24, 2017, the tenant signed a written lease for the subject property effective September 1, 2017.<sup>1</sup> The lease states that the tenant's rent shall be \$1,233.00 for the first three (3) months and will increase to \$1,400.00 in December of 2017. The tenant testified that she paid \$1,233.00 in rent monthly for September, October, and November of 2017. In December of 2017, the tenant began paying \$1,200.00 in rent monthly instead of the increased amount of \$1,400.00. The tenant testified that she began paying \$1,200.00 because she found out that she was paying more than other tenants in the building. The tenant is still paying \$1,200.00 in rent monthly.

The tenant further testified that the 2017 lease was negotiated in Spanish, with the tenant's minor son serving as an interpreter, but the tenant was only provided the written lease in English. The tenant also testified that she first received the RAP Notice on August 24, 2017, at the time she signed the lease.<sup>2</sup> The RAP Notice was provided to her in English and in Spanish. Finally, the tenant testified that she signed the 2017 lease under duress, because the owner told her that if she did not sign it, the owner would evict them because there were too many people living in the unit. The tenant testified that there are two (2) adults, and five (5) minor children living in the unit.

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<sup>1</sup> Exhibit 1

<sup>2</sup> Exhibit 1

The owner testified that she received a text from the tenant's son in August of 2017, requesting a lease under the tenant's name. It was only at that time that she realized that the tenants did not have a lease for the property. She also found out that there were seven (7) people living in the unit. That is a fire hazard, so the owner told the tenant that she could only have three (3) people living in the unit. The owner also told the tenant her rent would be increased because there were so many people living in the unit. Finally, she testified that both parties came to an agreement that the rent would be \$1,233.00 for the first three months after the lease was signed and would increase to \$1,400.00 in December of 2017. The owner testified that the tenant has paid \$1,200.00 in rent monthly instead of the increased amount of \$1,400.00.

### Decreased Housing Services

With the petition, the tenant submitted a list of decreased housing services. The parties testified as follows regarding the tenant's list of decreased housing services.

Electrical Wiring: The tenant testified that some of the electrical outlets were broken. Sparks came out if anything was plugged into the outlets. She first noticed this issue shortly after moving into the unit, in August of 2015. She complained about the electrical outlets to the maintenance worker, Mateo, on three or four occasions over the years but nothing was done. The City of Oakland Code Enforcement Services did an inspection of the unit on April 23, 2018, and issued a Notice of Violation on April 25, 2018.<sup>3</sup> The Notice of Violation cited a code violation for the electrical outlets in the living room and bathroom. In response, the owner completed repairs and Code Enforcement records show that the violation was abated on July 6, 2018.<sup>4</sup> The tenant testified that she has not had any issues with the outlets since July of 2018.

The owner testified that she did not receive notice of this issue until she received the Notice of Violation dated April 25, 2018. She never received a verbal or written complaint from the tenant. In response to the Notice of Violation, she completed the necessary repairs and the violation was abated as of July 2018.

Windows: The tenant testified that the windows in the bedroom do not open completely and the window in the living room is not installed properly. She noticed this issue when she first moved into the unit. She complained to Mateo, the maintenance worker, about this issue multiple times. The Notice of Violation dated April 25, 2018, cited a code violation for the windows, stating that the "windows in the bedroom do not open/close properly". In response, the owner completed repairs and Code Enforcement records show that the violation was abated on July 6, 2018.<sup>5</sup> The tenant testified that she has not had any issues with the windows since July of 2018.

Mold in Bathroom: The tenant testified that there is mold in the bathroom, specifically around the sink and bathtub. She uses Clorox to clean the mold but it keeps

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<sup>3</sup> Exhibit 3

<sup>4</sup> Exhibit 3

<sup>5</sup> Exhibit 3

returning. She complained to Mateo about the mold when she first moved into the unit but nothing has been done. The tenant submitted photographs of the mold.<sup>6</sup>

The owner testified that she never received notice of the mold prior to the filing of the petition. Further, mold was not cited in the Notice of Violation dated April 25, 2018.<sup>7</sup>

Kitchen Drawers: The tenant testified that the kitchen drawers and cabinets do not open and close properly. The drawers get stuck because they do not fit properly into the cabinets. She complained to Mateo, the maintenance worker, about this issue approximately a year after moving into the unit. Mateo sanded the drawers but they still got stuck. The Notice of Violation dated April 25, 2018, cited a code violation for the kitchen drawers. Code Enforcement records show that the violation was abated on July 6, 2018.<sup>8</sup>

Splitting of Utilities: The parties did not provide any testimony on this issue, therefore, this claim is dismissed.

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

### **Invalid Rent Increases**

The Rent Adjustment Ordinance states that an owner seeking a rent increase in excess of the CPI Rent Adjustment or available banking must first petition the Rent Program and receive approval for the rent increase before the rent increase can be imposed<sup>9</sup>. Any rent increase not based on the CPI Rent Adjustment or Banking that is not first approved by the Rent Adjustment Program is void and unenforceable.<sup>10</sup>

In this case, the contested rent increases exceed the CPI Rent Adjustment and available banking. The owner failed to petition the Rent Program to receive approval for the rent increases built into the 2017 lease before imposing the increases on the tenants. Therefore, the contested rent increases are void and unenforceable as a matter of law. The monthly rent remains \$945.00, the rent amount prior to the rent increases imposed in the 2017 lease. Since the tenants have paid a portion of the rent increases, they are owed restitution for rent overpayments as outlined in the Table below.

Although the tenant acknowledged receiving the RAP Notice in August of 2017, the timeliness requirements outlined in the RAP Notice only apply to rent increases based on the CPI, banking, or other claims such as decreased housing services, code violations etc. The timeliness requirements do not apply to rent increases that are void and unenforceable as a matter of law.

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<sup>6</sup> Exhibit 4

<sup>7</sup> Exhibit 3

<sup>8</sup> Exhibit 3

<sup>9</sup> O.M.C. §8.22.065(A)

<sup>10</sup> O.M.C. §8.22.065(A)

### Timeliness of Decreased Housing Service Claims

The Oakland Rent Ordinance provides that for a petition claiming decreased housing services:

a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant, the petition must be filed within ninety days of whichever of the following is later:

i. The date the tenant is noticed or first becomes aware of the decreased housing service; or

ii. The date the tenant first receives the RAP Notice.

b. If the decreased housing is ongoing, the tenant may file a petition at any point but is limited in restitution for ninety (90) days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.<sup>11</sup>

Therefore, the tenant's restitution for any decreased housing services shall be limited to March of 2018, ninety (90) days before the petition filing date of June 12, 2018.

### Decreased Housing Services

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>12</sup> and may be corrected by a rent adjustment.<sup>13</sup> However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy, or one that is required to be provided in a contract between the parties, or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. Further, an owner must be given notice of a problem, and a reasonable opportunity to make repairs, before a claim of decreased housing services will be granted.

Additionally, the tenants have the burden of proof with respect to each claim.

Electrical Wiring: The tenant testified credibly that some of the electrical outlets were broken and she notified Mateo, the maintenance worker, about this issue multiple times. Mateo is an agent of the owner, and therefore, notice of this issue is imputed onto the owner. Further, the Notice of Violation dated April 25, 2018, cited a code violation for the electrical outlets in the living room and bathroom. Code Enforcement records show that the violation was abated on July 6, 2018.

This claim affects the habitability of the unit and the tenant is entitled to compensation for past decreased housing services from March 2018, through July 2018, as stated in the Table below.

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<sup>11</sup> O.M.C. Section 8.22.090(A)(3)

<sup>12</sup> O.M.C. Section 8.22.070(F)

<sup>13</sup> O.M.C. Section 8.22.110(E)

Windows: The tenant testified credibly that the windows in the bedroom do not open completely and she notified Mateo about this issue multiple times. Further, the Notice of Violation dated April 25, 2018, cited a code violation for the windows, stating that the "windows in the bedroom do not open/close properly". Code Enforcement Records show that the violation was abated on July 6, 2018.<sup>14</sup>

This claim affects the habitability of the unit and the tenant is entitled to compensation for past decreased housing services from March 2018, through July 2018, as stated in the Table below.

Mold in Bathroom: The tenant testified that she complained about mold in the bathroom to Mateo when she first moved into the unit. However, mold was not cited in the Notice of Violation dated April 25, 2018. The tenant has failed to sustain her burden of proof regarding the mold and compensation for this claim is denied.

Kitchen Drawers: The tenant testified that the kitchen drawers and cabinets do not open and close properly. Further, the Notice of Violation dated April 25, 2018, cited a code violation for the kitchen drawers. Code Enforcement Records show that the violation was abated on July 6, 2018.

This claim affects the habitability of the unit and the tenant is entitled to compensation for past decreased housing services from March 2018, through July 2018, as stated in the Table below.

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Electrical Outlets	1-Mar-18	1-Jul-18	\$945	2%	\$ 18.90	5	\$ 94.50
Windows	1-Mar-18	1-Jul-18	\$945	2%	\$ 18.90	5	\$ 94.50
Drawers	1-Mar-18	1-Jul-18	\$945	1%	\$ 9.45	5	\$ 47.25
<b>TOTAL LOST SERVICES</b>							<b>\$ 236.25</b>

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Sep-17	1-Nov-17	\$1,233	\$945	\$ 288.00	3	\$ 864.00
1-Dec-17	1-Oct-19	\$1,200	\$945	\$ 255.00	23	\$ 5,865.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 6,729.00</b>

<sup>14</sup> Exhibit 3

**RESTITUTION**

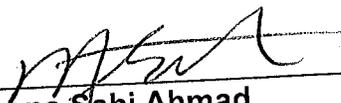
		MONTHLY RENT	\$945
		TOTAL TO BE REPAYED TO TENANT	\$ 6,965.25
		TOTAL AS PERCENT OF MONTHLY RENT	737%
AMORTIZED OVER		MO. BY REG. IS	
OR			
OVER	24	MONTHS BY HRG. OFFICER IS	\$ 290.22

**ORDER**

1. Petition T18-0311 is partly granted.
2. The 2017 rent increases are invalid. The tenant's base rent remains \$945.00.
3. The tenant is entitled to restitution for rent overpayments and past decreased housing services in the amount of \$6,965.25. The restitution shall be amortized over twenty-four (24) months. The tenant's rent from November 2019 to October 2021 is \$654.78. In November of 2021, the tenant's rent will revert to the base rent of \$945.00.
4. The remaining claims of decreased housing services are denied.

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

Dated: October 3, 2019

  
\_\_\_\_\_  
**Maimoona Sahi Ahmad**  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number T18-0311**

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

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

**Documents Included**  
Hearing Decision

**Owner**

May & Grant Fong  
358 Cerro Court  
Daly City, CA 94015

**Tenant**

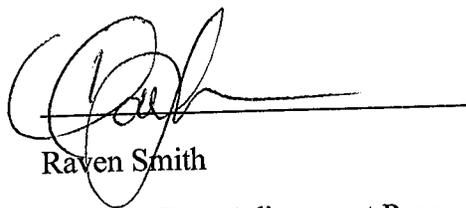
Maria & Luis Cervantes  
1791 28th Avenue  
Oakland, CA 94601

**Tenant Representative**

Xavier Johnson, Centro Legal de la Raza  
3022 International Blvd Ste. 410  
Oakland, CA 94601

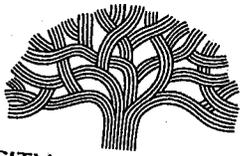
I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice an envelope placed in the mail collection receptacle described above would be deposited in the United States mail with the U.S. Postal Service on that same day with first 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 03, 2019** in Oakland, CA.

  
Raven Smith

Oakland Rent Adjustment Program

**000104**



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For date stamp.  
2019 OCT -9 AM 11:45

**APPEAL**

**Appellant's Name**

May Fong

Owner  Tenant

**Property Address (Include Unit Number)**  
1791-28th Avenue, Oakland, Ca 94601

**Appellant's Mailing Address (For receipt of notices)**  
358 Cerro Court, Daly City, Ca 94015

**Case Number**  
T18-0311

**Date of Decision appealed**  
October 3, 2019

**Name of Representative (if any)**

**Representative's Mailing Address (For notices)**

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

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

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- 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: 32

\*Please listen to only the section of testimony on the audio day of hearing.

• 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 8, 2019, 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>	Luis Cervantes AND Maria Amezquita
<b>Address</b>	1791-28th Avenue
<b>City, State Zip</b>	Oakland, Ca 94601
<b>Name</b>	
<b>Address</b>	
<b>City, State Zip</b>	

	10/8/19
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

T18-0311 APPEAL EXPLANATION

- 1) The hearing officer calculated the rent incorrectly. The rent for tenants Cervantes and Amerzquita was \$1400 as per signed lease in **Exhibit A**. The application for habitability issues is also incorrect. The electrical issues was due to the tenants' overloading the circuits with expansive outlets with overloading appliances. Please see attached **Exhibit B**. This caused shortages and dangerous circumstances and is due to the overcrowding of the unit 1 bedroom unit. The hearing officer calculated the decreased housing from March 2018 to July 2018. She has to put into account that the Owner was not made aware of any problems until receiving notice regarding the issues from code enforcement in or about May 2, 2018. Owners are allotted a reasonable time period to make repairs. Electrical and cabinets were repaired on May 8-2018. Window Repairs were completed June 1, 2018 due to ordering of windows. Please see attached receipts and email with the Code Enforcement Inspector. Please see attached **Exhibit C**. **The hearing officer did not adhere to the decrease housing clause.** [an owner must be given notice of a problem, and a reasonable opportunity to make repairs, before a claim of decreased housing services will be granted] These were all repaired within a reasonable time period which is exactly a day after receiving notice repairs had been made with exception of the windows that needed special ordering; therefore, there should be no compensation for decreased housing. The issues were abated in July only because the inspection for the unit was scheduled for July.
- 2) d) The decision violates Ca state law 2007 California Civil Code Article 2. Rental Agreement CA Codes (civ:798.15-798.23.5) CIVIL CODE SECTION 798.15-798.23.5. Tenant Luis Cervantes AND Maria Amezquita attempts to claim they should takeover the rent amount set at the original tenant lease. Nazana Nevarez was the original tenant that signed a valid lease with previous landlord on May 30, 2012. Please see attached **Exhibit D**. Owner May Fong purchased property January 30, 2015 and sent notices to existing tenants of new ownership information along with RAP information to the original authorized tenant. Please see attached **Exhibit E**.  
Nazana Nevarez subletted the unit to Luis Cervantes and Maria Amezquita without my approval or consent which is a breach of lease terms. Please see highlighted section regarding Subletting. It states the following:

[Tenant will not sublet any part of the Premises or assign this agreement without the prior written consent of Owner. The named Tenants are the only "Original" Tenants. No person other than the named Tenants will be permitted to regularly or continuously use or occupy the Premises unless all of the following conditions are met: 1) Tenant notifies Owner in writing, signed by every Tenant, stating a request to have a new person occupy the Premises; 2) said prospective occupant completes and gives to Owner Owners rental application; 3) Owner approves of the prospective occupant's creditworthiness and references from prior landlords; and 4) the new occupant signs Owner's Change of Tenant Agreement for such occupancy before occupying the Premises, which agreement will include a provision that the new occupant will abide by and perform all the obligations of

this Agreement. The rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises.

In the event that Owner consents to any sub-tenancy, is hereby agreed that the Original Tenant may not charge more to the sub-tenant(s) than that proportional share of the rent which is being charged by and paid to Owner.

No action or inaction or acceptance of rent or knowledge on the part of Owner will be deemed to be a waiver of the provision of this Section on the part of Owner and will not be deemed an approval of any person as a "sub-tenant" for any purpose.]

Owner May Fong was totally unaware that Luis Cervantes and Maria Amezcuita were illegal subtenants that moved into premises without authorization until the text sent by Luis Cervantes 8/18/17 as stated at the hearing. Please see attached **Exhibit F**. Original tenants were given proper notices with RAP notices. Please see attached **Exhibit E**.

When Owner was made aware of the Cervantes and Amezcuita were illegal subtenants, Owner was to evict them based on violation of lease and unauthorized subtenants. Tenants begged owner to stay. With heart, On August 24, 2017, Owner decided to allow tenant to stay and have tenants fill out an application and sign new lease as per original lease **ONLY** based on 3 persons residing in Premises and abide by stipulation in the original lease that the **rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises**. Tenants Cervantes and Amezcuita professed on multiple occasions they only had 3 in their family. Owner would never have signed a new lease with 7 living in a 1 bedroom unit because it is an unsafe and unhealthy environment.

Per original lease, Original Tenant(s) moved out of Premises and Cervantes and Amezcuita had become the new tenant, the lease sign and agreed by both parties raised to market rate at \$1400 per month is valid according to the California state law. Please see attached **Exhibit D**.

2.e. The decision is not supported by substantial evidence. The **Preponderance** of evidence is upon the Petitioner to not give testimony but present factual supported documented evidence. All of the tenants' claim has not been supported with any documents and the evidence the hearing officer claims is not accurate. The hearing officer claimed the tenant did not receive the RAP until we signed a new lease which is correct. However, she neglected to acknowledge all the RAP notices Owner sent was to the original tenant Nanzania. Tenants Cervantes and Amezcuita would not be sent these notices. Please see attached **Exhibit F**.

The hearing officer did not take into account that tenants Cervantes and Amezcuita were unauthorized subtenants until the new lease was signed. I emphasize they were not the authorized master tenants. Any rent payments the Petitioner claims was directly deposited in Owners account without disclosing to the Owner the rent payments were from anyone but the master tenants owners. Rent payments were also deposited in owners account with either cash or bank transfer masking who is depositing the rent. Please see **Exhibit G**. As evidenced in the application and lease signed and dated August 24, 2017. Please see attached **Exhibit A**. This is the Petitioners'

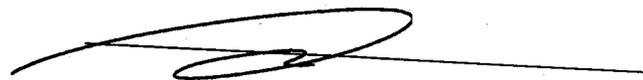
only and original lease as new tenants at the new market rate of \$1400 (market value is \$1800). The attached stated the terms of lease as per California law and was based on the tenant's misrepresentation of facts regarding their claim was only 3 persons in the unit.

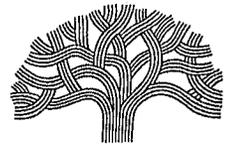
The hearing officer incorrectly claims that Owner testified "told the tenant her rent would be increased because there were so many people living in the unit." This is **TOTALLY UNTRUE**. Please listen to audio. Owner never made any claims of raising the rent due to the amount of people in unit. The rent was raised to market value as allowed by law when the original tenant vacates premises which happened. It is a fact I stated only 3 tenants can reside in the Premises and the tenant misrepresented themselves. Owner did indicate and firmly believe 7 in a 300 sleeping space is unsafe and hazardous but never claimed the rent is raised due to the amount of people that would be living there.

Tenants Cervantes and Amezquita were unauthorized subtenants and as per original lease in **Exhibit D, the rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises as well as State and local laws.**

h) The hearing officer did not adhere to the State or local laws. There was no 2017 rent increase as the hearing officer claims. This was a new lease to the new tenants of the unit. Prior to that they were unauthorized subtenants that never made me aware of their unauthorized residency until August 2017. Contracts matter and it is unjust to reward tenants who move into units without written authorization. Owners have the right to choose their tenants and charge market rent to new tenants once authorized. Tenants Cervantes and Amezquita deceived the Owner by moving into Premises without authorization and then misrepresenting themselves in order to avoid eviction and to obtain a new lease. This is not legally adhering to the laws.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 08, 2019 in Oakland, CA.

  
May Fong, Owner



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA. SUITE 5313 • OAKLAND.

Housing and Community Development  
Department Rent Adjustment Program

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

## **CORRECTED HEARING DECISION**

**CASE NUMBER:** T18-0311 Cervantes v. Fong  
**PROPERTY ADDRESS:** 1791 28<sup>th</sup> Avenue, Oakland, CA  
**DATE OF HEARING:** June 3, 2019  
**DATE OF CORRECTED DECISION:** October 16, 2019  
**APPEARANCES:** Xavier Johnson, Attorney for Tenant  
Luis Ayala Cervantes, Tenant  
Maria Amezquita, Tenant  
Abigail Romero, Interpreter  
May Fong, Owner

### **REASON FOR CORRECTED DECISION**

On October 3, 2019, a Hearing Decision was mailed to all parties. On page 3 of that Hearing Decision, it stated "The owner also told the tenant her rent would be increased because there were so many people living in the unit." After reviewing the audio recording of the Hearing, that sentence has been removed. Other than the removal of that sentence from page 3, the Hearing Decision remains the same.

This CORRECTED HEARING DECISION does not set a new appeal period.

### **SUMMARY OF DECISION**

The tenant's petition is partly granted.

### **CONTENTIONS OF THE PARTIES**

On June 12, 2019, the tenant filed a petition contesting two (2) rent increases, and alleging that her housing services have decreased. The basis for the tenant's petition includes the following:

- The CPI and/or banked rent increase notice I was given was calculated incorrectly;

- The increases exceed the CPI Adjustment and are unjustified or are greater than 10%;
- I received a rent increase notice before the property owner received approval from the Rent Adjustment Program for such as increase and the rent increase exceeds the CPI Adjustment and the available banked rent increase;
- No written notice of Rent Program was given to me together with the notice of increases I am contesting;
- The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increases;
- The increase I am contesting is the second increase in my rent in a 12-month period;
- There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance;
- The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner; and
- The proposed rent increase would exceed an overall increase of 30% in 5 years.

The owner filed a timely response denying the allegations.

### THE ISSUES

- (1) When, if ever, did the tenant receive the form Notice to Tenants (RAP Notice)?
- (2) Are the contested rent increases valid?
- (3) Have the tenant's housing services been decreased and, if so, by what percentage of the total housing services that are provided by the owner?

### EVIDENCE

#### Rent History and RAP Notice

On her petition, the tenant stated that she moved into the subject unit in August of 2015, at an initial monthly rent of \$945.00. She did not sign a lease at that time but paid rent directly to the owner. On August 24, 2017, the tenant signed a written lease for the subject property effective September 1, 2017.<sup>1</sup> The lease states that the tenant's rent shall be \$1,233.00 for the first three (3) months and will increase to \$1,400.00 in December of 2017. The tenant testified that she paid \$1,233.00 in rent monthly for September, October, and November of 2017. In December of 2017, the tenant began paying \$1,200.00 in rent monthly instead of the increased amount of \$1,400.00. The tenant testified that she began paying \$1,200.00 because she found out that she was

<sup>1</sup> Exhibit 1

paying more than other tenants in the building. The tenant is still paying \$1,200.00 in rent monthly.

The tenant further testified that the 2017 lease was negotiated in Spanish, with the tenant's minor son serving as an interpreter, but the tenant was only provided the written lease in English. The tenant also testified that she first received the RAP Notice on August 24, 2017, at the time she signed the lease.<sup>2</sup> The RAP Notice was provided to her in English and in Spanish. Finally, the tenant testified that she signed the 2017 lease under duress, because the owner told her that if she did not sign it, the owner would evict them because there were too many people living in the unit. The tenant testified that there are two (2) adults, and five (5) minor children living in the unit.

The owner testified that she received a text from the tenant's son in August of 2017, requesting a lease under the tenant's name. It was only at that time that she realized that the tenants did not have a lease for the property. She also found out that there were seven (7) people living in the unit. That is a fire hazard, so the owner told the tenant that she could only have three (3) people living in the unit. Finally, she testified that both parties came to an agreement that the rent would be \$1,233.00 for the first three months after the lease was signed and would increase to \$1,400.00 in December of 2017. The owner testified that the tenant has paid \$1,200.00 in rent monthly instead of the increased amount of \$1,400.00.

#### Decreased Housing Services

With the petition, the tenant submitted a list of decreased housing services. The parties testified as follows regarding the tenant's list of decreased housing services.

Electrical Wiring: The tenant testified that some of the electrical outlets were broken. Sparks came out if anything was plugged into the outlets. She first noticed this issue shortly after moving into the unit, in August of 2015. She complained about the electrical outlets to the maintenance worker, Mateo, on three or four occasions over the years but nothing was done. The City of Oakland Code Enforcement Services did an inspection of the unit on April 23, 2018, and issued a Notice of Violation on April 25, 2018.<sup>3</sup> The Notice of Violation cited a code violation for the electrical outlets in the living room and bathroom. In response, the owner completed repairs and Code Enforcement records show that the violation was abated on July 6, 2018.<sup>4</sup> The tenant testified that she has not had any issues with the outlets since July of 2018.

The owner testified that she did not receive notice of this issue until she received the Notice of Violation dated April 25, 2018. She never received a verbal or written complaint from the tenant. In response to the Notice of Violation, she completed the necessary repairs and the violation was abated as of July 2018.

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<sup>2</sup> Exhibit 1

<sup>3</sup> Exhibit 3

<sup>4</sup> Exhibit 3

Windows: The tenant testified that the windows in the bedroom do not open completely and the window in the living room is not installed properly. She noticed this issue when she first moved into the unit. She complained to Mateo, the maintenance worker, about this issue multiple times. The Notice of Violation dated April 25, 2018, cited a code violation for the windows, stating that the "windows in the bedroom do not open/close properly". In response, the owner completed repairs and Code Enforcement records show that the violation was abated on July 6, 2018.<sup>5</sup> The tenant testified that she has not had any issues with the windows since July of 2018.

Mold in Bathroom: The tenant testified that there is mold in the bathroom, specifically around the sink and bathtub. She uses Clorox to clean the mold but it keeps returning. She complained to Mateo about the mold when she first moved into the unit but nothing has been done. The tenant submitted photographs of the mold.<sup>6</sup>

The owner testified that she never received notice of the mold prior to the filing of the petition. Further, mold was not cited in the Notice of Violation dated April 25, 2018.<sup>7</sup>

Kitchen Drawers: The tenant testified that the kitchen drawers and cabinets do not open and close properly. The drawers get stuck because they do not fit properly into the cabinets. She complained to Mateo, the maintenance worker, about this issue approximately a year after moving into the unit. Mateo sanded the drawers but they still got stuck. The Notice of Violation dated April 25, 2018, cited a code violation for the kitchen drawers. Code Enforcement records show that the violation was abated on July 6, 2018.<sup>8</sup>

Splitting of Utilities: The parties did not provide any testimony on this issue; therefore, this claim is dismissed.

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

### **Invalid Rent Increases**

The Rent Adjustment Ordinance states that an owner seeking a rent increase in excess of the CPI Rent Adjustment or available banking must first petition the Rent Program and receive approval for the rent increase before the rent increase can be imposed<sup>9</sup>. Any rent increase not based on the CPI Rent Adjustment or Banking that is not first approved by the Rent Adjustment Program is void and unenforceable.<sup>10</sup>

In this case, the contested rent increases exceed the CPI Rent Adjustment and available banking. The owner failed to petition the Rent Program to receive approval for

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<sup>5</sup> Exhibit 3

<sup>6</sup> Exhibit 4

<sup>7</sup> Exhibit 3

<sup>8</sup> Exhibit 3

<sup>9</sup> O.M.C. §8.22.065(A)

<sup>10</sup> O.M.C. §8.22.065(A)

the rent increases built into the 2017 lease before imposing the increases on the tenants. Therefore, the contested rent increases are void and unenforceable as a matter of law. The monthly rent remains \$945.00; the rent amount prior to the rent increases imposed in the 2017 lease. Since the tenants have paid a portion of the rent increases, they are owed restitution for rent overpayments as outlined in the Table below.

Although the tenant acknowledged receiving the RAP Notice in August of 2017, the timeliness requirements outlined in the RAP Notice only apply to rent increases based on the CPI, banking, or other claims such as decreased housing services, code violations etc. The timeliness requirements do not apply to rent increases that are void and unenforceable as a matter of law.

### Timeliness of Decreased Housing Service Claims

The Oakland Rent Ordinance provides that for a petition claiming decreased housing services:

- a. If the decreased housing is the result of a noticed or discrete change in services provided to the tenant, the petition must be filed within ninety days of whichever of the following is later:
  - i. The date the tenant is noticed or first becomes aware of the decreased housing service; or
  - ii. The date the tenant first receives the RAP Notice.
- b. If the decreased housing is ongoing, the tenant may file a petition at any point but is limited in restitution for ninety (90) days before the petition is filed and to the period of time when the owner knew or should have known about the decreased housing service.<sup>11</sup>

Therefore, the tenant's restitution for any decreased housing services shall be limited to March of 2018, ninety (90) days before the petition filing date of June 12, 2018.

### Decreased Housing Services

Under the Oakland Rent Adjustment Ordinance, a decrease in housing services is considered to be an increase in rent<sup>12</sup> and may be corrected by a rent adjustment.<sup>13</sup> However, in order to justify a decrease in rent, a decrease in housing services must be either the elimination or reduction of a service that existed at the start of the tenancy, or one that is required to be provided in a contract between the parties, or a violation of the housing or building code which seriously affects the habitability of the tenant's unit. Further, an owner must be given notice of a problem, and a reasonable opportunity to make repairs, before a claim of decreased housing services will be granted.

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<sup>11</sup> O.M.C. Section 8.22.090(A)(3)

<sup>12</sup> O.M.C. Section 8.22.070(F)

<sup>13</sup> O.M.C. Section 8.22.110(E)

Additionally, the tenants have the burden of proof with respect to each claim.

Electrical Wiring: The tenant testified credibly that some of the electrical outlets were broken and she notified Mateo, the maintenance worker, about this issue multiple times. Mateo is an agent of the owner, and therefore, notice of this issue is imputed onto the owner. Further, the Notice of Violation dated April 25, 2018, cited a code violation for the electrical outlets in the living room and bathroom. Code Enforcement records show that the violation was abated on July 6, 2018.

This claim affects the habitability of the unit and the tenant is entitled to compensation for past decreased housing services from March 2018, through July 2018, as stated in the Table below.

Windows: The tenant testified credibly that the windows in the bedroom do not open completely and she notified Mateo about this issue multiple times. Further, the Notice of Violation dated April 25, 2018, cited a code violation for the windows, stating that the "windows in the bedroom do not open/close properly", Code Enforcement Records show that the violation was abated on July 6, 2018.<sup>14</sup>

This claim affects the habitability of the unit and the tenant is entitled to compensation for past decreased housing services from March 2018, through July 2018, as stated in the Table below.

Mold in Bathroom: The tenant testified that she complained about mold in the bathroom to Mateo when she first moved into the unit. However, mold was not cited in the Notice of Violation dated April 25, 2018. The tenant has failed to sustain her burden of proof regarding the mold and compensation for this claim is denied.

Kitchen Drawers: The tenant testified that the kitchen drawers and cabinets do not open and close properly. Further, the Notice of Violation dated April 25, 2018, cited a code violation for the kitchen drawers. Code Enforcement Records show that the violation was abated on July 6, 2018.

This claim affects the habitability of the unit and the tenant is entitled to compensation for past decreased housing services from March 2018, through July 2018, as stated in the Table below.

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<sup>14</sup> Exhibit 3

**VALUE OF LOST SERVICES**

Service Lost	From	To	Rent	% Rent Decrease	Decrease /month	No. Months	Overpaid
Electrical Outlets	1-Mar-18	1-Jul-18	\$945	2%	\$ 18.90	5	\$ 94.50
Windows	1-Mar-18	1-Jul-18	\$945	2%	\$ 18.90	5	\$ 94.50
Drawers	1-Mar-18	1-Jul-18	\$945	1%	\$ 9.45	5	\$ 47.25
<b>TOTAL LOST SERVICES</b>							<b>\$ 236.25</b>

**OVERPAID RENT**

From	To	Monthly Rent paid	Max Monthly Rent	Difference per month	No. Months	Sub-total
1-Sep-17	1-Nov-17	\$1,233	\$945	\$ 288.00	3	\$ 864.00
1-Dec-17	1-Oct-19	\$1,200	\$945	\$ 255.00	23	\$ 5,865.00
<b>TOTAL OVERPAID RENT</b>						<b>\$ 6,729.00</b>

**RESTITUTION**

MONTHLY RENT	\$945
TOTAL TO BE REPAYED TO TENANT	\$ 6,965.25
TOTAL AS PERCENT OF MONTHLY RENT	737%
AMORTIZED OVER	MO. BY REG. IS
OR	
OVER 24	MONTHS BY HRG. OFFICER IS \$ 290.22

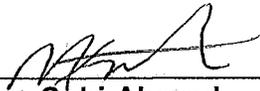
**ORDER**

- Petition T18-0311 is partly granted.
- The 2017 rent increases are invalid. The tenant's base rent remains \$945.00.
- The tenant is entitled to restitution for rent overpayments and past decreased housing services in the amount of \$6,965.25. The restitution shall be amortized over twenty-four (24) months. The tenant's rent from November 2019 to October 2021 is \$654.78. In November of 2021, the tenant's rent will revert to the base rent of \$945.00.
- The remaining claims of decreased housing services are denied.

**Right to Appeal:** This decision is the final decision of the Rent Adjustment Program. Either party may appeal this decision by filing a properly completed appeal using the form provided by the Rent Adjustment Program. The appeal must be received

within twenty (20) days after service of the decision. The date of service is shown on the attached Proof of Service. If the Rent Adjustment Office is closed on the last day to file, the appeal may be filed on the next business day.

Dated: October 16, 2019

  
\_\_\_\_\_  
**Maimoona Sahi Ahmad**  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number T18-0311**

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**

Corrected Hearing Decision

**Owner**

May & Grant Fong  
358 Cerro Court  
Daly City, CA 94015

**Tenant**

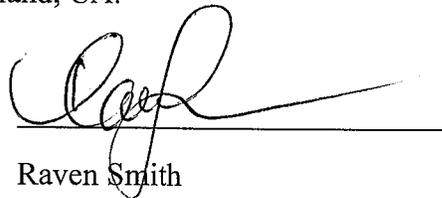
Maria & Luis Cervantes  
1791 28th Avenue  
Oakland, CA 94601

**Tenant Representative**

Xavier Johnson, Centro Legal de la Raza  
3022 International Blvd Ste. 410  
Oakland, CA 94601

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 17, 2019** in Oakland, CA.



Raven Smith

Oakland Rent Adjustment Program

**000118**

# CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

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

## Housing, Residential Rent and Relocation Board (HRRRB)

### PANEL APPEAL DECISION

**CASE NUMBER:** T18-0311, Cervantes v. Fong  
**APPEAL HEARING:** January 16, 2020  
**PROPERTY ADDRESS:** 1791 28<sup>th</sup> Avenue  
Oakland, CA  
**APPEARANCES:** May Lee Fong Owner Appellant  
Xavier Johnson Tenant Appellee Representative

#### Procedural Background

On June 12, 2018, tenants Maria Amezcuita and Luis Ayala Cervantes filed a petition contesting rent increases and claiming code violations and decreased housing services. The contested rent increases included the following:

- 4/26/18-from \$1,200 to \$1,400
- 10/3/17-from \$945 to \$1,200
- 9/5/17-from \$945 to \$1,233

The decreased housing claims included (1) malfunctioning electrical wiring, (2) windows not closing or installed properly, (3) mold in the bathroom, (4) kitchen drawers do not open properly and (5) splitting of utilities.

Staff mailed a copy of the tenant petition and owner response form to the owners on August 17, 2018. The owners filed untimely Owner Responses on November 18, 2018, and November 27, 2018.

On October 3, 2019, the Hearing Officer issued a Hearing Decision, stating the owners filed a timely response to the tenant petition (Owner May Fong was permitted to participate in the hearing). The Decision noted that the tenant

testified that her rent was \$945 when she moved into the unit in August 2015 and that the owner testified that she realized in 2017 that the tenants did not have a lease. Regarding the decreased housing services claims, the Hearing Decision noted that the tenant testified that she complained to the building maintenance worker about the problems, that the City issued a Notice of Violation in April 2018 related to the electrical wiring, windows, and drawers, and that City records showed that the violations were abated in July 2018.

The Decision denied the rent increases in the 2017 lease (\$1,233 for the first three months, \$1,400 thereafter) on the grounds that the owners did not seek prior approval from the Rent Adjustment Program of increases more than CPI or banking, and stated that the tenants' base rent remains \$945.00. The Decision ordered restitution for rent overpayment and past decreased housing services in the amount of \$6,965.25 (\$6,729 for rent paid 9/1/17 to 11/1/17 and 12/1/17 to 10/1/19; \$236.25 for problems with electrical outlets, windows, and drawers, 3/1/18 to 7/1/18), amortized over 24 months. Finally, the Decision denied the remaining decreased housing services claims. The Decision did not address the Costa Hawkins issue of whether the 2017 lease constituted a new tenancy.

#### Grounds for Appeal

The owners filed an appeal on October 9, 2019, on the following grounds:

- The decision violates federal, state or local law;
- The decision is not supported by substantial evidence;
- Other.

Specifically, the owner contends that:

- (1) The Hearing Officer calculated the rent incorrectly, which is \$1,400.00 per the signed lease, not \$945.00;
- (2) Regarding the decreased housing claim, the electrical outlet issue was caused by the tenants' overloading appliances and overcrowding of the 1 bedroom unit, the restitution period was incorrectly calculated from March 2018 to July 2018, and the owners were not advised of any problems until May 2018 and made repairs by June 1, 2018;
- (3) The Hearing Decision violates California Civil Code Section Article 2, Rental Agreement, §798.15-798.23.5. The original tenant was Nazana Nevarez, who sublet his unit to the tenant without the owner's prior written consent. The owner was unaware that Ms. Amezcua and Mr. Cervantes were illegal tenants until August 24, 2017. The owners agreed to allow them to stay upon signing of a new lease, based on 3 persons residing in the unit. The lease provides that the rent for the unit may be raised to market rates when the last original tenant moves

from the premises. The original tenant moved out and the owner raised the monthly rent to \$1,400.00;

- (4) The decision is not supported by substantial evidence because the tenants' claims are not supported with documents;
- (5) While the tenants did not receive the RAP notice until they signed the new lease, the RAP notice was sent to the original tenant. The owners also denied that they told the tenants that their rent would be increased because there were so many people living in the unit. On October 17, 2019, the Hearing Officer issued a Corrected Hearing Decision, removing the sentence on page 3 of the Hearing Decision stating "The owner also told the tenant her rent would be increased because there were so many people living in the unit."

Appeal Decision

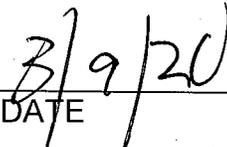
After questions to the parties and Board discussion, R. Stone moved to remand the Hearing Decision to the Hearing Officer to address when the tenancy commenced, and state the reasoning as to when the tenancy commenced, and restate the monthly base rent, disregarding any evidence presented on appeal. K. Sims seconded the motion.

The Board panel voted as follows:

Aye: R. Stone, K. Sims  
Nay: H. Flanery  
Abstain: 0

The motion carried.

  
\_\_\_\_\_  
CHANEE FRANKLIN MINOR  
BOARD DESIGNEE  
CITY OF OAKLAND  
HOUSING, RESIDENTIAL RENT AND RELOCATION BOARD

  
\_\_\_\_\_  
DATE

**PROOF OF SERVICE**  
**Case Number T18-0311**

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**

HRRRB Panel Appeal Decision

**Owner**

May & Grant Fong  
358 Cerro Court  
Daly City, CA 94015

**Tenant**

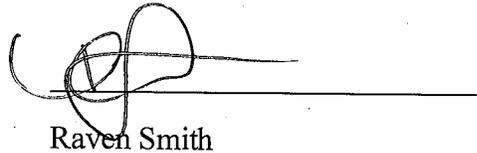
Maria & Luis Cervantes  
1791 28th Avenue  
Oakland, CA 94601

**Tenant Representative**

Xavier Johnson, Centro Legal de la Raza  
3022 International Blvd Ste. 410  
Oakland, CA 94601

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 **March 10, 2020** in Oakland, CA.



Raven Smith

Oakland Rent Adjustment Program

**000122**

Silveira, Ava

**From:** May Fong <mayfong@pacbell.net>  
**Sent:** Friday, January 24, 2020 9:53 AM  
**To:** Silveira, Ava  
**Subject:** Fw: Owner Response - Rent Adjust Program CASE T18-0311  
**Attachments:** ADDENDUM CASE CERVANTES.pdf

RECEIVED

JAN 24 2020

RENT ADJUSTMENT PROGRAM  
OAKLAND

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Hi Ava!

Here is another case I sent to Margaret this addendum and when I was at the hearing the hearing officer says they didn't receive it. This is what I told you about. Roberto told me this case was Margaret so I forwarded to her. I was very shocked when the hearing officer told me she didn't receive the addendum and then she wouldn't take what I had into consideration because she claims she didn't receive it in the file. In the past hearings especially I remember with Barbara Kong, the tenant's attorney would give the hearing officer paperwork at the hearing and it was taken into account.

This was a huge impact in my case and I will send you the originals for this case too because in appeal they would not take this in consideration claiming it was new evidence and was remanded back to the hearing officer. The tenant did not give any evidence yet the hearing officer only based her decision on tenant testimony and not on the evidence presented.

May

----- Forwarded Message -----

**From:** May Fong <mayfong@pacbell.net>  
**To:** Sullivan, Margaret <MSullivan@oaklandca.gov>  
**Sent:** Friday, November 16, 2018, 04:08:52 PM PST  
**Subject:** Re: Owner Response - Rent Adjust Program CASE T18-0311

Hi!

Can you add this addendum to this case?

May

**From:** "Costa, Robert" <RCosta@oaklandca.gov>  
**To:** May Fong <mayfong@pacbell.net>  
**Cc:** "Sullivan, Margaret" <MSullivan@oaklandca.gov>  
**Sent:** Tuesday, November 13, 2018 8:54 AM  
**Subject:** RE: Owner Response - Rent Adjust Program

Hi May:

000123

Addendum #1

We received your online response, I have printed and date stamped the document to be included in the file by the assigned Program Analyst, Margaret Sullivan.

I have forwarded your e-mail to Ms. Sullivan, her direct line is (510) 238-7387 if you have additional questions about this case.

Best,

**Roberto F. Costa**

City of Oakland Housing & Community Development Department  
Rent Adjustment Program Analyst II

**Mailing Address:** Rent Adjustment Program / 250 Frank Ogawa Plaza, Suite 5313  
Oakland, CA 94612

TEL. 510-238-2079 – Direct

TEL. 510-238-3721 – Main Number

FAX. 510-238-6181

Email: [RCosta@oaklandca.gov](mailto:RCosta@oaklandca.gov)

---

**From:** May Fong [mailto:[mayfong@pacbell.net](mailto:mayfong@pacbell.net)]

**Sent:** Monday, November 12, 2018 10:07 AM

**To:** Costa, Robert <[RCosta@oaklandca.gov](mailto:RCosta@oaklandca.gov)>

**Subject:** Fw: Owner Response - Rent Adjust Program

Hi Roberto!

Did you receive my lease attached to my online response?

May

----- Forwarded Message -----

**From:** City of Oakland - Applications <[oakapps@oaklandnet.com](mailto:oakapps@oaklandnet.com)>

**To:** [mayfong@pacbell.net](mailto:mayfong@pacbell.net)

**Sent:** Thursday, September 6, 2018 10:18 AM

**Subject:** Owner Response - Rent Adjust Program

Owner Response Submission Confirmation

**Thank you for submitting your response to case number T18-0311.**

**Your response number is 58.**

**A copy of your response will be added to the case file and a copy will be sent to the other party. Both parties may submit any further documentation up until 14 days before the assigned hearing date. Please pay close attention to your email and mail for further information regarding this case.**

**If at any point you would like to withdraw your petition, please submit a withdrawal form that can be found on the Rent Adjustment Program website. If you have any questions please contact RAP staff at Phone: (510) 238-3721.**

ADDENDUM T18-0311 CERVANTES

Please find attached original tenant lease showing prohibition of sublease. Tenant was unauthorized tenant. I've also attached texts to show the thread regarding the realization of Tenant's were the unauthorized tenants. Tenant committed fraud in obtaining lease claiming 3 occupants when there was actually 7.

000125

### Rental Agreement (Month-to-Month)

Owner rents to Tenants and Tenants rent from Owner the Premises subject to the following terms and conditions.

#### Terms of Tenancy

DS [Signature] 12/29/2014

Owner Joseph S. Martinez

Agent for Rent & Notices Same as above (Name)

1814 28th Ave Oakland Ca, 94601 (Address)

510-326-1943 JSMGoldenHours@gmail.com (Phone & Email)

Tenants Nazania V. Nevarrez (Name) 11-25-77 (DOB)

Teresa Vazques (Name) 5-17-95 (DOB)

Fernando Nevarrez (Name) 10-15-97 (DOB)

Cesar Nevarrez (Name) 6-29-04 (DOB)

(Name) \_\_\_\_\_ (DOB) \_\_\_\_\_

Premises X 1791 28th Avenue, Oakland Ca 94601 (Address)

Rent \$ 895.00 per month payable in advance on the 1st day of each month.

Parking Parking space assigned yes Monthly charge \$ NA payable with monthly rent.

Storage Storage space assigned yes Monthly charge \$ NA payable with monthly rent.

Rent Payments  Electronic Funds Transfer (EFT)  
 Personal check  
 Cashier's check or money order  
 Cash

Security Deposit \$ 800.00

Late Charge \$ 53.70 if Owner does not receive rent in full within 5th days after the due date.

Returned Payment \$ 25.00 in the event any check or other form of payment by Tenant is returned for lack of sufficient funds, a "stop payment" or any other reason.

Term of Tenancy The Tenancy begins on Dec 1, 2012 and ends on May 30, 2012 and thereafter continues on a month-to-month basis until terminated.

Pets Approved pets NO Pets

Owner's Utilities Owner pays for Water & garbage

Tenant's Utilities Tenant pays for Gas & Electric

Appliances & Fixtures Owner provides stove & Refrigerator

#### General Terms and Conditions of Tenancy

Use and Occupancy

The Premises are to be occupied and used only as a private residence by Tenants, without Owner's prior written consent, subject to applicable state and local laws. Occupancy by additional persons for more than two weeks in any six-month period is prohibited without Owner's written consent. Violation of the provisions of this Section is a substantial violation of a material term of the tenancy and is a just cause for eviction.

I have reviewed this page N.N (Tenant initials)

### Rental Agreement (Month-to-Month)

**Rent**

Rent will be paid in full to Owner or Owner's agent without offsets, deductions or credits. Tenant bears the risk of loss or delay of any mailed payment. Owner reserves the right to refuse any partial payment. Payment will be applied to any outstanding obligation of Tenant to Owner, notwithstanding any other designation by Tenant.

**Late Payments**

Tenant will pay Owner a late charge if rent is not received on time. By accepting a late charge, Owner does not waive the right to insist on payment of the rent in full on the due date. Tenant and Owner agree that the late charge represents a fair and reasonable estimate of costs incurred by Owner in this circumstance. Tenant and Owner agree that paying rent more than five days late on three separate occasions in any 12-month period is a substantial violation of a material term of the tenancy and is a just cause for eviction.

**Returned Payments**

Tenant will pay Owner a returned payment fee in the event any check or other form of payment offered by Tenant to Owner in payment of rent or any other amount due under this Agreement is returned for lack of sufficient funds, a "stop payment" or any other reason. Tenant and Owner agree that this amount represents a fair and reasonable estimate of costs incurred by Owner in this circumstance. A returned check may constitute late payment of rent. In the event of a returned check, Owner reserves the right to demand payment by money order or certified funds for the current and all future payments.

**Individual Liability**

Each person who signs this Agreement, whether or not they remain in possession of the Premises, will be jointly and severally liable for the full performance of this Agreement, including the payment of all rent due and the payment of costs to remedy damages to the Premises caused by Tenant, guests or invitees.

**Failure to Pay**

As required by law, Tenant is notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations, such as your obligations under the terms of this Agreement.

**Security Deposit**

Tenant may not apply the security deposit to the last month's rent or to any other sum due under this Agreement. Within two weeks after Tenant has vacated the Premises, Owner will furnish Tenant with an itemized written statement of the reasons for, and the dollar amount of, any of the security deposit retained by the Owner, along with a check for any deposit balance. Under Section 1950.5 of the California Civil Code, Owner may withhold only that portion of Tenant's security deposit necessary for: (1) remedy any default by Tenant in the payment of rent; (2) repair damages to the Premises exclusive of ordinary wear and tear; and (3) clean the Premises if necessary. Under state and local law, no interest payments are required on security deposits.

**Subletting**

Tenant will not sublet any part of the Premises or assign this agreement without the prior written consent of Owner. The named Tenants are the only "Original" Tenants. No person other than the named Tenants will be permitted to regularly or continuously use or occupy the Premises unless all of the following conditions are met: 1) Tenant notifies Owner in writing, signed by every Tenant, stating a request to have a new person occupy the Premises; 2) said prospective occupant completes and gives to Owner Owner's rental application; 3) Owner approves of the prospective occupant's creditworthiness and references from prior landlords; and 4) the new occupant signs Owner's Change of Tenant Agreement for such occupancy before occupying the Premises, which agreement will include a provision that the new occupant will abide by and perform all the obligations of this Agreement. The rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises.

In the event that Owner consents to any sub-tenancy, it is hereby agreed that the Original Tenant may not charge more to the sub-tenant(s) than that proportional share of the rent which is being charged by and paid to Owner. No action or inaction or acceptance of rent or knowledge on the part of Owner will be deemed to be a waiver of the provision of this Section on the part of Owner and will not be deemed an approval of any person as a "sub-tenant" for any purpose.

**Parking**

The assigned parking space is for the exclusive use of the tenants and may be used for the parking of motor vehicles only. No vehicle longer than 20 feet may be parked in the space. Any motor vehicle maintenance or repair performed in the space, or any other use of the property without the prior consent of Owner, is prohibited.

Owner will not be liable for any damage done by bursting, leaking or running of any gas or water or any plumbing fixture in, above, upon or about the parking lot; for damage by water, snow or ice being upon or coming off the lot; damage arising from acts or neglect of other occupants of the lot or other motor vehicles; or theft or vandalism by others. It is encouraged that Tenants purchase insurance to cover the above-mentioned instances.

**Storage**

Tenants release Owner from any liability for loss or damage to Tenants' property while stored on the Premises. Any property stored in designated storage areas shall be removed on or before the date of termination of tenancy. In the event such property is not so removed, Owner may dispose of same without any liability to Tenants. Tenants waive any rights as defined in Civil Code Section 1980 et. seq. Owner reserves the right to inspect all such storage areas and require necessary removal or clean up as deemed necessary for the health and safety of the Premises, the building and/or its occupants. No storage of any kind will be permitted on fire escapes or in other common areas.

I have reviewed this page   N.N   (Tenant Initials)

### Rental Agreement (Month-to-Month)

- Condition of Premises** Tenant agrees to: (1) keep the Premises clean and sanitary and in good repair and, upon termination of the tenancy, to return the Premises to Owner in a condition identical to that which existed when Tenant took occupancy, except for ordinary wear and tear; (2) immediately notify Owner of any defects or dangerous conditions in and about the Premises of which they become aware; and (3) reimburse Owner, on demand by Owner, for the cost of any repairs to the Premises damaged by Tenant or Tenant's guests or invitees through misuse or neglect.
- Appliances and Fixtures** Tenant acknowledges that all appliances, window and floor coverings, attached light fixtures, and other attached or semi-attached items are the property of Owner.
- Pets** Only Approved Pets are allowed on or about the Premises. Owner may require a photo of all Approved Pets. No other animals are allowed even temporarily or with a guest, without Owner's prior written consent, excepting guide, service or signal dogs pursuant to California Civil Code Sections 54.1 and 54.2. Stray animals shall not be kept or fed in or around the Building. Strays can be dangerous and Owner must be notified immediately of any strays in or around the Building.
- Approved Pets are not permitted outside Tenant's unit unless on a leash. Tenant agrees to immediately clean up any defecation in a sanitary manner. If Tenant fails to prevent any infestations of fleas, ticks, or other creatures, Tenant may be charged for cleaning, de-fleaing, deodorizing or shampooing any portion of the building or Premises. Tenant shall not permit the pets to cause any discomfort, annoyance, nuisance, or in any other way inconvenience any other Tenant. Any "mess" created by the Pet(s) shall immediately be cleaned up by Tenant. Tenant shall be liable to Owner, and shall defend Owner, hold Owner harmless, and indemnify Owner for all injuries, damages, expenses, losses or obligations of any kind incurred by or in connection with the pet.
- Trash** Tenant agrees to dispose of their ordinary household trash by placing it in the Waste Management containers for periodic collection. Tenant agrees to dispose of extraordinary trash, such as damaged furniture, broken appliances and the like, by immediately hauling it to the dump themselves or by paying someone else to remove it. In the event that Tenant's trash is left outside the Premises, Owner will arrange to have it removed at Tenant's expense.
- Owner's Access** California law allows Owner to enter the Premises for certain purposes during normal business hours. Owner will provide written notice to Tenant prior to entering the Premises whenever required by state law (Civil Code Section 1954).
- Extended Absences** Tenant agrees to notify Owner in the event that Tenant will be away from the Premises for 14 consecutive days or more. During each absence, Owner may enter the Premises at times reasonably necessary to maintain the property and inspect for damage and needed repairs.
- Quiet Enjoyment** Tenant will be entitled to quiet enjoyment of the Premises. Tenant and Tenant's guests or invitees will not use the Premises or adjacent areas in such a way as to: (1) violate any law or ordinance, including laws prohibiting the use, possession or sale of illegal drugs; (2) commit waste or nuisance; or (3) annoy, disturb, inconvenience or interfere with the quiet enjoyment and peace and quiet of any other tenant or nearby resident.
- Repairs and Alterations** Tenant will not, without Owner's prior written consent, alter, re-key or install any locks to the Premises or install or alter any burglar alarm system. Tenant will provide Owner with a key or keys capable of unlocking all such re-keyed or new locks as well as instructions on how to disarm any altered or new burglar alarm system.
- Except as provided by law or as authorized by the prior written consent of Owner, Tenant will not make or allow to be made any installation or modification of cable or telephone wiring, decorations (such as painting and wallpapering), alterations, or repairs (inclusively, "Changes") to the Premises. Tenant agrees to pay all costs of correcting any unauthorized Changes.
- Financial Responsibility** Tenant agrees to accept financial responsibility for any loss or damage to personal property belonging to Tenant and Tenant's guests and invitees caused by theft, fire or any other cause. Owner assumes no liability for any such loss. Owner recommends that Tenant obtain a renter's insurance policy from a recognized insurance firm to cover Tenant's liability, personal property damage and damage to the Premises.
- Water-filled Furniture** No waterbed or other item of water-filled furniture will be kept on the Premises.
- Smoke Detectors** The Premises are equipped with functioning smoke detection devices. Tenant will be responsible for testing the devices weekly and immediately reporting any problems, maintenance or need for repairs to Owner. Tenant will not remove their batteries or otherwise disable them.
- Termination** The tenancy may be terminated by Tenant by serving a 30-day written notice of termination upon Owner, and by Owner by serving a 30-day written notice of termination upon Tenant if Tenant has been in possession of the Premises for less than one year, or by serving a 60-day written notice of termination upon Tenant if Tenant has been in possession of the Premises for one year or longer. Any termination notice is subject to applicable local rent control ordinances and regulations. If the Premises are damaged by fire, flood, earthquake or any other cause so as to render them uninhabitable and therefore destroyed, the tenancy is terminated.

I have reviewed this page   N.N.   (Tenant initials)

### Rental Agreement (Month-to-Month)

**Attorney Fees** In any action or legal proceeding, to enforce any part of this Agreement, each party will be responsible for their own attorneys' fees and court costs, subject to local rent control ordinances and regulations that may apply.

**Megan's Law** Pursuant to Section 290.46 of the California Penal Code, information about specified registered sex offenders is made available to the public via an internet web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and the ZIP code in which he or she resides.

**Notices** Any required notices may be delivered to Tenant at the Premises and to Owner or Agent for Rent and Notices.

**Validity of Each Part** If any portion of this Agreement is held to be invalid, its invalidity will not affect the validity or enforceability of any other provision of this Agreement.

**Captions and Headings** The captions and headings in this Agreement are included to improve readability and are not part of the terms or provisions of this Agreement.

**Application** Any rental application or related document submitted by Tenant is incorporated herein as though set forth in full. Any misrepresentations contained therein will be considered a substantial violation of a material term of the tenancy and is a just cause for eviction.

**Attachments** The following attachments are incorporated as part of this Agreement:  
 Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards  
 Move-In-Move-Out Checklist  
 Oakland Notice to Tenants  
 EPA booklet entitled "Protect Your Family from Lead in Your Home"

**Entire Agreement** This document and Attachments identified above constitute the entire Agreement between the parties, and no promises or representations, other than those contained here and those implied by law, have been made by Owner or Tenant. Any modifications to this Agreement must be in writing signed by Owner and Tenant except that Owner may change the terms of the tenancy and this Agreement pursuant to Civil Code Section 827.

By: Joseph Martinez 11-26-12  
 Owner or Agent Date

Tenant _____	Date _____	Tenant _____	Date _____
<u>Nazario Navarro</u>	11-28-12		
Tenant _____	Date _____	Tenant _____	Date _____
Tenant _____	Date _____	Tenant _____	Date _____

Receipt

By signing above, Owner acknowledges having received, and Tenant acknowledges payment of, the following:

Security Deposit: \$ \_\_\_\_\_

Rent: \$ \_\_\_\_\_ for the period \_\_\_\_\_ to \_\_\_\_\_

Other: \$ \_\_\_\_\_ for \_\_\_\_\_

Total received: \$ \_\_\_\_\_ payment method \_\_\_\_\_



Form provided by the East Bay Rental Housing Association®  
[www.ebrha.com](http://www.ebrha.com)  
 Form Rental Agreement (Month-to-Month) © (06/11)



NOTICE TO TENANTS AT 28<sup>TH</sup> AVENUE

Dear Tenants,

I am writing in regards to the rules and maintenance of the building for 1783-28<sup>th</sup> Avenue. Thank you for those who have been doing their share in maintaining the cleanliness of the building and property including the carport, yard and garbage areas. Unfortunately, there seems to be some big problems we have been having with the garbage and some tenants have been throwing diapers down their windows to the back and sides of the building. I hope all tenants are aware that garbage that is thrown on the property and not put in the proper containers will cause huge rodent problems. According to the lease, each tenant has a responsibility to maintain the property. As a courtesy to all the other tenants, please do your share in keeping the property in good condition.

I want to clarify the rule that there is only 1 carport space per unit. If you have more than 1 car, you must not park it in any of the carport space or yard. Your car must be parked outside the gated area.

Since there seems to be some problems with the moving of the garbage container, I will be looking into having individual garbage cans where each tenant would be responsible for moving out their garbage container outside on garbage day. We have recycle bins. Please be sure to use these for recycling plastic, glass and paper. This will help the environment.

I will be slowly making repairs and improvement to the building to make the property more beautiful. Please do your part in helping to improve our building.

I will be meeting with each tenant to sign leases. I do want to remind all tenants to write down their unit address on the deposit slips when making your rent deposits so I can credit you correctly. Please find attached the RAP sheet as required by the Oakland rent board in regards to your tenant rights.

Thank you for your attention and cooperation.

Sincerely,



May Fong  
415-812-9908

000130

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development
Rent Adjustment Program

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases...
You have a right to file a petition with the RAP to contest a rent increase...
To contest a rent increase, you must file a petition with the RAP within sixty (60) days...
If you contest a rent increase, you must pay your rent with the contested increase...
Oakland has eviction controls...
Oakland charges owners a Rent Program Service Fee...
Oakland has a Tenant Protection Ordinance ("TPO")...

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit 1791, the unit you intend to rent.
Smoking (circle one) IS or IS NOT permitted in other units of your building.
There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_ (Date) \_\_\_\_\_ (Tenant's signature)

此份屋崙 (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.
Baun Thoang Baun quyeàn lòi cuà ngòðøi theuê trong Oakland naøy cuông còu baeng tieáng Viêät. Neà còu mòät baun sao, xin goii (510) 238-3721.

# THIRTY-DAY NOTICE OF CHANGE OF MONTHLY RENT

TO: Nazana Nevarez, Teresa Vazques, Fernando Nevarez and Cesar Nevarez, et al  
*All Residents (tenants and subtenants) in possession (full name) and all others in possession*

of the premises located at:

1791-28th Avenue, Unit # (if applicable) \_\_\_\_\_  
*(Street Address)*  
Oakland, CA 94601  
*(City) (Zip)*

You are hereby notified, in accordance with California Law, that 30 days after service upon you of this Notice, or  
8/1/16, whichever is later, your monthly rent which is payable in advance on or before the  
*(Date)*

1st day of each month, will be the sum of \$ 995, instead of \$ 945, the current monthly rent.

Except as herein provided, all other terms of your tenancy shall remain in full force and effect.

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

6/30/16  
Date

*May Fong*  
Owner/Agent May Fong

## Proof of Service

I, the undersigned, being at least 18 years of age, declare that I served this notice, of which this is a true copy, on the 30th day of June (month), 2016 (year), on the above-mentioned resident(s) in possession, in the manner indicated below. (Select one)

- BY MAILING by first class mail on said date a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named resident(s) at their place of residence

Place of Mailing: San Francisco Date of Mailing: 6/30/16

- BY DELIVERING a copy of the Notice to the following resident(s) PERSONALLY: \_\_\_\_\_
- BY LEAVING a copy for each of the above-named resident(s) with a person of suitable age and discretion at the residence or usual place of business of the resident(s), said resident(s) being absent thereof;  
AND MAILING by first class mail on said date a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named resident(s) at their place of residence.
- BY POSTING a copy for each of the above-named resident(s) in a conspicuous place on the property therein described, there being no person of suitable age or discretion to be found at any known place of residence or business of said resident(s);  
AND MAILING by first class mail on the same day as posted, a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope with postage fully prepaid, addressed to the resident(s) at the place where the property is situated.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and if called as a witness to testify thereto, I could do so competently.

Executed this 30th day of June (month), 2016 (year), in San Francisco (city), Ca (state).

May Fong  
Name of Declarant (Print)

\_\_\_\_\_  
(Signature of Declarant)

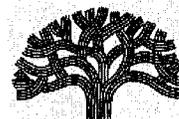


California Apartment Association Approved Form  
www.caanet.org  
Form 5.1-SV - Revised 12/14 - ©2014 - All Rights Reserved  
Page 1 of 1

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of Blank Forms is Illegal.



# CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043  
Department of Housing and Community Development  
Rent Adjustment Program

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

## NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program (“RAP”) that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. It does not apply to subsidized units, most single family dwellings, condominiums and some other types of units. For more information on which units are covered, contact the RAP office.
- 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 (“CPI increase”). An owner can increase rent more than the CPI rate, but with limits, for: capital improvements, operating expense increases, and deferred annual rent increases (“banking”). No annual rent increase may exceed 10%. The owner 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 the owner decreases your housing services, this may be an increase in your rent. Decreased housing services include substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP within sixty (60) days of whichever is later: (1) the date the owner served the rent increase notice; or (2) the date you first received this Notice To Tenants. Information and the petition forms are available from the RAP office: 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Fl., Oakland, CA 94612 or: <http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment>
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. After your petition is filed, if the rent increase notice separately states the amount of the CPI rate, you have to pay your rent plus the CPI increase. If the CPI rate has **not** been stated separately, you may pay the rent you were paying before the rent increase notice. If the increase is approved and you did not pay it you will owe the amount of the increase retroactive to the effective date of increase.
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- Smoking (circle one) IS or **IS NOT** permitted in other units of your building. (If both smoking and non-smoking units exist in tenant's building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or **IS NOT** a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_ (Date) \_\_\_\_\_ (Tenant's signature)

此份屋崙 (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 ở trong Oakland này cũng có bản tiếng Việt. Nếu có mặt bản sao, xin gọi (510) 238-3721.





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**Fong Investments: Account Activity Transaction Details**

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**Post date:** 12/05/2018

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 1603915720

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 1603915720

**Transaction category:** Income: Deposits



Online Banking

---

**Fong Investments: Account Activity Transaction Details**

---

**Post date:** 03/05/2018

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 0511268718

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 0511268718

**Transaction category:** Income: Deposits

000136

THIS DOCUMENT HAS A TRUE WATERMARK AND VISIBLE FIBERS DISCEARNIBLE FROM BOTH SIDES

**CITY OF OAKLAND  
BUSINESS TAX CERTIFICATE**

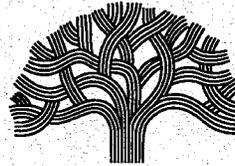
**ACCOUNT  
NUMBER**  
00205989

The issuing of a Business Tax Certificate is for revenue purposes only. It does not relieve the taxpayer from the responsibility of complying with the requirements of any other agency of the City of Oakland and/or any other ordinance, law or regulation of the State of California, or any other governmental agency. The Business Tax Certificate expires on December 31st of each year. Per Section 85.04.190A, of the O.M.C. you are allowed a renewal grace period until March 1st the following year.

**DBA** FONG GRANT W & MAY L

**BUSINESS LOCATION** 1783 28TH AVE  
OAKLAND, CA 94601-2453

**BUSINESS TYPE** M Rental- Apartment



**EXPIRATION DATE**  
12/31/2020



MAY FONG  
MAY FONG  
358 CERRO CT  
DALY CITY, CA 94015-4087

THIS DOCUMENT IS ALTERATION PROTECTED AND REFLECTS FLUORESCENT FIBERS UNDER UV LIGHT.

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

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

PUBLIC INFORMATION ABOVE THIS LINE TO BE CONSPICUOUSLY POSTED!

**RECEIVED**  
JAN 28 2020  
RENT ADJUSTMENT PROGRAM  
OAKLAND

000137

**RECEIVED**

ADDENDUM B - T18-0311 CERVANTES

JAN 28 2020

RENT ADJUSTMENT PROGRAM  
**OAKLAND**

I want to point out that I emailed the original lease on November 3, 2018 to Ms. Sullivan to show the Cervantes were illegal subtenants which I prohibited based on the lease. I brought this to the hearing and because the hearing officer did not find it in the file, she would not allow it to be considered in the case. As I mentioned, in past hearings, specifically I recall with hearing officer Barbara Kong, she had accepted evidence from Tenant attorneys presented at the hearing. The hearing officer abused her discretion by failing to consider the leases and applying unequal standards to my evidence of the original lease establishing the Tenants were unauthorized subtenants and failed to consider the mutually signed new lease. The Tenants failed to meet their burden of proof to establish their rent to be \$945 yet the hearing officer took only the tenant's testimony in regards to the rent amount.

I request the hearing officer to accept the original lease into evidence as proof the tenants were illegal subtenants which was prohibited. Cervantes was new tenants and under Costa Hawkins and Oakland Municipal code, Owner is able to set rent at market rent. Therefore, the hearing officer should find the rent is \$1400.

**000138**

**Fw: Owner Response - Rent Adjust Program CASE T18-0311**

From: May Fong (mayfong@pacbell.net)  
To: asilveira@oaklandca.gov  
Date: Friday, January 24, 2020, 09:53 AM PST

Hi Ava!

Here is another case I sent to Margaret this addendum and when I was at the hearing the hearing officer says they didn't receive it. This is what I told you about. Roberto told me this case was Margaret so I forwarded to her. I was very shocked when the hearing officer told me she didn't receive the addendum and then she wouldn't take what I had into consideration because she claims she didn't receive it in the file. In the past hearings especially I remember with Barbara Kong, the tenant's attorney would give the hearing officer paperwork at the hearing and it was taken into account.

This was a huge impact in my case and I will send you the originals for this case too because in appeal they would not take this in consideration claiming it was new evidence and was remanded back to the hearing officer. The tenant did not give any evidence yet the hearing officer only based her decision on tenant testimony and not on the evidence presented.

*May*

----- Forwarded Message -----

**From:** May Fong <mayfong@pacbell.net>  
**To:** Sullivan, Margaret <MSullivan@oaklandca.gov>  
**Sent:** Friday, November 16, 2018, 04:08:52 PM PST  
**Subject:** Re: Owner Response - Rent Adjust Program CASE T18-0311

Hi!

Can you add this addendum to this case?

*May*

---

**From:** "Costa, Robert" <RCosta@oaklandca.gov>  
**To:** May Fong <mayfong@pacbell.net>  
**Cc:** "Sullivan, Margaret" <MSullivan@oaklandca.gov>  
**Sent:** Tuesday, November 13, 2018 8:54 AM  
**Subject:** RE: Owner Response - Rent Adjust Program

Hi May:

ADDENDUM T18-0311 CERVANTES

Please find attached original tenant lease showing prohibition of sublease. Tenant was unauthorized tenant. I've also attached texts to show the thread regarding the realization of Tenant's were the unauthorized tenants. Tenant committed fraud in obtaining lease claiming 3 occupants when there was actually 7.

### Rental Agreement (Month-to-Month)

Rent

Rent will be paid in full to Owner or Owner's agent without offsets, deductions or credits. Tenant bears the risk of loss or delay of any mailed payment. Owner reserves the right to refuse any partial payment. Payment will be applied to any outstanding obligation of Tenant to Owner, notwithstanding any other designation by Tenant.

Late Payments

Tenant will pay Owner a late charge if rent is not received on time. By accepting a late charge, Owner does not waive the right to insist on payment of the rent in full on the due date. Tenant and Owner agree that the late charge represents a fair and reasonable estimate of costs incurred by Owner in this circumstance. Tenant and Owner agree that paying rent more than five days late on three separate occasions in any 12-month period is a substantial violation of a material term of the tenancy and is a just cause for eviction.

Returned Payments

Tenant will pay Owner a returned payment fee in the event any check or other form of payment offered by Tenant to Owner in payment of rent or any other amount due under this Agreement is returned for lack of sufficient funds, a "stop payment" or any other reason. Tenant and Owner agree that this amount represents a fair and reasonable estimate of costs incurred by Owner in this circumstance. A returned check may constitute late payment of rent. In the event of a returned check, Owner reserves the right to demand payment by money order or certified funds for the current and all future payments.

Individual Liability

Each person who signs this Agreement, whether or not they remain in possession of the Premises, will be jointly and severally liable for the full performance of this Agreement, including the payment of all rent due and the payment of costs to remedy damages to the Premises caused by Tenant, guests or invitees.

Failure to Pay

As required by law, Tenant is notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations, such as your obligations under the terms of this Agreement.

Security Deposit

Tenant may not apply the security deposit to the last month's rent or to any other sum due under this Agreement. Within two weeks after Tenant has vacated the Premises, Owner will furnish Tenant with an itemized written statement of the reasons for, and the dollar amount of, any of the security deposit retained by the Owner, along with a check for any deposit balance. Under Section 1950.5 of the California Civil Code, Owner may withhold only that portion of Tenant's security deposit necessary to: (1) remedy any default by Tenant in the payment of rent; (2) repair damages to the Premises exclusive of ordinary wear and tear, and (3) clean the Premises if necessary. Under state and local law, no interest payments are required on security deposits.

Subletting

Tenant will not sublet any part of the Premises or assign this agreement without the prior written consent of Owner. The named Tenants are the only "Original" Tenants. No person other than the named Tenants will be permitted to regularly or continuously use or occupy the Premises unless all of the following conditions are met: 1) Tenant notifies Owner in writing, signed by every Tenant, stating a request to have a new person occupy the Premises; 2) said prospective occupant completes and gives to Owner Owner's rental application; 3) Owner approves of the prospective occupant's creditworthiness and references from prior landlords; and 4) the new occupant signs Owner's Change of Tenant Agreement for such occupancy before occupying the Premises, which agreement will include a provision that the new occupant will abide by and perform all the obligations of this Agreement. The rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises.

In the event that Owner consents to any sub-tenancy, it is hereby agreed that the Original Tenant may not charge more to the sub-tenant(s) than that proportional share of the rent which is being charged by and paid to Owner.

No action or inaction or acceptance of rent or knowledge on the part of Owner will be deemed to be a waiver of the provision of this Section on the part of Owner and will not be deemed an approval of any person as a "sub-tenant" for any purpose.

Parking

The assigned parking space is for the exclusive use of the Tenants and may be used for the parking of motor vehicles only. No vehicle longer than 20 feet may be parked in the Space. Any motor vehicle maintenance or repair performed in the Space, or any other use of the property without the prior consent of Owner, is prohibited.

Owner will not be liable for any damage done by bursting, leaking or running of any gas or water or any plumbing fixture in, above, upon or about the parking lot; for damage by water, snow or ice being upon or coming off the lot; damage arising from acts or neglect of other occupants of the lot or other motor vehicles; or theft or vandalism by others. It is encouraged that Tenants purchase insurance to cover the above-mentioned instances.

Storage

Tenants release Owner from any liability for loss or damage to Tenants' property while stored on the Premises. Any property stored in designated storage areas shall be removed on or before the date of termination of tenancy. In the event such property is not so removed, Owner may dispose of same without any liability to Tenants. Tenants waive any rights as defined in Civil Code Section 1980 et. seq. Owner reserves the right to inspect all such storage areas and require necessary removal or clean up as deemed necessary for the health and safety of the Premises, the building and/or its occupants. No storage of any kind will be permitted on fire escapes or in other common areas.

I have reviewed this page   NN   (Tenant initials)

### Rental Agreement (Month-to-Month)

- Attorney Fees** In any action or legal proceeding to enforce any part of this Agreement, each party will be responsible for their own attorneys' fees and court costs, subject to subject to local rent control ordinances and regulations that may apply.
- Megan's Law** Pursuant to Section 290.46 of the California Penal Code, information about specified registered sex offenders is made available to the public via an internet web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and the ZIP code in which he or she resides.
- Notices** Any required notices may be delivered to Tenant at the Premises and to Owner or Agent for Rent and Notices.
- Validity of Each Part** If any portion of this Agreement is held to be invalid, its invalidity will not affect the validity or enforceability of any other provision of this Agreement.
- Captions and Headings** The captions and headings in this Agreement are included to improve readability and are not part of the terms or provisions of this Agreement.
- Application** Any rental application or related document submitted by Tenant is incorporated herein as though set forth in full. Any misrepresentations contained therein will be considered a substantial violation of a material term of the tenancy and is a just cause for eviction.
- Attachments** The following attachments are incorporated as part of this Agreement:  
 Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards  
 Move-In-Move-Out Checklist  
 Oakland Notice to Tenants  
 EPA booklet entitled "Protect Your Family from Lead in Your Home"
- Entire Agreement** This document and Attachments identified above constitute the entire Agreement between the parties, and no promises or representations, other than those contained here and those implied by law, have been made by Owner or Tenant. Any modifications to this Agreement must be in writing signed by Owner and Tenant except that Owner may change the terms of the tenancy and this Agreement pursuant to Civil Code Section 827.

By: Joseph Martinez 11-26-12  
 Owner or Agent Date

Tenant	Date	Tenant	Date
<u>Magaria Nunez</u>	<u>11-28-12</u>		
Tenant	Date	Tenant	Date
Tenant	Date	Tenant	Date

<u>Receipt</u>	
By signing above, Owner acknowledges having received, and Tenant acknowledges payment of, the following:	
Security Deposit:	\$ _____
Rent:	\$ _____ for the period _____ to _____
Other:	\$ _____ for _____
Total received:	\$ _____ payment method _____



Form provided by the East Bay Rental Housing Association®  
[www.ebrha.com](http://www.ebrha.com)  
 Form Rental Agreement (Month-to-Month) © (06/11)



CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development
Rent Adjustment Program

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

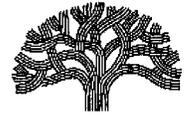
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TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit 1791, the unit you intend to rent.
• Smoking (circle one) IS or IS NOT permitted in other units of your building.
• There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_ (Date) \_\_\_\_\_ (Tenant's signature)

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BaÙn Thoàng Baùo quyeàn lờii cuõa ngõõphi thueá trong Oakland naøy cuõng cõu baèng tieáng Vieät. Ñeã cõu moãt baÙn sao, xin goii (510) 238-3721.



P.O. BOX 70243, OAKLAND, CA 94612-2043  
 Department of Housing and Community Development  
 Rent Adjustment Program

TEL (510) 238-3721  
 FAX (510) 238-6181  
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I received a copy of this notice on \_\_\_\_\_ (Date) \_\_\_\_\_ (Tenant’s signature)

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 Baùn Thoâng Baùo quyềàn lờii của ngồđøi thueã trong Oakland nàøy cuõng còu baềng tieáng Việãt. Neã còu moãt  
 baùn sao, xin gõii (510) 238-3721.



Online Banking

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**Fong Investments: Account Activity Transaction Details**

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**Post date:** 03/05/2018

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 0511268718

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 0511268718

**Transaction category:** Income: Deposits

000145



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

Housing and Community Development Department  
Rent Adjustment ProgramTEL (510) 238-3721  
FAX (510) 238-6181  
CA Relay Service 711**REMAND HEARING DECISION**

**CASE NUMBER:** T18-0311 Cervantes v. Fong  
**PROPERTY ADDRESS:** 1791 28<sup>th</sup> Avenue, Oakland, CA  
**DATE OF HEARING:** June 3, 2019  
**DATE OF DECISION:** October 3, 2019  
**DATE OF CORRECTED DECISION:** October 17, 2020  
**DATE OF APPEAL HEARING:** January 16, 2020  
**DATE OF APPEAL DECISION:** March 10, 2020  
**DATE OF REMAND DECISION:** November 24, 2020

**INTRODUCTION**

A Hearing Decision in this case was issued on October 3, 2019. A Corrected Hearing Decision was issued on October 17, 2020. The Hearing Decision partly granted the tenant's petition. Specifically, the Hearing Decision denied the rent increases in the 2017 lease (\$1,233.00 for the first three months, \$1,400.00 thereafter), on the grounds that the owner did not seek prior approval from the Rent Adjustment Program for increases exceeding the CPI and banking, and stated that the tenant's base rent remains \$945.00. Additionally, the Hearing Decision granted restitution for rent overpayments and past decreased housing services in the amount of \$6,965.25. The owner filed an Appeal, which was heard by the Board on January 16, 2020. The Board remanded the case to the Hearing Officer to address when the tenant's tenancy commenced, and state the reasoning as to when the tenancy commenced, and restate the monthly base rent, disregarding any evidence presented on appeal.

**EVIDENCE**

A review of the evidence presented at the underlying hearing and the Hearing Decision shows the following:

Commencement of Tenancy and Base Rent: The tenant stated on her petition and testified at the hearing that she moved into the subject unit in August of 2015, at an

initial monthly rent of \$945.00. She did not sign a lease at that time but paid rent directly to the owner. The tenant submitted copies of rent receipts verifying rent payments to the owner.<sup>1</sup> The tenant further testified that the owner was aware that they were living the subject unit as of 2015.

The owner testified that she received a text from the tenant's son in August of 2017, requesting a lease under the tenant's name. It was only at that time that she realized the tenants did not have a lease for the property. In response, she met with the parties and they signed a new lease effective September 1, 2017. At that time, they came to an agreement that the rent would be \$1,233.00 for the first three months after the lease was signed and would increase to \$1,400.00 in December of 2017.

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

The tenant testified credibly that she moved into the subject unit in August of 2015 at an initial rent of \$945.00. Although the tenant did not sign a lease at the time she moved into the unit, she paid rent directly to the owner and provided rent receipts verifying these payments.

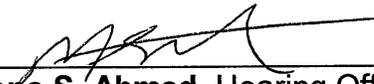
The Rent Ordinance defines a tenant as "A person entitled, by written or oral agreement, to the use or occupancy of any covered unit"<sup>2</sup>. The tenant's credible testimony establishes that the subject tenancy commenced in August of 2015. The owner's acceptance of the tenant's rent since 2015, as shown by the rent receipts, is further evidence of a tenancy between the tenant and the owner. It is hereby found that the subject tenancy began in August of 2015, and the monthly base rent is \$945.00.

### **ORDER**

1. The subject tenancy commenced in August of 2015.
2. The monthly base rent is \$945.00.

**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: November 24, 2020

  
\_\_\_\_\_  
**Maimoona S. Ahmad**, Hearing Officer  
Rent Adjustment Program

<sup>1</sup> Exhibit 2

<sup>2</sup> Rent Ordinance, Definitions

**PROOF OF SERVICE**  
**Case Number T18-0311**

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, 5<sup>th</sup> Floor, Oakland, California 94612.

Today, I served the attached **REMAND 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, 5<sup>th</sup> Floor, Oakland, California, addressed to:

**Tenant:**

Maria & Luis Cervantes  
1791 28<sup>th</sup> Avenue  
Oakland, CA 94601

**Tenant Representative**

Xavier Johnson, Centro Legal de la Raza  
3022 International Boulevard, Suite #410  
Oakland, CA 94601

**Property Owner**

May & Grant Fong  
358 Cerro Court  
Dali City, CA 94105

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 18, 2020 in Oakland, California.

  
\_\_\_\_\_  
Robert F. Costa  
Oakland Rent Adjustment Program

**000148**

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

<b>Appellant's Name</b> May Fong		<input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant	
<b>Property Address (Include Unit Number)</b> 1791-28th Avenue, Oakland, Ca 94601			
<b>Appellant's Mailing Address (For receipt of notices)</b> 358 Cerro Court, Daly City, Ca 94015		<b>Case Number</b> T18-0311	
		<b>Date of Decision appealed</b> November 24, 2020	
<b>Name of Representative (if any)</b>		<b>Representative's Mailing Address (For notices)</b>	

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: 32.

\*Please listen to only the section of testimony on the audio day of hearing.

**• 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 8, 2019, 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>	Luis Cervantes AND Maria Amezquita
<b><u>Address</u></b>	1791-28th Avenue
<b><u>City, State Zip</u></b>	Oakland, Ca 94601
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

	12/28/20
<b>SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>

For more information phone (510) 238-3721.

## T18-0311 APPEAL EXPLANATION

1) The hearing officer calculated the rent incorrectly. The rent for tenants Cervantes and Amerzquita was \$1400 as per signed lease in **Exhibit A**. The application for habitability issues is also incorrect. The electrical issues was due to the tenants' overloading the circuits with expansive outlets with overloading appliances. Please see attached **Exhibit B**. This caused shortages and dangerous circumstances and is due to the overcrowding of the unit 1 bedroom unit. The hearing officer calculated the decreased housing from March 2018 to July 2018. She has to put into account that the Owner was not made aware of any problems until receiving notice regarding the issues from code enforcement in or about May 2, 2018. Owners are allotted a reasonable time period to make repairs. Electrical and cabinets were repaired on May 8, 2018. Window Repairs were completed June 1, 2018 due to ordering of windows. Please see attached receipts and email with the Code Enforcement Inspector. Please see attached **Exhibit C**. **The hearing officer did not adhere to the decrease housing clause.** [an owner must be given notice of a problem, and a reasonable opportunity to make repairs, before a claim of decreased housing services will be granted] These were all repaired within a reasonable time period which is exactly a day after receiving notice repairs had been made with exception of the windows that needed special ordering; therefore, there should be no compensation for decreased housing. The issues were abated in July only because the inspection for the unit was scheduled for July.

2) d) The decision violates Ca state law 2007 California Civil Code Article 2. Rental Agreement CA Codes (civ:798.15-798.23.5) CIVIL CODE SECTION 798.15-798.23.5. Tenant Luis Cervantes AND Maria Amezquita attempts to claim they should takeover the rent amount set at the original tenant lease. Nazana Nevarez was the original tenant that signed a valid lease with previous landlord on May 30, 2012. Please see attached **Exhibit D**. Owner May Fong purchased property January 30, 2015 and sent notices to existing tenants of new ownership information along with RAP information to the original authorized tenant. Please see attached **Exhibit E**.

Nazana Nevarez subletted the unit to Luis Cervantes and Maria Amezquita without my approval or consent which is a breach of lease terms. Please see highlighted section regarding Subletting. It states the following:

[Tenant will not sublet any part of the Premises or assign this agreement without the prior written consent of Owner. The named Tenants are the only "Original" Tenants. No person other than the named Tenants will be permitted to regularly or continuously use or occupy the Premises unless all of the following conditions are met: 1) Tenant notifies Owner in writing, signed by every Tenant, stating a request to have a new person occupy the Premises; 2) said prospective occupant completes and gives to Owner Owners rental application; 3) Owner approves of the prospective occupant's creditworthiness and references from prior landlords; and 4) the new occupant signs Owner's Change of Tenant Agreement for such occupancy before occupying the Premises, which agreement will include a provision that the new occupant will abide by and perform all the obligations of

this Agreement. The rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises.

In the event that Owner consents to any sub-tenancy, is hereby agreed that the Original Tenant may not charge more to the sub-tenant(s) than that proportional share of the rent which is being charged by and paid to Owner.

No action or inaction or acceptance of rent or knowledge on the part of Owner will be deemed to be a waiver of the provision of this Section on the part of Owner and will not be deemed an approval of any person as a "sub-tenant" for any purpose.]

Owner May Fong was totally unaware that Luis Cervantes and Maria Amezquita were illegal subtenants that moved into premises without authorization until the text sent by Luis Cervantes 8/18/17 as stated at the hearing. Please see attached **Exhibit F**. Original tenants were given proper notices with RAP notices. Please see attached **Exhibit E**.

When Owner was made aware of the Cervantes and Amezquita were illegal subtenants, Owner was to evict them based on violation of lease and unauthorized subtenants. Tenants begged owner to stay. With heart, On August 24, 2017, Owner decided to allow tenant to stay and have tenants fill out an application and sign new lease as per original lease **ONLY** based on 3 persons residing in Premises and abide by stipulation in the original lease that the **rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises**. Tenants Cervantes and Amezquita professed on multiple occasions they only had 3 in their family. Owner would never have signed a new lease with 7 living in a 1 bedroom unit because it is an unsafe and unhealthy environment.

Per original lease, Original Tenant(s) moved out of Premises and Cervantes and Amezquita had become the new tenant, the lease sign and agreed by both parties raised to market rate at \$1400 per month is valid according to the California state law. Please see attached **Exhibit D**.

2.e. The decision is not supported by substantial evidence. The **Preponderance** of evidence is upon the Petitioner to not give testimony but present factual supported documented evidence. All of the tenants' claim has not been supported with any documents and the evidence the hearing officer claims is not accurate. The hearing officer claimed the tenant did not receive the RAP until we signed a new lease which is correct. However, she neglected to acknowledge all the RAP notices Owner sent was to the original tenant Nanzania. Tenants Cervantes and Amezquita would not be sent these notices. Please see attached **Exhibit F**.

The hearing officer did not take into account that tenants Cervantes and Amezquita were unauthorized subtenants until the new lease was signed. I emphasize they were not the authorized master tenants. Any rent payments the Petitioner claims was directly deposited in Owners account without disclosing to the Owner the rent payments were from anyone but the master tenants owners. Rent payments were also deposited in owners account with either cash or bank transfer masking who is depositing the rent. Please see **Exhibit G**. As evidenced in the application and lease signed and dated August 24, 2017. Please see attached **Exhibit A**. This is the Petitioner's

only and original lease as new tenants at the new marker rate of \$1400 (market value is \$1800). The attached stated the terms of lease as per California law and was based on the tenant's misrepresentation of facts regarding their claim was only 3 persons in the unit.

The hearing officer incorrectly claims that Owner testified "told the tenant her rent would be increased because there were so many people living in the unit." This is TOTALLY UNTRUE. Please listen to audio. Owner never made any claims of raising the rent due to the amount of people in unit. The rent was raised to market value as allowed by law when the original tenant vacates premises which happened. It is a fact I stated only 3 tenants can reside in the Premises and the tenant misrepresented themselves. Owner did indicate and firmly believe 7 in a 300 sleeping space is unsafe and hazardous but never claimed the rent is raised due to the amount of people that would be living there.

Tenants Cervantes and Amezquita were unauthorized subtenants and as per original lease in **Exhibit D**, the rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises as well as State and local laws.

h) The hearing officer did not adhere to the State or local laws. There was no 2017 rent increase as the hearing officer claims. This was a new lease to the new tenants of the unit. Prior to that they were unauthorized subtenants that never made me aware of their unauthorized residency until August 2017. Contracts matter and it is unjust to reward tenants who move into units without written or oral authorization. Owners have the right to choose their tenants and charge market rent to new tenants once authorized. Tenants Cervantes and Amezquita deceived the Owner by moving into Premises without authorization and then misrepresenting themselves in order to avoid eviction and to obtain a new lease. This is not legally adhering to the laws.

**2 (a & b)** The hearing officer did not adhere to the evidence presented and did not include all evidence as with my past hearings including T12-0105, T17-0025, where all evidence was taken into account and the hearing officer based the decision on facts and evidence including evidence attorneys brought into hearing on day of case and offered to extend to tenants more time for evidence for the case to be sure all facts were taken into account.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 28, 2020 in Oakland, CA.



May Fong, Owner

**000153**

EXHIBIT A

APPLICATION TO RENT OR LEASE

APPLICANT Each Applicant over the age of 18 must complete their own application form

PLEASE PRINT

First, Middle, Last Name <i>Maria Amezquita Arceo</i>	Date of Birth <i>7-5-81</i>	Social Security # <i>617-392871</i>	Driver's License #
Other Names Used In the Last 10 Years	Home Phone	Cell Phone	Email Address

ADDITIONAL OCCUPANTS List everyone who will live with you:

First, Middle, Last Name <i>Luis Ayala cervantes</i>	Date of Birth <i>6-19-68</i>	Relationship To Applicant <i>ESPOSO</i>
<i>Jovani Ayala</i>	<i>2-16-02</i>	<i>hijo</i>
<i>Maria Amezquita</i>	<i>7-5-81</i>	<i>mamá</i>

EMPLOYMENT

	Current Employment	Prior Employment
Employer	<i>Limpiando casas</i>	
Address		
Employer Phone	<i>Negocio propia cuenta</i>	
Job Title		
Name of Supervisor		
Dates of Employment	From: To:	From: To:
Income Per Month	\$	\$

RESIDENCE

	Current Residence	Previous Residence	Previous Residence
Street Address	<i>1791 28th Ave</i>		
City	<i>Oakland cal</i>		
State & Zip	<i>94601</i>		
Dates of Stay			
Owner/Manager And Phone number			
Reason For Leaving			
Last Rent Paid	\$	\$	\$

VEHICLES

Automobiles	Make	Model	Color	Year	License No.
Motorcycles					

PERSONAL REFERENCES

In Case Of Emergency, Notify	Address/City	Phone	Relationship
<i>Nancy nevares</i> Close Friend		<i>(610)213-9707</i>	<i>prima y amiga</i>
Nearest Relative Living Elsewhere			



**CREDIT INFORMATION** Please list all your financial obligations

Name of Bank or Savings & Loan		Branch or Address		Account No.		Balance
				Checking		\$
				Savings		\$
Credit Accounts	Account No.	Address/City	Phone	Balance	Due Monthly	

**GENERAL INFORMATION** Check answer that applies

- Do you smoke?  YES  NO
- Do you have any pets/animals?  YES  NO
- Have you ever filed for bankruptcy?  YES  NO
- Do you have any musical instruments?  YES  NO
- Do you have any water-filled furniture or do you intend to use water filled furniture in the apartment?  YES  NO
- Have you ever been convicted for selling, possessing, distributing or manufacturing illegal drugs or convicted of any other crime?  YES  NO
- Have you ever been evicted or named as a defendant in an eviction for non-payment of rent or any other reason?  YES  NO

Please explain any "yes" answers to the above questions:

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Why are you leaving your current residence? \_\_\_\_\_

The applicant hereby applies to rent/lease Apartment # \_\_\_\_\_ at \_\_\_\_\_ for \$ \_\_\_\_\_ per month, and upon owner's approval agrees to enter into a Rental Agreement and/or Lease and pay all rent and security deposits required before occupancy.

An application fee of \$ \_\_\_\_\_ is hereby submitted for the cost of processing this application, to obtain credit history and other background information.

**Applicant represents that all information given on this application is true and correct. Applicant hereby authorizes verification of all references and facts, including but not limited to current and previous landlords and employers, and personal references. Applicant hereby authorizes owner/agent to obtain Unlawful Detainer, Credit Reports, Telechecks, and/or criminal background reports. Applicant agrees to furnish additional credit and/or personal references upon request. Applicant understands that incomplete or incorrect information provided in the application may cause a delay in processing which may result in denial of tenancy. In the event that a material misstatement or misrepresentation is discovered after Applicant is accepted as a Resident, and whether or not a Lease or Month to Month Rental Agreement is executed, Owner may, at Owner's sole discretion, deem such misstatement or misrepresentation to be a material and non-curable breach of any subsequent Lease or Month to Month Rental Agreement and grounds for rescission of the contract and immediate eviction. Applicant hereby waives any claim and releases from liability any person providing or obtaining said verification or additional information.**

Applicant: Maria Amezcua Date: 8-24-17  
 (Signature required)



Received \$600 8/21/17

OAKLAND RENTAL AGREEMENT AND/OR LEASE

Landlord/Lessor/Agent: Mav Fong Apartment Number 1791
Tenant(s)/Lessee: Maria Amezcua Arceo
Tenant(s)/Lessee: Luis Cervantes, Jovani Ayala Amezcua
Apartment Number: 1791
Apartment Address: 1791-28th Avenue
City: Oakland State Ca Zip 94601
Monthly Rental Rate: \$1700
Rental Due Date: 1st of month
Security Deposit: \$3500
Late Charge: \$75 if not paid by 3rd
Parking Space: 1
Storage Space: 0

\$1400 from 12/1/17 M.A

1. This Rental Agreement and/or Lease shall evidence the complete terms and conditions under which the parties whose signatures appear below have agreed. Landlord/Lessor/Agent shall be referred to as "OWNER" and Tenant(s)/Lessee(s) shall be referred to as "RESIDENT."

2. PAYMENTS: Rent and/or other charges are to be paid at the office or apartment of the manager of the building or at such other place designated in writing by OWNER. For the safety of the manager, all payments are to be made by check or money order and no cash shall be acceptable. OWNER acknowledges receipt of the First month's rent of: \$1233 and a Security Deposit of \$2000 for a total payment of \$3433. All payments are to be made payable to: Mav Fong and delivered to: 358 Cerro Court, Daly City California, Telephone Number 415-812-9908 who is usually available on the following days: Every day during the following hours: 9am-5pm.

3. LATE CHARGE/FEE: The late charge amount noted above, not to exceed 6% of the monthly rent, shall be added to any payment of rent not made on the rental due date or for which a deficient (bounced) check shall have been given. Tenant shall be liable for \$25 each time a check is returned to OWNER because the check was dishonored. A fee of \$50.00 will be incurred each time the OWNER is required to serve a 3-Day Notice to Pay the Rent due to the Tenant's failure to pay rent on the day rent is due.

4. SECURITY DEPOSITS: The Security Deposit shall not exceed two times the monthly rent for unfurnished apartments or three times the monthly rent for furnished apartments. The total of the above deposits shall secure compliance with the terms and conditions of this agreement and shall be refunded to RESIDENT within 21 days after the premises have been completely vacated less any amount necessary to pay OWNER: a) any unpaid rent, b) cleaning costs, c) key replacement costs, d) costs for repair of damages to apartment and/or common areas above ordinary wear and tear, and e) any other amount legally allowable under the terms of this agreement. A written accounting of said charges shall be presented to RESIDENT within 21 days of move-out. If deposits do not cover such costs and damages, the RESIDENT shall immediately pay said additional costs for damages to OWNER. During the term of tenancy, RESIDENT agrees to increase the deposit upon 30 days written notice by an amount equal to any future increases in rent and/or an amount necessary to cover the cost of rectifying any damage or expense for which RESIDENT is responsible. Security deposit is not to be used as last month's rent.

5. UTILITIES: RESIDENT agrees to pay for all utilities and/or services based upon occupancy of the premises except garbage.

6. OCCUPANTS: Guest(s) staying over 14 days cumulative or longer during any 12-month period, without the OWNER's written consent, shall be considered a breach of this agreement. ONLY the following listed individuals and/or animals, AND NO OTHERS shall occupy the subject apartment for more than 14 days unless the expressed written consent of OWNER is obtained in advance, (the 14 day period maybe extended by local Rent Control Laws): Oakland. RESIDENT shall pay additional rent at the rate of \$100.00 per month or 25% (or the amount allowed under rent control) of the current monthly rent, whichever amount is greater, for the period of time that each additional guest in excess of the above named shall occupy the premises. RESIDENT shall pay the same additional monthly rent for each additional animal in excess of the above named animal(s), which shall occupy the premises. Acceptance of additional rent or approval of a guest shall not waive any requirement of this agreement or convert the status of any "guest" into a RESIDENT.

7. PETS AND FURNISHINGS: Furnishings - No liquid-filled furniture of any kind may be kept on the premises. If the structure was built in 1973 or later RESIDENT may possess a waterbed if he maintains waterbed insurance valued at \$100,000.00 or more. RESIDENT must furnish OWNER with proof of said insurance. RESIDENT must also comply with Civil Code Section 1940.5. Resident shall not keep on premises a receptacle containing more than ten gallons of liquid, highly combustible materials or other items which may cause a hazard or affect insurance rates such as, musical instrument, item(s) of unusual weight or dimension, RESIDENT also agrees to carry insurance deemed appropriate by OWNER to cover possible losses caused by using said items. Pets - No animal, fowl, fish, reptile, and/or pet of any kind shall be kept on or about the premises, for any amount of time, without obtaining the prior written consent and meeting the requirements of the OWNER. Said consent, if granted, shall be revocable at OWNER'S option upon giving a 30-day written notice. In the event laws are passed or permission is granted to have any item prohibited by this agreement or if for any reason such item exists on the premises, there shall be minimum additional rent of \$25.00 a month for each such item if another amount is not stated in this agreement. In the event laws are passed or permission is granted to have a pet and/or animal of any kind, an additional deposit in the amount of \$3,000 shall be required along with the signing of OWNER'S "PET AGREEMENT."

8. PARKING/STORAGE: When and if RESIDENT is assigned a parking space on OWNER'S property, the parking space shall be used exclusively for parking of passenger automobiles and/or those approved vehicles listed on RESIDENT'S "Application to Rent/Lease" or attached hereto. RESIDENT may not wash, repair, or paint in this parking space or at any other common areas on the premises. (RESIDENT may not assign, sublet, or allow RESIDENT'S guest(s) to use this or any other parking space.) RESIDENT is responsible for oil leaks and other vehicle discharges for which RESIDENT shall be charged for cleaning if deemed necessary by OWNER. Only vehicles that are operational may park in their assigned space.

9. NOISE: RESIDENT agrees not to cause or allow any noise or activity on the premises that might disturb the peace and quiet of another RESIDENT. Said noise and/or activity shall be a breach of this Agreement.

10. LOITERING AND PLAY: Lounging, playing, or unnecessary loitering in the halls, on the front steps, or in the common areas in such a way as to interfere with the free use and enjoyment, passage or convenience of another RESIDENT is prohibited.

11. DESTRUCTION OF PREMISES: If the premises become totally or partially destroyed during the term of this Agreement so that RESIDENT'S use is seriously impaired, RESIDENT or OWNER may terminate this Agreement immediately upon three-day written notice to the other.

12. CONDITION OF PREMISES: RESIDENT acknowledges that he has examined the premises and that said premises, all furnishings, fixtures, furniture, plumbing, heating, electrical facilities, all items listed on the attached inventory sheet, if any, and/or all other items provided by OWNER are all clean, and in good satisfactory condition except as may be indicated elsewhere in this Agreement. RESIDENT agrees to keep the premises and all items in good order and condition and to immediately pay for costs to repair and/or replace any portion of the above damaged by RESIDENT, his guests and/or invitees, except as provided by law. At the termination of this Agreement, all of the above-enumerated items in this provision shall



Can Also Deposit to Bank of America Account

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be returned to OWNER in clean and good condition except for reasonable wear and tear; the premises shall be free of all personal property and trash not belonging to OWNER. It is agreed that all dirt, holes, tears, burns, or stains of any size or amount in the carpets, drapes, walls, fixtures, and/or any other part of the premises, do not constitute reasonable wear and tear.

**13. MAINTENANCE AND ALTERATIONS:** RESIDENT shall not paint, wallpaper, alter or redecorate, change or install locks, install antenna or other equipment, screws, fastening devices, excessively large nails, or adhesive materials, place signs, displays, or other exhibits, on or in any portion of the premises without the written consent of the OWNER except as may be provided by law. RESIDENT shall deposit all garbage and waste in a clean and sanitary manner into the proper receptacles as provided and shall cooperate in keeping the garbage area neat and clean. RESIDENT shall be responsible for disposing of items of such size or nature as is not normally acceptable by the garbage hauler for the building. RESIDENT shall be responsible for keeping the garbage disposal clean of chicken bones, toothpicks, match sticks, celery, pits, grease, metal vegetable ties, and all other items that may tend to cause stoppage of the mechanism. RESIDENT shall pay for the cleaning out of any plumbing fixture that may need to be cleared of stoppage and for the expense or damage caused by the stopping of waste pipes or overflow from bathtubs, washbasins, toilets, or sinks, if caused by negligence or misuse by RESIDENT or their guests. Tenant must notify landlord with a written notice stating what item(s) need service or repair and give landlord a reasonable opportunity to service or repair that item(s). Should any charges be incurred by the City as a result of not notifying the Landlord in writing of such needed service or repairs, tenant shall be responsible for a minimum of \$201.50 for each occurrence plus any additional fines or inspection fees imposed by a government office as a result of RESIDENT not notifying OWNER in writing of any deficiencies with the residence.

**14. SMOKE/CARBON MONOXIDE DETECTORS:** The rental unit is equipped with properly functioning smoke and carbon monoxide detectors. Resident agrees to test the smoke and carbon monoxide detectors in the rental unit monthly for proper function. Resident agrees not to interfere with their normal function or disable any detectors in any manner.

**15. HOUSE, POOL, AND LAUNDRY RULES:** RESIDENT shall comply with all house, pool, pet, and laundry rules attached to this agreement which may be changed from time to time. These rules shall apply to, but are not limited to, noise, odors, disposal of trash, pets, parking, use of common areas, and storage of toys, bicycles, tools, and other personal items (including signs and laundry), which must be kept inside and out of view. OWNER shall not be liable to RESIDENT for any violation of such rules by any other RESIDENTS or persons. Rights of usage and maintenance of the laundry room and/or pool and pool area are gratuitous and subject to revocation by OWNER at any time.

**16. CHANGE OF TERMS:** The terms and conditions of this agreement are subject to future change by OWNER after the expiration of the agreed lease period upon 30 days written notice setting forth such change and delivered to RESIDENT. Any changes are subject to laws in existence at the time of the Notice Of Change Of Terms.

**17. TERMINATION:** After expiration of the leasing period, this agreement is automatically renewed from month-to-month, but may be terminated by either party. The owner giving a 60-day notice and the resident giving a 30-day written notice of intention to terminate. Where laws require "just cause," such just cause shall be so stated on said notice. The premises shall be considered vacated only after all areas including storage areas are clear of all RESIDENT'S belongings, and keys and other property furnished for RESIDENT'S use are returned to OWNER. Should the RESIDENT hold over beyond the termination date or fail to vacate all possessions on or before the termination date, RESIDENT shall be liable for additional rent and damages, which may include damages due to OWNER'S loss of prospective new RENTERS.

**18. POSSESSION:** If OWNER is unable to deliver possession of the Apartment to RESIDENT on the agreed date, because of the loss or destruction of the Apartment or because of the failure of the prior RESIDENT to vacate or for any other reason, the RESIDENT and/or OWNER may immediately cancel and terminate this agreement upon written notice to the other party at their last known address, whereupon neither party shall have liability to the other, and any sums paid under this Agreement shall be refunded in full. If neither party cancels, this Agreement shall be pro-rated and begin on the date of actual possession.

**19. INSURANCE:** RESIDENT acknowledges that OWNER'S insurance does not cover personal property damage caused by fire, theft, rain, war, acts of God, acts of others, and/or any other causes, nor shall OWNER be held liable for such losses. RESIDENT HEREBY AGREES TO OBTAIN HIS OWN INSURANCE POLICY TO COVER ANY PERSONAL LOSSES. This does not waive OWNER'S duty to prevent personal injury or property damage where that duty is imposed by law, however, RESIDENT'S failure to maintain said policy shall be a complete waiver of RESIDENT'S rights to seek damages against OWNER for above stated losses.

**20. RIGHT OF ENTRY AND INSPECTION:** OWNER or OWNER'S Agent by themselves or with others, may enter, inspect and/or repair the premises at any time in case of emergency or suspected abandonment. OWNER shall give 24 hours advance notice and may enter for the purpose of showing the premises during normal business hours to prospective renters, buyers, lenders, for smoke alarm inspections, and/or for normal inspection and repairs. OWNER is permitted to make all alterations, repairs and maintenance that in OWNER'S judgment is necessary to perform. In addition, OWNER has the right to enter pursuant to Civil Code Section 1954. If the work performed requires that RESIDENT temporarily vacate the unit, then RESIDENT shall vacate for this temporary period upon being served a 7-day notice by OWNER. RESIDENT agrees that in such event RESIDENT will be solely compensated by a corresponding reduction in the rent for those many days that RESIDENT was temporarily displaced. No other compensation shall be due to the RESIDENT. If the work to be performed requires the cooperation of the RESIDENT to perform certain tasks, then RESIDENT shall perform those tasks upon receiving a 24-hour written notice. (EXAMPLE: removing food items from cabinets so that the unit may be sprayed for pests.) Upon 24 hours notice, RESIDENT hereby agrees to lend OWNER the keys to the premises for the purpose of having a duplicate made for OWNER'S use.

**21. ASSIGNMENT:** RESIDENT agrees not to transfer, assign or sublet the premises or any part thereof and hereby appoints and authorizes the OWNER as his agent and/or by OWNER'S own authority to evict any person claiming possession by way of any alleged assignment or subletting.

**22. PARTIAL INVALIDITY:** Nothing contained in this Agreement shall be construed as waiving any of RESIDENT'S or OWNER'S rights under the law. If any part of this Agreement shall be in conflict with the law, that part shall be void to the extent that it is in conflict, but shall not invalidate this Agreement nor shall it affect the validity or enforceability of any other provision of this Agreement.

**23. NO WAIVER:** OWNER'S acceptance of rent with knowledge of any default by RESIDENT or waiver by OWNER of any breach of any term or condition of this Agreement shall not constitute a waiver of subsequent breaches. Failure to require compliance or to exercise any right shall not be construed as a waiver by OWNER of said term, condition, and/or right, and shall not affect the validity or enforceability of any other provision of this Agreement.

**24. ATTORNEY'S FEES:** If any legal action or proceeding be brought by either party to this agreement, the prevailing party shall be reimbursed for all reasonable attorneys' fees up to but not more than \$500 in addition to other damages awarded.

**25. ABANDONMENT:** California Civil Code Section 1951.2 shall govern Abandonment. If any rent has remained unpaid for 14 or more consecutive days and the OWNER has a reasonable belief of abandonment of the premises, OWNER shall give 18 days written notice to RESIDENT at any place (including the rented premises) that OWNER has reason to believe RESIDENT may receive said notice of OWNER'S intention to declare the premises abandoned. RESIDENT'S failure to respond to said notice as required by law shall allow OWNER to reclaim the premises.

26. The undersigned RESIDENTS are jointly and severally responsible and liable for all obligations under this agreement and shall indemnify OWNER for liability caused by the actions (omission or commission) of RESIDENTS, their guests and invitees.

27. Pursuant to Section 1785.26 of the California Civil Code, as required by law, you are hereby notified that a negative credit report reflecting on your credit history may be submitted to a credit reporting agency, if you fail to fulfill the terms of your credit obligation. RESIDENT expressly authorizes OWNER/AGENT (including a collection agency) to obtain Resident's consumer credit report, which OWNER/AGENT may use if attempting to collect past due rent payments, late fees, or other charges from Resident, both during the term of the Agreement and thereafter.

28. **Lead Warning Statement:** Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, OWNERS must disclose the presence of known lead-based paint hazards in the dwelling. RESIDENTS must also receive a federally approved pamphlet on lead poisoning prevention.

**OWNER/AGENT DISCLOSURE (Initial)**

ME OWNER'S initials (on left) mean OWNER has no knowledge of lead-based paint and/or lead-based hazards in or on the Premises and OWNER has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in or on the Premises, and OK RENTER'S initial (on left) indicate that RENTER has received a copy of a "Protect Your Family from Lead in Your Home", and that RENTER shall notify OWNER promptly in writing of any deteriorating and/or peeling paint.

29. **MOLD:** The OWNER/AGENT has inspected the unit prior to lease and knows of no damp or wet building materials and knows of no mold contamination. Resident agrees to accept full responsibility and maintain the premises in a manner that prevents the occurrence of an infestation of mold in the premises. Resident also agrees to immediately report to the OWNER/AGENT any evidence of water leaks, excessive moisture or lack of proper ventilation and evidence of mold that cannot be removed by cleaning.



30. ADDITIONS AND EXCEPTIONS: TENANT is responsible for all repairs and replacements of all appliances including refrigerator, stove, and microwave.

31. NOTICES: All notices to RESIDENT shall be served at RESIDENT'S apartment / house whether or not RESIDENT is present at the time of delivery and all notices to OWNER / AUTHORIZED PERSON shall be served by first class mailing to:

Person Authorized To Manage Property:

Name \_\_\_\_\_ Address \_\_\_\_\_  
Phone Number \_\_\_\_\_

Owner of property or a person who is authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for all notices and demands.

Name \_\_\_\_\_ Address \_\_\_\_\_  
Phone Number \_\_\_\_\_

Person or Entity Authorized to Receive Payment of Rent:

Name \_\_\_\_\_ Address \_\_\_\_\_  
Phone Number \_\_\_\_\_

32. INVENTORY: The Apartment contains the following items for use by RESIDENT: stove, refrigerator

RESIDENT further acknowledges that the subject premises are furnished with the additional furnishings listed on the attached inventory and that said attached inventory is hereby made part of this agreement.

33. Proposition 65 Notice: Warning: Some areas may contain chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.  
34. Notice is hereby given of the existence of the Residential Rent Arbitration Board (RRAB) and the Rent Arbitration Program of the City of Oakland, the office of which is located at 250 Frank H. Ogawa Plaza, 5th Floor, Oakland, CA, 94612, phone number (510) 238-3721. The Rent Arbitration Program (Oakland Municipal Code, Chapter 8.22) lease addendum is attached to this lease and acknowledged in number 35 below as a lease addendum notifying tenants of the Notice to Tenants regarding Oakland's Rent Adjustment Program. In the event that Owner/Agent elects not to implement an annual rent adjustment, the Owner/agent hereby advises Tenant that Owner/agent elects to bank any such rent adjustment to future year(s) pursuant to the provisions of the Oakland Rent Arbitration Ordinance.

Note: Tenant and Landlord has adopted, and agree to comply with Measure EE "Just Cause Eviction" Ordinance for the City of Oakland, CA., which requires landlords of specified residential properties, the right to evict a tenant only for reasons specified in the measure, such as non-payment of rent, breach of lease, damaging premises, drug or other illegal activity, disorderly conduct, rehabilitation of unit, landlord or relative occupancy, except in certain circumstances where the tenant is disabled, elderly or catastrophically ill. Further, the ordinance provides for damages, penalties and attorneys' fees against landlords who violate this law. Should Tenant violate any portion of the ordinance, Landlord may exercise his/her right to evict tenant for damages, penalties and attorneys' fees.

35. RESIDENT acknowledges receipt of the following, which shall be deemed a part of this Agreement: (Please check)

- House Rules
- Laundry Rules
- Mailbox Keys
- Pet Agreement
- Pool Rules
- Apartment Keys
- Garage Door Opener \_\_\_\_\_
- Notice to Tenants: Oakland's Rent Adjustment Program
- Information About Bed Bugs Sheet

36. ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between OWNER and RESIDENT. No oral agreements have been entered into, and all modifications or notices shall be in writing to be valid. The undersigned Residents are jointly and severally responsible for all obligations under this agreement and shall indemnify Owner for liability caused by the actions (omission or commission) of residents, their guests and invitees. Renter has relied on his own judgment in entering into this agreement.

37. NOTICE: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

38. RECEIPT OF AGREEMENT: The undersigned RESIDENT hereby certifies that he/she is fluent in the English language and has read and completely understands this Agreement and hereby acknowledges receipt of a copy of this "Rental Agreement and/or Lease." (\_\_\_\_\_) RESIDENT'S initials:

OR Pursuant to California Civil Code 1632, which requires translation of specified contracts or agreements that are negotiated in Spanish, Chinese, Vietnamese, Tagalog or Korean:

(Maria A.) Resident's Initials on left hereby acknowledge that this agreement was translated and interpreted in their foreign language of: Spanish  
Jovani Ayala \_\_\_\_\_, Jovani Ayala \_\_\_\_\_, 08/24/17  
Printed Name of Interpreter Signature of Interpreter Date

Mav Fong \_\_\_\_\_ 8/24/17  
Owner/Agent Date

\_\_\_\_\_  
Owner/Agent Date

\_\_\_\_\_  
Owner/Agent Date

Maria Amezcua 8-24-17  
Resident Date

Luis Ramirez  
Resident Date

Jovani Ayala 8-24-17  
Resident Date

NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR THE ADEQUACY OF ANY PROVISION IN THIS AGREEMENT. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.



CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043
Department of Housing and Community Development
Rent Adjustment Program

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

NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases...
Starting on February 1, 2017, an owner must petition the RAP for any rent increase...
Contesting a Rent Increase: You can file a petition with the RAP to contest unlawful rent increases...
If you contest a rent increase, you must pay your rent with the contested increase until you file a petition...
Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22)...
Oakland charges owners a Rent Program Service Fee per unit per year...
Oakland has a Tenant Protection Ordinance ("TPO") to deter harassing behaviors by landlords...
The owner [ ] is [X] is not permitted to set the initial rent on this unit without limitations...

TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit 1791, the unit you intend to rent.
Smoking (circle one) IS or IS NOT permitted in other units of your building.
There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on 8-24-17 (Date) Maria Amezcua (Tenant's signature)

此份屋書 (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.



P.O. BOX 70243, OAKLAND, CA 94612-2043  
 Departamento de Desarrollo Comunitario y Vivienda  
 Programa de Ajustes en el Alquiler

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

**AVISO A LOS INQUILINOS DEL PROGRAMA DE AJUSTES EN EL ALQUILER RESIDENCIAL**

- Oakland tiene un Programa de Ajustes en el Alquiler (Rent Adjustment Program, RAP) que limita los aumentos en el alquiler (Capítulo 8.22 del Código Municipal de Oakland) y cubre a la mayoría de las unidades residenciales en alquiler construidas antes de 1983. Para más información sobre las viviendas cubiertas, contacte a la oficina del RAP.
- A partir del 1º de febrero de 2017, un propietario debe presentar una petición ante el RAP para todo aumento en el alquiler que sea mayor que el aumento general anual en el alquiler (“aumento CPI”) o permitido que los aumentos en el alquiler sean “invertidos”. Estos incluyen mejoras de capital y aumentos en los gastos operativos. En lo que respecta a este tipo de aumentos, el propietario puede aumentar su alquiler sólo después de que un funcionario de audiencia haya autorizado el incremento. Ningún aumento anual en el alquiler podrá exceder el 10%. Usted tiene derecho a disputar el aumento en el alquiler propuesto respondiendo a la petición del propietario. No es indispensable que usted presente su propia petición.
- **Cómo disputar un aumento en el alquiler:** Puede presentar una petición ante el RAP para disputar aumentos ilícitos en el alquiler o la disminución de servicios en la vivienda. Para disputar el aumento en el alquiler, debe presentar una petición (1) en un plazo de (90) días a partir de la fecha del aviso de aumento en el alquiler si el propietario también proporcionó este Aviso a los Inquilinos con la notificación del aumento en el alquiler; o (2) en un plazo de 120 días a partir de la fecha de recepción del aviso de aumento en el alquiler si este Aviso a los Inquilinos no fue entregado con la notificación de aumento en el alquiler. Si el propietario no entregó este Aviso a los Inquilinos al inicio del periodo de arrendamiento, deberá presentar una solicitud en un plazo de (90) días a partir de la fecha en que recibió por primera vez este Aviso a los Inquilinos. Encontrará información y formularios disponibles en la oficina del RAP en el Centro de Asistencia de Vivienda: 250 Frank H. Ogawa Plaza, 6º Piso, Oakland; también puede visitar: <http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment>.
- Si usted disputa un aumento en el alquiler, debe pagar su alquiler con el aumento disputado hasta que presente la petición. Si el aumento es aprobado y usted no lo pagó, adeudará la suma del incremento retroactivo a la fecha de inicio de vigencia del aumento.
- Oakland tiene controles de desalojo (Ordenanza de Desalojo por Causa Justa y Reglamentos, O.M.C. 8.22) que limitan los motivos de desalojo en las viviendas cubiertas. Para más información contacte la oficina RAP.
- Oakland les cobra a los propietarios una Tarifa de Servicio del Programa de Alquiler (Rent Program Service Fee) por vivienda al año. Si la tarifa se paga a tiempo, el propietario tiene derecho a cobrar la mitad del costo de esta tarifa al inquilino. No se requiere que los inquilinos de viviendas subsidiadas paguen la porción del inquilino de la tarifa.
- Oakland posee una Ordenanza de Protección al Inquilino (Tenant Protection Ordinance, TPO) para impedir el comportamiento abusivo por parte de propietarios y para ofrecerles a los inquilinos recursos legales en instancias donde han sido víctimas de comportamiento abusivo por parte de propietarios (O.M.C. 8.22.600). (Ordenanza del Concejo Municipal No. 13265 C.M.S.)
- El propietario  tiene  no tiene permitido establecer el alquiler inicial de esta vivienda sin limitaciones (por ejemplo, de conformidad con la Ley Costa-Hawkins). Si el propietario no tiene permitido establecer el alquiler inicial sin limitaciones, el alquiler vigente cuando el inquilino anterior desalojó la vivienda era de 2016\_\_\_\_\_.

**INFORMACIÓN A LOS INQUILINOS SOBRE LAS POLÍTICAS PARA FUMADORES**

- Fumar (encierre en un círculo) NO ESTÁ permitido en la Vivienda \_\_\_\_\_, la vivienda que usted pretende alquilar.
- Fumar (encierre en un círculo) NO ESTÁ permitido en otras viviendas de su edificio. (Si hay disponibilidad de ambas viviendas, fumador y no fumador, en el edificio del inquilino, adjunte una lista de las viviendas en donde se permite fumar.)
- (Encierre en un círculo), HAY o NO HAY un área designada al aire libre para fumar. Se encuentra en \_\_\_\_\_.

Recibí una copia de este aviso el 8-24-17 Maria Amezcua  
(Fecha) (Firma del inquilino)

此份屋崙(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.

**MICHAEL MEHRETEAB  
ELECTRIC**

**RECEIVED 05/10/18**

---

**RECEIPIENT:**

**May Fong**

**LOCATION:**

**1791 28th Ave  
Oakland**

---

**SENDER:**

**Michael Mehreteab Electric**

6119 Market St, Oakland, Ca 94608

Phone: (510) 978- 2489

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Replace burnt outlet in living room due to overloaded circuit. Checked circuit breaker for damages. \$200

Received payment 5/9/18

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Job #29

**000162**



# SPECIAL SERVICES CUSTOMER INVOICE EXHBIT C

Notice of Cancellation (see Exhibit A) may be sent to this address:

HOME DEPOT U.S.A., INC.

Phone: (650) 755-9600

Store 0639 COLMA II

Salesperson: kxh6ggf

2 COLMA BLVD

Reviewer: sv995

COLMA, CA 94014

## REPRINT

<b>SOLD TO</b>	Name <b>MAY FONG MAY FONG</b>		Phone 1 <b>(415) 812-9908</b>	
	Address <b>358 CERRO CT</b>		Phone 2	
	Company Name			
	City <b>DALY CITY</b>		Job Description <b>1791</b>	
	State <b>CA</b>	Zip <b>94015</b>	County <b>SAN MATEO</b>	

2018-05-09 14:00

### CUSTOMER PICKUP #1

### MERCHANDISE AND SERVICE SUMMARY

We reserve the right to limit the quantities of merchandise sold to customers

REF # **W02** SKU # **0000-515-664** Customer Pickup / Will Call

<b>S.O. MERCHANDISE TO BE PICKED UP:</b>				<b>S/O MILGARD MFG INC</b>	<b>REF # S01</b>	<b>ESTIMATED ARRIVAL DATE: 05/30/2018</b>	<b>P.O. #39505099</b>	
REF #	SKU	QTY	UM	DESCRIPTION	PI	TAX	PRICE EACH	EXTENSION
S0101	0000-301-390	0.00	EA	NA / SINGLE SLIDER 29.5 X 47.5 VINYL XO / SINGLE SLIDER 29.5 X 47.5 VINYL XO{#1}	A	N	\$269.07	\$0.00*
<b>SCHEDULED PICKUP DATE: Will be scheduled upon arrival of all S/O Merchandise</b>							<b>MERCHANDISE TOTAL:</b>	<b>\$0.00</b>
<b>END OF CUSTOMER PICKUP - REF #W02</b>								

### CUSTOMER PICKUP #2

REF # **W04** SKU # **0000-515-664** Customer Pickup / Will Call

<b>S.O. MERCHANDISE TO BE PICKED UP:</b>				<b>S/O MILGARD MFG INC</b>	<b>REF # S03</b>	<b>ESTIMATED ARRIVAL DATE: 05/31/2018</b>	<b>P.O. #39505130</b>	
REF #	SKU	QTY	UM	DESCRIPTION	PI	TAX	PRICE EACH	EXTENSION
S0303	0000-301-390	1.00	EA	NA / SINGLE SLIDER 29.5 X 47.5 VINYL XO / SINGLE SLIDER 29.5 X 47.5 VINYL XO{#1}	A	Y	\$220.57	\$220.57*
<b>SCHEDULED PICKUP DATE: Will be scheduled upon arrival of all S/O Merchandise</b>							<b>MERCHANDISE TOTAL:</b>	<b>\$220.57</b>
<b>END OF CUSTOMER PICKUP - REF #W04</b>								

#### WILL-CALL MERCHANDISE PICK-UP

Will-Call items will be held in the store for 7 days only.

Check your current order status online at

[www.homedepot.com/orderstatus](http://www.homedepot.com/orderstatus)

FOR WILL CALL  
MERCHANDISE PICK-UP  
PROCEED TO WILL CALL OR  
SERVICE DESK AREA

(Pro Customers, Proceed To The Pro Desk)

\* Indicates item markdown  
Customer Copy

**TOTAL CHARGES OF ALL MERCHANDISE & SERVICES**

**Policy Id (PI):**

A: 90 DAYS DEFAULT POLICY;

*'The Home Depot reserves the right to limit / deny returns. Please see the return policy sign in stores for details.'*

<b>ORDER TOTAL</b>	\$220.57
<b>SALES TAX</b>	\$19.30
<b>TOTAL</b>	\$239.87
<b>BALANCE DUE</b>	\$0.00

**END OF ORDER No. H0639-111901**

## EXHIBIT C

Re: Case 1801330 1783-28th Avenue

---

From: May Fong (mayfong@pacbell.net)

To: HBarron@oaklandnet.com

Date: Friday, June 15, 2018, 9:55 AM PDT

---

Hi Hugo!

The inspection passed on Wednesday.

Please confirm the case has been abated.

Thx

May  
Sent from my iPhone

On Jun 6, 2018, at 8:33 AM, Barron, Hugo <[HBarron@oaklandnet.com](mailto:HBarron@oaklandnet.com)> wrote:

Not, you need to call 238-3444 and schedule a final inspection once the permit is final please call me and let me know. Hugo.

---

**From:** May Fong [<mailto:mayfong@pacbell.net>]  
**Sent:** Tuesday, June 05, 2018 12:47 PM  
**To:** Barron, Hugo <[HBarron@oaklandnet.com](mailto:HBarron@oaklandnet.com)>  
**Subject:** Re: Case 1801330 1783-28th Avenue

Hi Hugo!

I wanted to find if you are able to pass my inspection for my windows since you were at the unit yesterday?

Thanks.

May

---

**From:** May Fong <[mayfong@pacbell.net](mailto:mayfong@pacbell.net)>

**To:** "[hbarron@oaklandnet.com](mailto:hbarron@oaklandnet.com)" <[hbarron@oaklandnet.com](mailto:hbarron@oaklandnet.com)>  
**Sent:** Wednesday, May 2, 2018 2:49 PM  
**Subject:** Case 1801330 1783-28th Avenue

<image001.jpg>

To Inspector Barron,

I received the above reference complaint. Please find attached the notice I sent to the tenants regarding a violation you have included. I was made aware of the dumping on April 18th by a tenant, not by Luis Ayala. I verified the issues and contacted Luis regarding the violations he has caused and sent over the notices. Mr. Ayala has never complained to me regarding electrical or cabinet issues. I was made aware of the window and my handyman will repair the drawers in the kitchen and window well as today. My electrician will take care of the electrical on Friday and I already had made arrangements for bulky item pickup next Wednesday. I warned the tenant with the red van not to park at the lawn and I installed yellow parking bumpers to prevent cars from entering the lawn as per picture. I also installed security cameras in hopes to prevent the dumping and illegal car parking.

I will send you the confirmation that everything is taken care of and you can reinspect by May 14th.

Thanks.

*May*

### Rental Agreement (Month-to-Month)

Owner rents to Tenants and Tenants rent from Owner the Premises subject to the following terms and conditions.

#### Terms of Tenancy

DS GW 12/29/2014

Owner Joseph S. Martinez (Name)

Agent for Rent & Notices Same as above (Name)  
1814 28th Ave Oakland Ca. 94601 (Address)  
570-326-1943 JSMGoldenHours@gmail.com (Phone & Email)

Tenants Nazania V. Nevarez (Name) 11-25-77 (DOB)  
Teresa Vazquez (Name) 5-17-95 (DOB)  
Fernando Nevarez (Name) 10-15-97 (DOB)  
Cesar Nevarez (Name) 6-29-04 (DOB)

Premises X 1791 28th Avenue, Oakland Ca 94601 (Address)

Rent \$ 895.00 per month payable in advance on the 1st day of each month.

Parking Parking space assigned yes Monthly charge \$ NA payable with monthly rent.

Storage Storage space assigned yes Monthly charge \$ NA payable with monthly rent.

Rent Payments  Electronic Funds Transfer (EFT)  
 Personal check  
 Cashier's check or money order  
 Cash

Security Deposit \$ 800.00

Late Charge \$ 53.70 if Owner does not receive rent in full within 5th days after the due date.

Returned Payment \$ 25.00 in the event any check or other form of payment by Tenant is returned for lack of sufficient funds, a "stop payment" or any other reason.

Term of Tenancy The Tenancy begins on Dec 1 2012 and ends on May 30, 2012 and thereafter continues on a month-to-month basis until terminated.

Pets Approved pets NO Pets

Owner's Utilities Owner pays for Water & garbage

Tenant's Utilities Tenant pays for Gas & Electric

Appliances & Fixtures Owner provides stove & Refrigerator

#### General Terms and Conditions of Tenancy

Use and Occupancy The Premises are to be occupied and used only as a private residence by Tenants, without Owner's prior written consent, subject to applicable state and local laws. Occupancy by additional persons for more than two weeks in any six-month period is prohibited without Owner's written consent. Violation of the provisions of this Section is a substantial violation of a material term of the tenancy and is a just cause for eviction.

I have reviewed this page N.N (Tenant initials)

### Rental Agreement (Month-to-Month)

- Rent**                      Rent will be paid in full to Owner or Owner's agent without offsets, deductions or credits. Tenant bears the risk of loss or delay of any mailed payment. Owner reserves the right to refuse any partial payment. Payment will be applied to any outstanding obligation of Tenant to Owner, notwithstanding any other designation by Tenant.
- Late Payments**        Tenant will pay Owner a late charge if rent is not received on time. By accepting a late charge, Owner does not waive the right to insist on payment of the rent in full on the due date. Tenant and Owner agree that the late charge represents a fair and reasonable estimate of costs incurred by Owner in this circumstance. Tenant and Owner agree that paying rent more than five days late on three separate occasions in any 12-month period is a substantial violation of a material term of the tenancy and is a just cause for eviction.
- Returned Payments**    Tenant will pay Owner a returned payment fee in the event any check or other form of payment offered by Tenant to Owner in payment of rent or any other amount due under this Agreement is returned for lack of sufficient funds, a "stop payment" or any other reason. Tenant and Owner agree that this amount represents a fair and reasonable estimate of costs incurred by Owner in this circumstance. A returned check may constitute late payment of rent. In the event of a returned check, Owner reserves the right to demand payment by money order or certified funds for the current and all future payments.
- Individual Liability**     Each person who signs this Agreement, whether or not they remain in possession of the Premises, will be jointly and severally liable for the full performance of this Agreement, including the payment of all rent due and the payment of costs to remedy damages to the Premises caused by Tenant, guests or invitees.
- Failure to Pay**            As required by law, Tenant is notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations, such as your obligations under the terms of this Agreement.
- Security Deposit**        Tenant may not apply the security deposit to the last month's rent or to any other sum due under this Agreement. Within two weeks after Tenant has vacated the Premises, Owner will furnish Tenant with an itemized written statement of the reasons for, and the dollar amount of, any of the security deposit retained by the Owner, along with a check for any deposit balance. Under Section 1950.5 of the California Civil Code, Owner may withhold only that portion of Tenant's security deposit necessary to: (1) remedy any default by Tenant in the payment of rent; (2) repair damages to the Premises exclusive of ordinary wear and tear; and (3) clean the Premises if necessary. Under state and local law, no interest payments are required on security deposits.
- Subletting**                Tenant will not sublet any part of the Premises or assign this agreement without the prior written consent of Owner. The named Tenants are the only "Original" Tenants. No person other than the named Tenants will be permitted to regularly or continuously use or occupy the Premises unless all of the following conditions are met: 1) Tenant notifies Owner in writing, signed by every Tenant, stating a request to have a new person occupy the Premises; 2) said prospective occupant completes and gives to Owner Owner's rental application; 3) Owner approves of the prospective occupant's creditworthiness and references from prior landlords; and 4) the new occupant signs Owner's Change of Tenant Agreement for such occupancy before occupying the Premises, which agreement will include a provision that the new occupant will abide by and perform all the obligations of this Agreement. The rent for the Premises may be raised to market rates when the last Original Tenant(s) moves from the Premises.  
     In the event that Owner consents to any sub-tenancy, it is hereby agreed that the Original Tenant may not charge more to the sub-tenant(s) than that proportional share of the rent which is being charged by and paid to Owner.  
     No action or inaction or acceptance of rent or knowledge on the part of Owner will be deemed to be a waiver of the provision of this Section on the part of Owner and will not be deemed an approval of any person as a "sub-tenant" for any purpose.
- Parking**                 The assigned parking space is for the exclusive use of the Tenants and may be used for the parking of motor vehicles only. No vehicle longer than 20 feet may be parked in the Space. Any motor vehicle maintenance or repair performed in the Space, or any other use of the property without the prior consent of Owner, is prohibited.  
     Owner will not be liable for any damage done by bursting, leaking or running of any gas or water or any plumbing fixture in, above, upon or about the parking lot; for damage by water, snow or ice being upon or coming off the lot; damage arising from acts or neglect of other occupants of the lot or other motor vehicles; or theft or vandalism by others. It is encouraged that Tenants purchase insurance to cover the above-mentioned instances.
- Storage**                 Tenants release Owner from any liability for loss or damage to Tenants' property while stored on the Premises. Any property stored in designated storage areas shall be removed on or before the date of termination of tenancy. In the event such property is not so removed, Owner may dispose of same without any liability to Tenants. Tenants waive any rights as defined in Civil Code Section 1980 et. seq. Owner reserves the right to inspect all such storage areas and require necessary removal or clean up as deemed necessary for the health and safety of the Premises, the building and/or its occupants. No storage of any kind will be permitted on fire escapes or in other common areas.

I have reviewed this page   NN   (Tenant initials)

## Rental Agreement (Month-to-Month)

Condition of Premises	Tenant agrees to: (1) keep the Premises clean and sanitary and in good repair and, upon termination of the tenancy, to return the Premises to Owner in a condition identical to that which existed when Tenant took occupancy, except for ordinary wear and tear; (2) immediately notify Owner of any defects or dangerous conditions in and about the Premises of which they become aware; and (3) reimburse Owner, on demand by Owner, for the cost of any repairs to the Premises damaged by Tenant or Tenant's guests or invitees through misuse or neglect.
Appliances and Fixtures	Tenant acknowledges that all appliances, window and floor coverings, attached light fixtures, and other attached or semi-attached items are the property of Owner.
Pets	Only Approved Pets are allowed on or about the Premises. Owner may require a photo of all Approved Pets. No other animals are allowed even temporarily or with a guest, without Owner's prior written consent, excepting guide, service or signal dogs pursuant to California Civil Code Sections 54.1 and 54.2. Stray animals shall not be kept or fed in or around the Building. Strays can be dangerous and Owner must be notified immediately of any strays in or around the Building.  Approved Pets are not permitted outside Tenant's unit unless on a leash. Tenant agrees to immediately clean up any defecation in a sanitary manor. If Tenant fails to prevent any infestations of fleas, ticks, or other creatures, Tenant may be charged for cleaning, de-fleaing, deodorizing or shampooing any portion of the building or Premises. Tenant shall not permit the pets to cause any discomfort, annoyance, nuisance, or in any other way inconvenience any other Tenant. Any "mess" created by the Pet(s) shall immediately be cleaned up by Tenant. Tenant shall be liable to Owner, and shall defend Owner, hold Owner harmless, and indemnify Owner for all injuries, damages, expenses, losses or obligations of any kind incurred by or in connection with the pet.
Trash	Tenant agrees to dispose of their ordinary household trash by placing it in the Waste Management containers for periodic collection. Tenant agrees to dispose of extraordinary trash, such as damaged furniture, broken appliances and the like, by immediately hauling it to the dump themselves or by paying someone else to remove it. In the event that Tenant's trash is left outside the Premises, Owner will arrange to have it removed at Tenant's expense.
Owner's Access	California law allows Owner to enter the Premises for certain purposes during normal business hours. Owner will provide written notice to Tenant prior to entering the Premises whenever required by state law (Civil Code Section 1954).
Extended Absences	Tenant agrees to notify Owner in the event that Tenant will be away from the Premises for 14 consecutive days or more. During each absence, Owner may enter the Premises at times reasonably necessary to maintain the property and inspect for damage and needed repairs.
Quite Enjoyment	Tenant will be entitled to quiet enjoyment of the Premises. Tenant and Tenant's guests or invitees will not use the Premises or adjacent areas in such a way as to: (1) violate any law or ordinance, including laws prohibiting the use, possession or sale of illegal drugs; (2) commit waste or nuisance; or (3) annoy, disturb, inconvenience or interfere with the quiet enjoyment and peace and quiet of any other tenant or nearby resident.
Repairs and Alterations	Tenant will not, without Owner's prior written consent, alter, re-key or install any locks to the Premises or install or alter any burglar alarm system. Tenant will provide Owner with a key or keys capable of unlocking all such re-keyed or new locks as well as instructions on how to disarm any altered or new burglar alarm system.  Except as provided by law or as authorized by the prior written consent of Owner, Tenant will not make or allow to be made any installation or modification of cable or telephone wiring, decorations (such as painting and wallpapering), alterations, or repairs (inclusively, "Changes") to the Premises. Tenant agrees to pay all costs of correcting any unauthorized Changes.
Financial Responsibility	Tenant agrees to accept financial responsibility for any loss or damage to personal property belonging to Tenant and Tenant's guests and invitees caused by theft, fire or any other cause. Owner assumes no liability for any such loss. Owner recommends that Tenant obtain a renter's insurance policy from a recognized insurance firm to cover Tenant's liability, personal property damage and damage to the Premises.
Water-filled Furniture	No waterbed or other item of water-filled furniture will be kept on the Premises.
Smoke Detectors	The Premises are equipped with functioning smoke detection devices. Tenant will be responsible for testing the devices weekly and immediately reporting any problems, maintenance or need for repairs to Owner. Tenant will not remove their batteries or otherwise disable them.
Termination	The tenancy may be terminated by Tenant by serving a 30-day written notice of termination upon Owner, and by Owner by serving a 30-day written notice of termination upon Tenant if Tenant has been in possession of the Premises for less than one year, or by serving a 60-day written notice of termination upon Tenant if Tenant has been in possession of the Premises for one year or longer. Any termination notice is subject to applicable local rent control ordinances and regulations. If the Premises are damaged by fire, flood, earthquake or any other cause so as to render them uninhabitable and therefore destroyed, the tenancy is terminated.

I have reviewed this page   N.N.   (Tenant initials)

### Rental Agreement (Month-to-Month)

**Attorney Fees** In any action or legal proceeding to enforce any part of this Agreement, each party will be responsible for their own attorneys' fees and court costs, subject to local rent control ordinances and regulations that may apply.

**Megan's Law** Pursuant to Section 290.46 of the California Penal Code, information about specified registered sex offenders is made available to the public via an internet web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and the ZIP code in which he or she resides.

**Notices** Any required notices may be delivered to Tenant at the Premises and to Owner or Agent for Rent and Notices.

**Validity of Each Part** If any portion of this Agreement is held to be invalid, its invalidity will not affect the validity or enforceability of any other provision of this Agreement.

**Captions and Headings** The captions and headings in this Agreement are included to improve readability and are not part of the terms or provisions of this Agreement.

**Application** Any rental application or related document submitted by Tenant is incorporated herein as though set forth in full. Any misrepresentations contained therein will be considered a substantial violation of a material term of the tenancy and is a just cause for eviction.

**Attachments** The following attachments are incorporated as part of this Agreement:  
 Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards  
 Move-In-Move-Out Checklist  
 Oakland Notice to Tenants  
 EPA booklet entitled "Protect Your Family from Lead in Your Home"

**Entire Agreement** This document and Attachments identified above constitute the entire Agreement between the parties, and no promises or representations, other than those contained here and those implied by law, have been made by Owner or Tenant. Any modifications to this Agreement must be in writing signed by Owner and Tenant except that Owner may change the terms of the tenancy and this Agreement pursuant to Civil Code Section 827.

By: Joseph Martinez 11-26-12  
 Owner or Agent Date

_____ Tenant	_____ Date	_____ Tenant	_____ Date
<u>Nazario Nunez</u> Tenant	<u>11-28-12</u> Date	_____ Tenant	_____ Date
_____ Tenant	_____ Date	_____ Tenant	_____ Date
_____ Tenant	_____ Date	_____ Tenant	_____ Date

<u>Receipt</u>	
By signing above, Owner acknowledges having received, and Tenant acknowledges payment of, the following:	
Security Deposit:	\$ _____
Rent:	\$ _____ for the period _____ to _____
Other:	\$ _____ for _____
Total received:	\$ _____ payment method _____



Form provided by the East Bay Rental Housing Association®  
[www.ebrha.com](http://www.ebrha.com)  
 Form Rental Agreement (Month-to-Month) © (06/11)



## EXHIBIT E

### NOTICE TO TENANTS AT 28<sup>TH</sup> AVENUE

Dear Tenants,

I am writing in regards to the rules and maintenance of the building for 1783-28<sup>th</sup> Avenue. Thank you for those who have been doing their share in maintaining the cleanliness of the building and property including the carport, yard and garbage areas. Unfortunately, there seems to be some big problems we have been having with the garbage and some tenants have been throwing diapers down their windows to the back and sides of the building. I hope all tenants are aware that garbage that is thrown on the property and not put in the proper containers will cause huge rodent problems. According to the lease, each tenant has a responsibility to maintain the property. As a courtesy to all the other tenants, please do your share in keeping the property in good condition.

I want to clarify the rule that there is only 1 carport space per unit. If you have more than 1 car, you must not park it in any of the carport space or yard. Your car must be parked outside the gated area.

Since there seems to be some problems with the moving of the garbage container, I will be looking into having individual garbage cans where each tenant would be responsible for moving out their garbage container outside on garbage day. We have recycle bins. Please be sure to use these for recycling plastic, glass and paper. This will help the environment.

I will be slowly making repairs and improvement to the building to make the property more beautiful. Please do your part in helping to improve our building.

I will be meeting with each tenant to sign leases. I do want to remind all tenants to write down their unit address on the deposit slips when making your rent deposits so I can credit you correctly. Please find attached the RAP sheet as required by the Oakland rent board in regards to your tenant rights.

Thank you for your attention and cooperation.

Sincerely,



May Fong  
415-812-9908

**000171**



P.O. BOX 70243, OAKLAND, CA 94612-2043  
 Department of Housing and Community Development  
 Rent Adjustment Program

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

## NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program (“RAP”) that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. It does not apply to subsidized units, most single family dwellings, condominiums and some other types of units. For more information on which units are covered, contact the RAP office.
- 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 (“CPI increase”). An owner can increase rent more than the CPI rate, but with limits, for: capital improvements, operating expense increases, and deferred annual rent increases (“banking”). No annual rent increase may exceed 10%. The owner 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 the owner decreases your housing services, this may be an increase in your rent. Decreased housing services include substantial problems with the condition of a unit.
- To contest a rent increase, you must file a petition with the RAP within sixty (60) days of whichever is later: (1) the date the owner served the rent increase notice; or (2) the date you first received this Notice To Tenants. Information and the petition forms are available from the RAP office: 250 Frank H. Ogawa Plaza, 6<sup>th</sup> Fl., Oakland, CA 94612 or: <http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment>
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. After your petition is filed, if the rent increase notice separately states the amount of the CPI rate, you have to pay your rent plus the CPI increase. If the CPI rate has **not** been stated separately, you may pay the rent you were paying before the rent increase notice. If the increase is approved and you did not pay it you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Your payment for the annual fee is not part of the rent. Tenants in subsidized units are not required to pay the tenant portion of the fee.
- Oakland has a Tenant Protection Ordinance (“TPO”) to deter harassing behaviors by landlords and to give tenants legal recourse in instances where they are subjected to harassing behavior by landlords (O.M.C. 8.22.600). (City Council Ordinance No. 13265 C.M.S.)

### TENANTS’ SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or **IS NOT** permitted in Unit 1791, the unit you intend 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 tenant’s building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_ (Date) \_\_\_\_\_ (Tenant’s signature)

此份屋崙 (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.

Baùn Thoàng Baùo quyềàn lờii củuà ngồôøi thueã trong Oakland nàøy củng còu bàeng tieáng Vieät. Ñeã còu moät baùn sao, xin goii (510) 238-3721.

# THIRTY-DAY NOTICE OF CHANGE OF MONTHLY RENT

TO: Nazana Nevarez, Teresa Vazques, Fernando Nevarez and Cesar Nevarez, et al  
*All Residents (tenants and subtenants) in possession (full name) and all others in possession*

of the premises located at:

1791-28th Avenue, Unit # (if applicable) \_\_\_\_\_  
*(Street Address)*  
Oakland, CA 94601  
*(City) (Zip)*

You are hereby notified, in accordance with California Law, that 30 days after service upon you of this Notice, or  
8/1/16, whichever is later, your monthly rent which is payable in advance on or before the  
*(Date)*

1st day of each month, will be the sum of \$ 995, instead of \$ 945, the current monthly rent.

Except as herein provided, all other terms of your tenancy shall remain in full force and effect.

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

6/30/16  
*Date*

  
*Owner/Agent* May Fong

## Proof of Service

I, the undersigned, being at least 18 years of age, declare that I served this notice, of which this is a true copy, on the 30th day of June (month), 2016 (year), on the above-mentioned resident(s) in possession, in the manner indicated below. (Select one)

- BY MAILING** by first class mail on said date a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named resident(s) at their place of residence

Place of Mailing: San Francisco Date of Mailing: 6/30/16

- BY DELIVERING** a copy of the Notice to the following resident(s) **PERSONALLY**: \_\_\_\_\_
- BY LEAVING** a copy for each of the above-named resident(s) with a person of suitable age and discretion at the residence or usual place of business of the resident(s), said resident(s) being absent thereof;  
**AND MAILING** by first class mail on said date a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named resident(s) at their place of residence.
- BY POSTING** a copy for each of the above-named resident(s) in a conspicuous place on the property therein described, there being no person of suitable age or discretion to be found at any known place of residence or business of said resident(s);  
**AND MAILING** by first class mail on the same day as posted, a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope with postage fully prepaid, addressed to the resident(s) at the place where the property is situated.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and if called as a witness to testify thereto, I could do so competently.

Executed this 30th day of June (month), 2016 (year), in San Francisco (city), Ca (state).

May Fong  
*Name of Declarant (Print)*

\_\_\_\_\_  
*(Signature of Declarant)*



California Apartment Association Approved Form  
www.caanet.org  
**Form 5.1-SV** – Revised 12/14 - ©2014 – All Rights Reserved  
Page 1 of 1

**Unauthorized Reproduction  
of Blank Forms is Illegal.**



**000173**



P.O. BOX 70243, OAKLAND, CA 94612-2043  
 Department of Housing and Community Development  
 Rent Adjustment Program

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

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- There (circle one) IS or  IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_ (Date) \_\_\_\_\_ (Tenant’s signature)

此份屋崙 (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.

Baùn Thoàng Baùo quyềàn lôii củua ngồôøi thueã trong Oakland nàøy củong cồu baềng tieáng Vieät. Ñeã cồu moãt baùn sao, xin goii (510) 238-3721.

EXHIBIT F

TEXTS FROM LUIS 8/17/17 ESTABLISHED ILLEGALLY STAYING AT UNIT

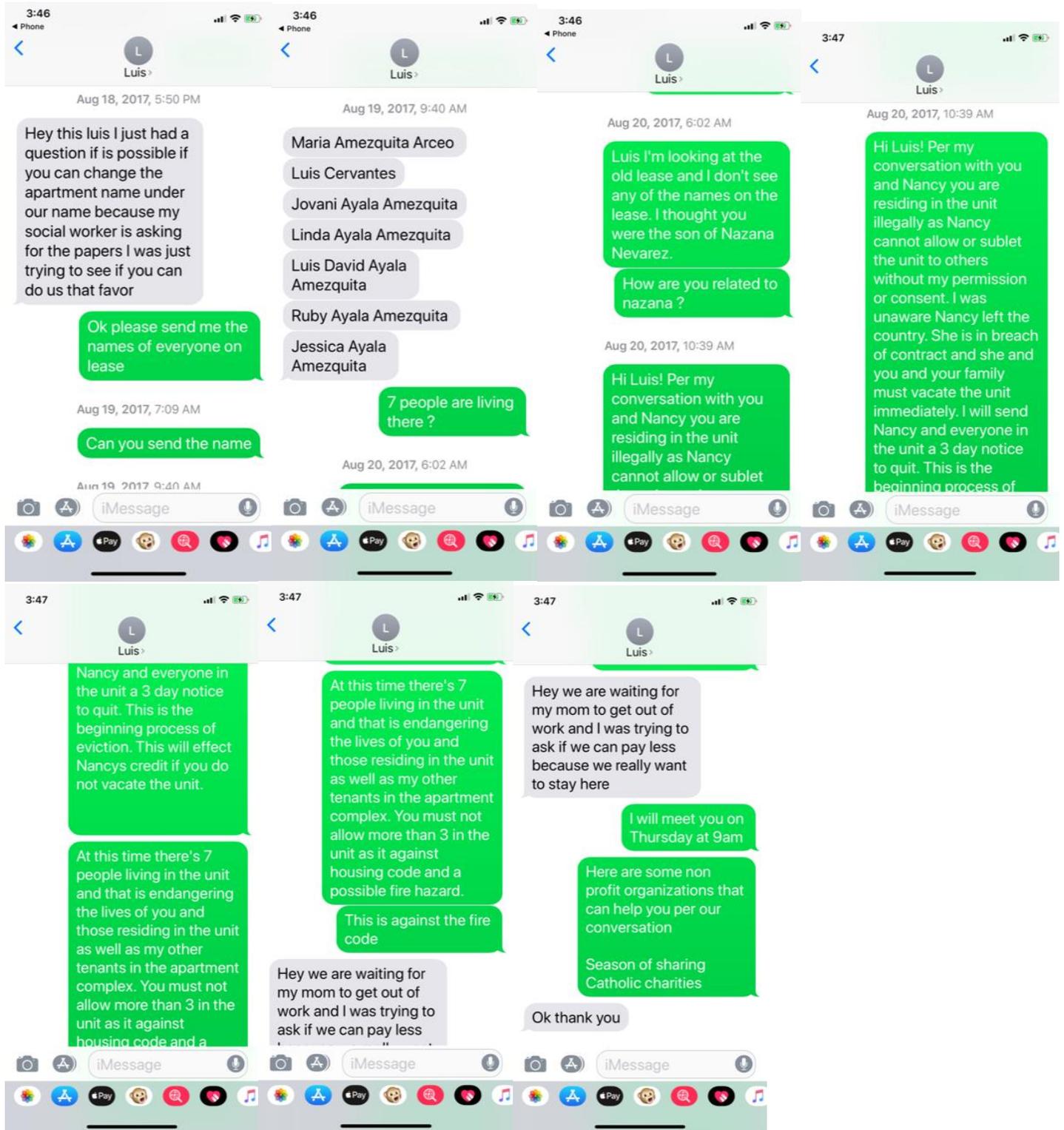




EXHIBIT G

Online Banking

---

**Fong Investments: Account Activity Transaction Details**

---

**Post date:** 07/08/2019

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 0262910428

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 0262910428

**Transaction category:** Income: Deposits

**000176**



**Fong Investments: Account Activity Transaction Details**

**Post date:** 06/05/2019

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 1476793191

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 1476793191

**Transaction category:** Income: Deposits



**Fong Investments: Account Activity Transaction Details**

**Post date:** 05/06/2019

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 0317314036

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 0317314036

**Transaction category:** Income: Deposits



**Fong Investments: Account Activity Transaction Details**

**Post date:** 04/05/2019

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 1750389378

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 1750389378

**Transaction category:** Income: Deposits



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**Fong Investments: Account Activity Transaction Details**

---

**Post date:** 03/06/2019

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 1789276445

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 1789276445

**Transaction category:** Income: Deposits



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**Fong Investments: Account Activity Transaction Details**

---

**Post date:** 02/05/2019

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 2740017444

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 2740017444

**Transaction category:** Income: Deposits



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**Fong Investments: Account Activity Transaction Details**

---

**Post date:** 12/05/2018

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 1603915720

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 1603915720

**Transaction category:** Income: Deposits



---

**Fong Investments: Account Activity Transaction Details**

---

**Post date:** 03/05/2018

**Amount:** 1,200.00

**Type:** Deposit

**Description:** CA TLR transfer Banking Ctr FRUITVALE  
#0000546 CA Confirmation# 0511268718

**Merchant name:** CA TLR transfer Banking Ctr FRUITVALE  
 #0000546 CA Confirmation# 0511268718

**Transaction category:** Income: Deposits

## CHRONOLOGICAL CASE REPORT

Case No.: L19-0159

Case Name: 378 Grand Avenue Associates, LP v. Tenants

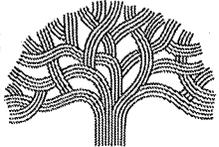
Property Address: 378 Grand Ave, Oakland, CA

Parties: Chantae Hergenroether (Owner)  
Greg & JR McConnell (Owner's Representative)  
Jackie Zaneri (Tenant Representative)  
Victoria Wentworth (Tenant)

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Owner petition filed	June 5, 2019
Tenant Response filed	November 1, 2019
Hearing Decision mailed	February 19, 2021
Tenant Appeal filed	March 11, 2021

6/5/19

 <p><b>CITY OF OAKLAND</b>  <b>RENT ADJUSTMENT PROGRAM</b>  P.O. Box 70243  Oakland, CA 94612-0243  (510) 238-3721</p> <p><i>LM/AM RC</i>  <i>LI9-0159</i></p>	For date stamp.  <p align="center"><b><u>PROPERTY OWNER</u></b>  <b><u>PETITION FOR</u></b>  <b><u>APPROVAL OF RENT</u></b>  <b><u>INCREASE</u></b></p>
---	---

**Please Fill Out This Form Completely As You Can.** Failure to provide needed information may result in your petition being rejected or delayed. Attach 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 378 Grand Avenue Associates, LP Chantae Hergenroether	Complete Address (with zip code) Mosser Companies Inc. 308 Jessie St. San Francisco, CA 94103	Daytime Telephone: 628-895-5809  E-mail: chergenroether@mosserco.com
Your Representative's Name (if any) Big City Property Group Jill Broadhurst	Complete Address (with zip code) P.O. Box 13122 Oakland, CA 94661	Daytime Telephone: 510-838-0655  E-mail: bigcitypg@gmail.com
Property Address (If the property has more than one address, list all addresses) 378 Grand Ave., Oakland, CA 94610		

Total number of units on property: 19

Date on which you acquired the building: 3/24/2017

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?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
On what date was the RAP Notice first given?	9/28/2018	
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.)	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Oakland Business License number	00195773	

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

<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>2019 JUN -5 PM 12:17</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:

---

**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
See Attachment			
<b>SUBTOTAL:</b>			

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

**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



**Oakland Capital Improvement Tenant Profile Worksheet**

<b>Property Address:</b>	378 Grand Ave., Oakland 94610
Total Number of Units:	19
Date Building Acquired:	3/24/2017
Oakland RAP Paid:	Yes
Oakland Business License Paid:	Yes
Oakland Business License Number:	00195773

**Tenant Information**

Unit #	Tenant Name(s)	Monthly Base Rent	Previous Cap Imp Rents	Other Rents	Total Monthly Rent	RAP Notice Issued (Y/N)	Date RAP Notice Issued
100	Jared Gutekunst	\$536.35	\$0	\$0	\$536.35	Yes	9/28/2018
101	VACANT	\$0.00	\$0	\$0	\$0.00	NA	NA
102	Kevin Kelley	\$1,077.59	\$0	\$0	\$1,077.59	Yes	9/28/2018
103	Maurice Wallace	\$787.29	\$0	\$0	\$787.29	Yes	9/28/2018
104	Ricardo Tavarez	\$1,039.53	\$0	\$0	\$1,039.53	Yes	9/28/2018
105	Patricia LeBron	\$945.61	\$0	\$0	\$945.61	Yes	9/28/2018
106	Nicholas Gaylord	\$1,506.72	\$0	\$0	\$1,506.72	Yes	9/28/2018
201	Nathanael Denny	\$1,746.90	\$0	\$0	\$1,746.90	Yes	9/28/2018
202	Robert Rich	\$1,801.27	\$0	\$0	\$1,801.27	Yes	9/28/2018
203	Carly Myers	\$2,112.83	\$0	\$0	\$2,112.83	Yes	9/28/2018
204	Jennifer Mueller	\$2,150.00	\$0	\$0	\$2,150.00	Yes	9/28/2018
205	Evin Weissenberg ATT: Customer	\$2,100.00	\$0	\$0	\$2,100.00	Yes	9/28/2018
206	Jhaqueline Palominos Valle	\$1,035.00	\$0	\$0	\$1,035.00	Yes	9/28/2018
301	Dennis Agatep	\$1,192.24	\$0	\$0	\$1,192.24	Yes	9/28/2018
302	Meaza Haile (RM)	\$905.00	\$0	\$0	\$905.00	Yes	9/28/2018
303	Beberly Velasquez	\$1,216.48	\$0	\$0	\$1,216.48	Yes	9/28/2018
304	Victoria Wentworth	\$929.45	\$0	\$0	\$929.45	Yes	9/28/2018
305	Krystal Rodriguez	\$1,072.15	\$0	\$0	\$1,072.15	Yes	9/28/2018
306	Daniel Carlton	\$2,274.80	\$0	\$0	\$2,274.80	Yes	9/28/2018

000190  
 (p/s. see backside)

DATE:02/12/2019 CK#:70394 TOTAL:\$1,292.00\*\*\* BANK:378 Grand WF OP Account(wf582100)  
PAYEE:City of Oakland(cit005)

Property Account	Invoice - Date	Description	Amount
582-100 90020	00195775 - 02/04/2019	Rent adjustment program fees	1,292.00
			<u>1,292.00</u>

Safeguard

ORIGINAL DOCUMENT PRINTED ON CHEMICAL FREE ACIVE PAPER WITH MICROWAVE BORDER

378 Grand Avenue Associates, LP

02/12/2019

70394

Mosser Companies, Inc  
308 Jessie Street  
San Francisco, CA 94103

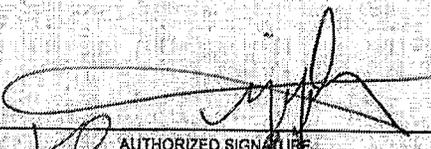
Wells Fargo  
8183717526

11-4288  
1210

PAY EXACTLY:\*\*\* ONE THOUSAND TWO HUNDRED NINETY TWO AND 00/100 DOLLARS

\$1,292.00\*\*\*

PAY  
TO THE  
ORDER OF: **City of Oakland**  
Rent Adjustment Program  
PO Box 101517  
Pasadena, CA 91189-0009

  
AUTHORIZED SIGNATURE

SIGNATURE

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK TOUCH

⑈070394⑈ ⑆121042882⑆

000191



**INSTRUCTIONS FOR FILING RENT ADJUSTMENT PROGRAM (RAP) DECLARATION**

**Delinquent if paid after March 1, 2019**

**CITY OF OAKLAND**

**Office hours: 8:00 AM-4:00 PM Monday, Tuesday, Thursday & Friday | 9:30 AM-4:00 PM on Wednesdays**

**Office closed on the following holidays: December 25, 2018, January 1, 2019, January 21, 2019, February 12, 2019 and February 18, 2019.**

The sections below correspond to the section/line numbers on your RAP Declaration:

**SECTION I - OWNER INFORMATION:**

1. **ACCOUNT NUMBER**
2. **MAILING ADDRESS:** Visit [HTTPS://LTSS.OAKLANDNET.COM](https://ltss.oaklandnet.com) to make any corrections to the mailing address.
3. **OWNER(S) NAME:** Must match owner(s) name per Alameda County Recorder's Office.
4. **RENTAL LOCATION:** Do NOT attempt to make corrections to Line 4, as it must match the address listed with the Alameda County Recorder's Office.
5. **TOTAL NUMBER OF UNITS:** This is the total number of units for this parcel location per the Alameda County Recorder's Office. If the pre-printed number of units is incorrect, DO NOT MAKE ANY CORRECTIONS. Please contact the Zoning Department at (510) 238-3911.

**SECTION II - CLOSE ACCOUNT:**

- RAP accounts are not automatically closed. The property owner must request closure in writing by indicating the date the rental activity was permanently discontinued or the date the property was sold or foreclosed.
- If this rental property was sold or foreclosed in 2018: No fee is due. Return the signed and dated declaration to ensure the closure of your account.
- If this rental property was sold or foreclosed in 2019: Complete the declaration and remit RAP fee in full. Return the signed and dated declaration, with payment, to ensure cancellation of your account.

**SECTION III - EXEMPTIONS CLAIMED FOR 2019:**

Below is a list of RAP exemptions, per Oakland Municipal Code Section 8.22.030A. Please note, you may be required to submit written proof of your exemption.

- A. Owner-Occupied Unit(s)
  - B. A dwelling unit that is off the rental housing market for the entire fiscal year (attach explanation of the reason why the unit is not on the rental market)
  - C. An accommodation in a motel, hotel, inn, tourist house, rooming house, or boarding house, that is not occupied by the same tenant for thirty (30) or more consecutive days.
  - D. Most healthcare facilities.
  - E. Newly constructed: Attach a copy of the Certificate of Exemption or contact the RAP Department at (510) 238-3721 for more information.
6. **TOTAL NUMBER OF EXEMPT UNITS:** Add Lines A-E and enter total on Line 6

**SECTION IV - NET CHARGEABLE UNITS:**

7. **NET CHARGEABLE UNITS:** Subtract the total of exempt units on Line 6 from Line 5.
8. **RAP FEE DUE:** Multiply Line 7 (Net Chargeable Units) x \$68 and enter amount on Line 8.
- 9-10. **PENALTY & INTEREST DUE:** If the fee is paid after March 1, 2019, calculate the appropriate Penalty and Interest rate as indicated on the declaration.
11. **PRIOR AMOUNT DUE:** This amount represents any unpaid prior RAP fee year(s). Go to [HTTPS://LTSS.OAKLANDNET.COM](https://ltss.oaklandnet.com) for the most current balance due. This amount is not the fee due for 2019 and must be included in the total amount due on Line 12
12. **TOTAL DUE:** Add Lines 8-11.

**SECTION V - SIGNATURE:**

Please print, sign and date your form. Also, include your phone number.

**REMIT YOUR PAYMENT AND RENT ADJUSTMENT PROGRAM DECLARATION TO:**

City of Oakland, Rent Adjustment Program  
PO Box 45650  
San Francisco, CA 94145-0650

You can now renew and pay your RAP fees online. Log onto [HTTPS://LTSS.OAKLANDNET.COM](https://ltss.oaklandnet.com) using your account number and personalized PIN. Contact our office at (510) 238-3704, if you have received the previous owner's RAP declaration. Do not make any changes to the previous owner's declaration. All new rental properties must have a new RAP account established in the new owner's name. For more information visit: <https://www.oaklandca.gov/services/rent-adjustment-program-fee>

**BUSINESS TAX SECTION:** If you operate rental property in Oakland, you are also required to register your property with the Oakland Business Tax Section. Contact the Business Tax Office at 250 Frank H. Ogawa plaza, #1320 to obtain the appropriate form(s) for registration or call (510) 238-3704 for further information.



MOSSER

10/25/2019

Victoria Wentworth  
378 Grand Ave Apt 305  
Oakland, CA 94610

RE: Recession of 30-Day Notice of Change Terms of Tenancy

Dear Krystal Rodriguez:

Please be advised that the Landlord is rescinding the 30-Day Notice of Terms of Tenancy dated December 2, 2018, with an effective date of February 01, 2019.

Please continue to pay the monthly rent of One Thousand Seventy-Two Dollars and Fifteen cents (\$1,072.15) effective December 2019 until further notice.

Enclosed please find the Rent Adjustment Program Notice. We apologize for any inconvenience this may cause you.

Sincerely,

*Lee Yoo Jang*

Accounts Receivable  
MOSSER COMPANIES

Alma  
docs  
49-0159  
10/29 - 11/13

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PROGRAM  
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RECEIVED

**CERTIFICATE OF SERVICE OF NOTICE TO TENANTS** 2 2019

RENT ADJUSTMENT PROGRAM  
OAKLAND

I served the attached Notice to the Tenant(s) of the premises at  
378 Grand Ave Apt 305 in the City of Oakland State of California

which is the  residence  business address of the said Tenant(s), in the manner checked and set forth below.

1162 (1) By serving a copy of the Notice at the place(s) and on the date(s) indicated on the following Tenant(s) personally:

Name(s)	Place	Date

1162 (2) By leaving a copy for the following Tenant(s) on \_\_\_\_\_ with a person of suitable age and discretion at the residence business of the Tenant(s), said Tenant(s) being absent from any known place of the residence or business thereof, and then on \_\_\_\_\_ mailing a true copy of said Notice, postage prepaid by U.S. Mail, addressed to the Tenants(s), at the place of residence of the Tenant(s):

Name(s): \_\_\_\_\_

1162 (3) By affixing a copy for the following Tenant(s) on 10/25/2019 in a conspicuous place on the property therein described, there being no person of suitable age or discretion to be found at any known place of residence or business of said Tenant(s), and no person found residing on the property, and then on 10/25/2019 mailing a true copy of said Notice, postage prepaid, by U.S. Mail to said Tenant(s) at the address of the property as set forth in the Notice:

Name(s) Victoria Wentworth

If called as witness I can testify competently and personally to the foregoing. At the time of service I was over the age of 18 years. I declare under penalty of perjury the foregoing is true and correct.

Executed on 10/25/2019 at OAKLAND, CALIFORNIA

Signature: [Signature] Address: 308 Jessie Street, San Francisco, CA 94103  
Notary: Academy Notary

Re: Wrong Terms of Tenancy dated on Recession of 30-Day Notice of Change Terms of Tenancy

RECEIVED

NOV 12 2019

BENT ADJUSTMENT PROGRAM  
OAKLAND

Dear Tenants,

This letter is to inform you that we found an error on your Rent Recession Notice that sent out on 10/15/2019. We attached the correct one in this mail for you. Please see the second page for your rent recession notice.

If you have further question, please contact me during our business hours Mon-Fri 09:00 AM - 05:00 PM at the number below.

We are sorry for the inconvenience that this may have caused you.

Sincerely,

*[Signature]*  
Account Receivable



MOSSER  
COMPANIES

10/31/2019

Krystal Rodriguez  
378 Grand Ave Apt 305  
Oakland, CA 94610

RECEIVED

NOV 12 2019

RENT ADJUSTMENT PROGRAM  
OAKLAND

RE: Recession of 30-Day Notice of Change Terms of Tenancy

Dear Krystal Rodriguez:

Please be advised that the Landlord is rescinding the 30-Day Notice of Terms of Tenancy dated May 29, 2019, with an effective date of July 01, 2019.

Please continue to pay the monthly rent of One Thousand Seventy-Two Dollars and Fifteen cents (\$1,072.15) effective December 2019 until further notice.

Enclosed please find the Rent Adjustment Program Notice. We apologize for any inconvenience this may cause you.

Sincerely,

*Lia Yee Tang*

Accounts Receivable  
MOSSER COMPANIES

000196

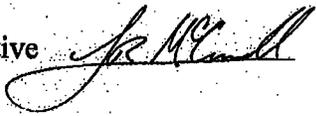
# EXHIBIT 2

  
**THE McCONNELL GROUP**  
Consultants and Advocates

RECEIVED  
CITY OF OAKLAND  
GENERAL ARBITRATION PROGRAM  
2020 FEB 13 AM 10:04

## Memorandum

To: Keith Mason, Hearing Analyst

From: JR McConnell, Owner Representative 

Date: 2/11/20

Subject: L19-0159 : Owner Petition Supporting Documentation

Attached, please find the following evidentiary documentation in support of Owner Capital Improvement petition L19-0159:

Invoice & Checks for the following:

- Entry System
- Interior Paint
- Common Area Lighting
- Boiler Replacement
- Common Area Flooring
- Roofing

Thank you.

# Lightology

1718 W. Fullerton Ave.  
Chicago, IL 60614  
(312) 944-1000  
www.lightology.com

## QUOTE

CUST.#: 7481989

SHIP TO: 378 Grand Avenue

UPO VERSION 000000	QUOTE DATE 06/27/17	ORDER NO. 487987-00
P.O. NO. 378 Grand Avenue		PAGES 1

CORRESPONDENCE TO: Lightology  
1718 West Fullerton Ave.  
Chicago, IL 60614

BILL TO: Mosser Companies  
220 Montgomery Street  
20th Floor  
San Francisco, CA 94104

SALES-REP IN Xavier Yager	SALES-REP OUT Xavier Yager	TAKEN BY Xavier Yager
INSTRUCTIONS		TERMS Due tomorrow
SHIP POINT Lightology - 1	SHIP VIA UPS Ground	SHIPPED

LINE NO.	PRODUCT AND DESCRIPTION	QUANTITY ORDERED	QUANTITY B.O.	QTY. SHIPPED	QTY. UAI	UNIT PRICE	AMOUNT (NET)
1	20671ledd-ch/op Aero 2 Light Flush-Mount Opal/Chrome LED	12			each	161.00	1932.00
2	163-5 Ibis 5 Light Chandelier Matte Opal/Chrome	1			each	325.50	325.50
3	ra-c1325 Halo 11IN Sconce White/B rushed Chrome-PCH	9			each	241.50	2173.50
4	1326bk-led Shelter 5 inch LED Halo Light Clear Seedy/Black	2			each	147.88	295.76
6	1665sk Luna Out FH Etched/Satin BK 6W 8IN	1			each	147.88	147.88
5	Lines Total			25			
	Qty Shipped Total					Total	4874.64
						Invoice Total	4874.64

### Last Page

Please be sure to open and inspect your Lightology order within 48 hours, or two business days of receiving your order. Lightology cannot be held responsible for any missing, or damaged goods if we are not notified within this time period. Do not schedule installation until all items have been delivered and inspected.

Products not eligible for return/exchange include: independent bulb, custom / special orders, floor models, large orders - single fixtures over \$5,000, or orders totaling over \$5,000 on multiple quantities of the same fixture, stock items, open box items and close-out items.

Products eligible for return/exchange include: items in original, new, uninstalled condition with all original parts, tags, and packaging. All returns must be pre-approved within 30 days of receipt, and have a valid Return Number. 1 Year Warranty on all items Excluding Light Bulbs. You are responsible to cover the cost of return shipping back to Lightology. Details about a product's return policy may be found on each product page. The complete Lightology Return Policy can be found on our website. Restocking fees may apply as noted below:

- 0% restocking fee on Pre-ordered brand purchases. Shows our selection of preferred on Lightology.com.
- 25% restocking fee on original brand purchases on some brands / products. This restocking fee will be deducted from your refund/credit.
- 50% restocking fee on some brands / products and made-to-order purchases from some brands. This restocking fee will be deducted from your refund/credit.

Our professionals are standing by to assist you with anything that you may need. Use link below to reach the right team:

Check order status? - Click order tracking link on lightology.com  
Need help with your order? - customer-care@lightology.com  
Order damage, returns, cancellations - returns@lightology.com  
Unhappy with your order? Contact our management team and let us help you - itg\_management@lightology.com  
Thank you, Lightology Staff

9  
000198

**Declaration of Victoria Wentworth**

**Appeal of Case No. T19-0159**

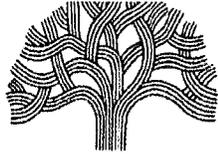
I, Victoria Wentworth, state and declare as follows:

1. The following facts are true of my own personal knowledge and I could and would testify to them under oath if called to do so.
2. I am a tenant at 378 Grand Avenue, Unit 304, Oakland, California.
3. On February 13, 2020, I submitted my evidence to the Oakland Rent Adjustment Program for Case No. T19-0159 in-person at the Rent Adjustment Program office. I stamped each evidence packet page individually using the Rent Adjustment Program date stamp and kept one copy. The other copy I submitted to the Rent Adjustment Program staff member who was present at the time.
4. True and correct copies of several pages from my original stamped evidence packet are attached to this Declaration as Exhibit 1.
5. I had previously attempted to file the attached evidence on Wednesday, February 12, 2020. That day, I arrived at the building that the Rent Adjustment Program is located in with my evidence and found that the door was locked. A security guard told me and approximately thirty other people who had also arrived at the same time that the building was closed for a holiday. I have since learned that the building was closed because of "Lincoln's birthday."

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 8, 2021 in Oakland, California.



Victoria Wentworth



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)

## PROOF OF SERVICE

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

- 1) Use this PROOF OF SERVICE form to indicate the date and manner of service and the person(s) served.
- 2) Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.
- 3) File a completed copy of this PROOF OF SERVICE form with RAP together with your Petition. Your Petition will not be considered complete until this form has been filed indicating that service has occurred.

On the following date: 04 / 08 / 21 I served a copy of (check all that apply):

- TENANT PETITION plus \_\_\_\_\_ attached pages (number of pages attached to Petition not counting the Petition form, NOTICE TO PROPERTY OWNER OF TENANT PETITION, or PROOF OF SERVICE)
- NOTICE TO PROPERTY OWNER OF TENANT PETITION
- Other: Appeal Brief of Victoria Wentworth + 10 attached pages

by the following means (check one):

- United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below.
- Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

#### PERSON(S) SERVED:

Name	Gregory McConnell
Address	The Rotunda Building, 300 Frank Ogawa Plaza, Suite 460
City, State, Zip	Oakland, California 94612

Name	
Address	
City, State, Zip	

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

Ethan Silverstein

PRINTED NAME



SIGNATURE

April 8, 2021

DATE SIGNED

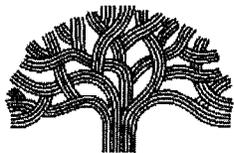
RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 NOV -1 PM 12: 41

RECEIVED  
CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2019 OCT 32 PM 12: 19

KM/LM



CITY OF OAKLAND

### RENT ADJUSTMENT PROGRAM

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

**CASE NUMBER L19-0159**

### 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>Victoria Wentworth</i>	Complete Address (with Zip Code) <i>378 Grand Ave apt 304 Oakland, CA 94610</i>	Telephone <i>(206) 819-4849</i>
Your Representative's Name	Complete Address (with Zip Code)	Telephone

Number of Units on the parcel: 19

Are you current on your rent? Yes  No

#### Rental History:

Date you entered into the Rental Agreement for this unit: 6/15/2009

Date you moved into this unit: 6/17/2009

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

Yes  No

Initial Rent: \$ 795.00

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  No

Notice of the law given earlier.  
Copy of petition received around 10/1/19

Please list the date you first received the Notice to Tenants 7/1/18 I think?

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	
A few months before?	7/1/19	\$ 925.45	\$ 961.98	Yes <input checked="" type="checkbox"/> No
same	7/1/18	\$ 863.00	\$ 929.45	Yes <input checked="" type="checkbox"/> No
same	3/1/15	\$ 850.00	\$ 863.00	Yes <input checked="" type="checkbox"/> No
same	1/1/14	\$ 830.00	\$ 850.00	Yes <input checked="" type="checkbox"/> No
same	12/1/12	\$ 410.00	\$ 430.00	Yes <input checked="" type="checkbox"/> No
	unsure (bank no longer has records)	\$ 795.00	\$ 410.00	Yes <input checked="" type="checkbox"/> No
		\$	\$	Yes <input type="checkbox"/> 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.

[Signature]  
Tenant's Signature

10/23/19  
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**

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**



MOSSER  
COMPANIES

10/25/2019

Victoria Wentworth  
378 Grand Ave Apt 304  
Oakland, CA 94610

Received 10/31, rescission  
of 7/1/19 rent increase  
from \$929.45 to \$961.98

RE: Recession of 30-Day Notice of Change Terms of Tenancy

Dear Victoria Wentworth:

Please be advised that the Landlord is rescinding the 30-Day Notice of Terms of Tenancy dated December 2, 2018, with an effective date of February 01, 2019.

Please continue to pay the monthly rent of Nine Hundred Twenty-Nine Dollars and Forty-Five cents (\$929.45) effective December 2019 until further notice.

Enclosed please find the Rent Adjustment Program Notice. We apologize for any inconvenience this may cause you.

Sincerely,

*Lai Yee Pang*

Accounts Receivable  
MOSSER COMPANIES



**CERTIFICATE OF SERVICE OF NOTICE TO TENANT(S)**

I served the attached Notice to the Tenant(s) of the premises at:

**378 Grand Ave Apt 304** in the City of Oakland State of California

which is the  residence  business address of the said Tenant(s), in the manner checked and set forth below:

- 1162 (1) By serving a copy of the Notice at the place(s) and on the date(s) indicated on the following Tenant(s) personally:

Name(s)	Place	Date
<hr/>		
<hr/>		

- 1162 (2) By leaving a copy for the following Tenant(s) on \_\_\_\_\_ with \_\_\_\_\_ a person of suitable age and discretion at the residence business of the Tenant(s), said Tenant(s) being absent from any known place of the residence or business thereof, and then on \_\_\_\_\_ mailing a true copy of said Notice, postage prepaid by U.S. Mail, addressed to the Tenants(s), at the place of residence of the Tenant(s):

Name(s): \_\_\_\_\_

- 1162 (3) By affixing a copy for the following Tenant(s) on 10/25/2019 in a conspicuous place on the property therein described, there being no person of suitable age or discretion to be found at any known place of residence or business of said Tenant(s), and no person found residing on the property, and then on 10/25/2019 mailing a true copy of said Notice, postage prepaid, by U.S. Mail to said Tenant(s) at the address of the property as set forth in the Notice:

Name(s): Victoria Wentworth

If called as witness I can testify competently and personally to the forgoing. At the time of service I was over the age of 18 years. I declare under penalty of perjury the foregoing is true and correct.

Executed on 10/25/2019, at OAKLAND, CALIFORNIA

Signature: Let The Pump, Address: 308 Jessie Street, San Francisco, CA 94103  
*Mosser Accounts Receivable*

Tenant Response Statement  
Victoria Wentworth  
378 Grand ave apt #304  
Oakland, CA 94610  
Case #L19-0159

No information has been provided to me as to how much exactly the landlord plans to raise the rent, and when it would go into effect. I have excepted since they started to do superficial work to the building interior that they planned to do whatever they could to excuse the max 10% increase on grounds of capital improvements, and can only assume that is the amount sought since no details are listed in the documentation given to me thus far.

1/3 of the entire \$64,506 claimed is for the boiler replacement, listed as \$23,500. However, up until they replaced it my unit never had heating available, for a period of around 8 years. I relied strictly on space heaters for heating. As I understand it, the capital improvements exception does NOT cover correcting basic habitability violations. \$6,656 is listed for roofing work, if it was to stop potential leaks, I would assume this also falls under basic and required work for habitability.

Furthermore, \$6,290 is claimed for a new entry system. Despite filling out and submitting the form provided to add my unit to this system, it has been around 1.5 years since it was installed, and I have not been added. I continue to function off tenants calling me via cellphone and then walking down to let them in manually.

Lastly, the rest is claimed for interior "upgrades" that appeared to be done as cheaply as possible, and were in no way necessary: the lights worked fine, the carpet was not at all worn through. Yet they've claimed \$9,375 for interior painting for common areas, \$8,964 to replace the carpet, and nearly \$10,000 over three separate line items for light fixtures. I've counted 22 light fixtures in common areas, all made of cheap plastic construction, which means over \$400 per light.

My concern since these "improvements" were first undertaken, is that they are attempting to lump in remodel costs for the units that come open and pass it off as common area expenses, thus inflating the numbers and making it possible to put onto the backs of long term, rent controlled tenants. They completely gut and remodel every unit that comes open while refusing to do any more than absolute minimum repairs in rent controlled units. I would like to see absolute proof that expenses from these remodel jobs, which secure them extremely high market rates for the units they alter, are not being lumped into invoices for common area work. It seems like this would be an easy and hard to detect way to inflate invoices for "common area improvements", like \$10,000 for ~22 cheap plastic light fixtures.

Thank you for your consideration,

Victoria Wentworth

000207

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:** L19-0159, 378 Grand Ave. Associates, LP v. Tenants

**PROPERTY ADDRESS:** 378 Grand Ave., Oakland, CA

**DATE OF HEARING:** February 19, 2020

**DATE OF DECISION:** May 27, 2020

**APPEARANCES:** Hugh Vanho, Agent for Ownership  
Chantae Hergenroether, Agent for Ownership  
Greg McConnell, Owner's Representative  
JR McConnell, Owner's Representative  
Victoria Wentworth, Tenant (Unit #304)  
Kevin Kelley, Tenant (Unit #102)  
Beberly Velasquez, Tenant (Unit #303)  
Maurice Wallace, Tenant (Unit #103)  
Ricardo Tavarez, Tenant (Unit #104)  
Krystal Rodriguez, Tenant (Unit #305)  
Michel Holm, Support for Tenants  
Angela Shannon, Tenant Representative

**SUMMARY OF DECISION**

The owner petition is granted.

**CONTENTIONS OF THE PARTIES**

On June 5, 2019, the owner filed a Petition for Approval of Rent Increase based on capital improvements in the subject building.

On October 4, 2019, all tenants in the subject building were notified of the owner's petition and the hearing date. Tenants Kelley (#102), Wallace (#103), Tavarez (#104) and Wentworth (#304) filed responses to owner's petition and appeared at the hearing. Tenant LeBron (#105) filed a response but did not appear at the hearing. Tenant

000208

Rodriguez (#305) did not file a response and appeared at the hearing. The tenants in the remaining units did not file responses and did not appear at the hearing.

### **THE ISSUE**

Is the work considered a capital improvement project and if so, what is the amount that can be passed to the tenants?

### **EVIDENCE**

The current owner acquired the building on March 24, 2017. The subject property is a residential dwelling which contains nineteen (19) residential units.

The owner's agents provided an updated roster of the tenants at the hearing and their current rents.<sup>1</sup> The owner is not requesting the capital-improvement pass through to Units 101, 106, 202, 204, 205 and 302 as those units were either vacant when the petition was filed or the tenants moved in after the completion of the project.

#### **Scope and Cost of the Project**

The owner's agents testified that the project included upgrades to the common areas, which included new entry system, new interior paint, lighting and flooring, replacement of boiler system and roof coating. The owner submitted copies of invoices from the contractors and copies of checks paid to the contractors for the work done, for the total cost of \$64,505.85.<sup>2</sup>

**Entry System:** The entry system to the building was replaced with electronic PC programmable system with touch tone telephone capability. The project started on October 27, 2017, and was completed and paid for on December 6, 2017, for the cost of \$6,290.00.<sup>3</sup>

**Common Areas:** This project included new interior paint on walls, trims, doors in common areas (\$9,375.00), installation of new lighting fixtures (\$6,820.85), installation of new flooring – tile work in two lobbies (\$2,900.00) and new carpet (\$8,964.00) throughout the hallways and stairs. The project started on June 15, 2017, and was completed and paid for on October 11, 2017, for the total amount of \$28,059.85.<sup>4</sup>

**Boiler Replacement:** The work included pipe insulation and boiler replacement which was recommended by the contractor during the yearly inspection. The project started on May 16, 2017, and was completed and paid for on October 10, 2017, for the cost of \$23,500.00.<sup>5</sup>

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<sup>1</sup> Exhibit A

<sup>2</sup> Exhibit B (20 pages)

<sup>3</sup> Exhibit B, pages 1-3

<sup>4</sup> Exhibit B, pages 4-14 and 17-18

<sup>5</sup> Exhibit B, pages 15-16

Roof Sealing: An aluminum coating was applied on the entire roof to prevent leaks. This project cost \$6,656.00 and was completed and paid for on August 2, 2017.<sup>6</sup>

Each tenant was given an opportunity to speak and they testified that the improvements were not necessary but no evidence of gold plating was presented. The tenants testified that the old carpet, old lighting fixtures were fine and functional, and there were no issues.

No evidence was submitted that the project was a result of deferred maintenance or that the project was performed to correct a Priority 1 or 2 condition per City Building Services Inspector. There was no evidence of a code violation relating to any part of the project subject of 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>7</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>8</sup> Normal routine maintenance and repair is not a capital improvement cost, but a housing service cost.<sup>9</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>10</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 and the total costs shall be amortized over that time period unless the rent increase using this amortization would exceed ten percent (10%) of the existing Rent for a particular unit.<sup>11</sup>

### **Cost Allowed and the Calculation of Capital Improvements**

The replacement of new entry system, new paint, new flooring, new fixtures, new boiler system and application of roof sealant all qualify as capital improvements because they primarily benefit the tenants: The new entry system, paint, light fixtures and new flooring make the building safer for the tenants as only authorized persons can enter the building and the building appears well-maintained and cared for. The new boiler and insulation of pipes make the units well heated and more energy-efficient. The roof coating prevents water intrusion and makes the building water-tight which prevents

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<sup>6</sup> Exhibit B, pages 17-18

<sup>7</sup> O.M.C. Section 8.22.070(C)

<sup>8</sup> Regulations, Appendix A, Section 10.2

<sup>9</sup> Regulations, Appendix A, Section 10.2.2 (4)(d)

<sup>10</sup> City Council Resolution No. 84936

<sup>11</sup> Regulations, Appendix A, Section 10.2.3 (2)

mold. While the owner has the right to improve the building as they see fit, these upgrades were made primarily to benefit the tenants and upon recommendations from the contractors. There is no evidence of gold plating and no evidence of deferred maintenance. Therefore, the projects are considered capital improvements.

The owner submitted proof of payments in the form of invoices and bank checks paid to the contractors in the total amount of \$64,505.85 for the building-wide improvements that benefit all units. Even though it cannot be passed to certain units, the cost will still be divided by the total number of units (19). Accordingly, the owner is entitled to a capital improvement pass-through of 70% of the cost of the project.

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.

### **ORDER**

1. The Owner Petition L19-0159 is granted.
2. The Capital Improvement pass-through is granted in the amount of \$26.08 per month for a period of nine (9) years for each of the following units: 100, 102, 103, 104, 105, 201, 203, 206, 301, 303, 304, 305 and 306.
3. After the end of amortization period (9 years), each tenant's monthly rent in the units listed above will decrease by \$26.08 per month.
4. This Capital Improvement pass through will not be passed to Units 101, 106, 202, 204, 205 and 302.
5. The increase will be effective thirty (30) days (thirty-five (35) days if served by mail), after the owner serves the rent increase notice, together with a RAP Notice, and the attached Decision Summary. The owner must wait twelve 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 this decision by filing a properly completed appeal form that must be received within twenty days after service of the decision, shown on the attached Proof of Service.

Dated: May 27, 2020



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**Linda M. Moroz**  
Hearing Officer  
Rent Adjustment Program







## 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:** L19-0159, 378 Grand Ave. Associates LP v. Tenants

**PROPERTY ADDRESS:** 378 Grand Ave., Oakland, CA

**DATE OF HEARING:** February 19, 2020

**DATE OF DECISION:** May 27, 2020

1. The Owner Petition L19-0159 for Approval of Rent Increase is granted.
2. The maximum approved amount per month is \$26.08 for an amortization period of nine (9) years for each of the following units: 100, 102, 103, 104, 105, 201, 203, 206, 301, 303, 304, 305 and 306.
3. The rent increase will expire at the end of the amortization period, which is nine (9) years for each unit. After the end of amortization period, each tenant's monthly rent will decrease by \$26.08 per month.
4. This rent increase will not apply to the following units in the subject building: Units 101, 106, 202, 204, 205 and 302.
5. The increase will be effective thirty (30) days after the owner serves the rent increase notice, together with a *RAP Notice*, and this *Decision Summary*. If the rent increase notice is served by mail, it will be effective thirty-five (35) days after the service. The owner must wait twelve (12) months from the effective date of the last rent increase before he/she may raise the rent again.

000214

**PROOF OF SERVICE**

**Case Number L19-0159**

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**

Chantae Hergenroether, 378 Grand Avenue Associates, LP/Mosser Companies Inc.  
308 Jessie Street  
San Francisco, CA 94103

**Owner Representative**

Greg McConnell, The McConnell Group  
300 Frank Ogawa Plaza Suite 460  
Oakland, CA 94612

**Owner Representative**

JR McConnell, The McConnell Group  
300 Frank Ogawa Plaza Suite 460  
Oakland, CA 94612

**Tenant**

Beberly Velasquez  
378 Grand Ave. #303  
Oakland, CA 94610

**Tenant**

Carly Myers  
378 Grand Ave. #203  
Oakland, CA 94610

**Tenant**

Daniel Carlton  
378 Grand Ave. #306  
Oakland, CA 94610

**000215**

**Tenant**

Dennis Agatep  
378 Grand Ave. #301  
Oakland, CA 94610

**Tenant**

Evin Weissenberg  
378 Grand Ave. #205  
Oakland, CA 94610

**Tenant**

Jared Gutekunst  
378 Grand Ave. #100  
Oakland, CA 94610

**Tenant**

Jennifer Mueller  
378 Grand Ave. #204  
Oakland, CA 94610

**Tenant**

Jhaqueline Palominos Valle  
378 Grand Ave. #206  
Oakland, CA 94610

**Tenant**

Kevin Kelley  
378 Grand Ave. #102  
Oakland, CA 94610

**Tenant**

Krystal Rodriguez  
378 Grand Ave. #305  
Oakland, CA 94610

**Tenant**

Maurice Wallace  
378 Grand Ave. #103  
Oakland, CA 94610

**Tenant**

Meaza Haile  
378 Grand Ave. #302  
Oakland, CA 94610

**Tenant**

Nathanael Denny  
378 Grand Ave. #201

Oakland, CA 94610

**Tenant**

Nicholas Gaylord  
378 Grand Ave. #106  
Oakland, CA 94610

**Tenant**

Patricia LeBron  
378 Grand Ave. #105  
Oakland, CA 94610

**Tenant**

Resident  
378 Grand Ave. #101  
Oakland, CA 94610

**Tenant**

Ricardo Tavaréz  
378 Grand Ave. #104  
Oakland, CA 94610

**Tenant**

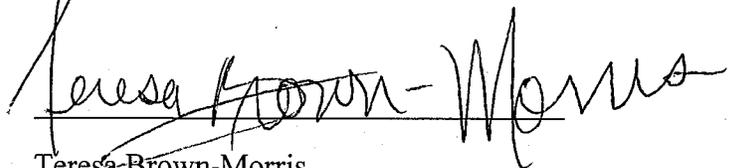
Robert Rich  
378 Grand Ave. #202  
Oakland, CA 94610

**Tenant**

Victoria Wentworth  
378 Grand Ave. #304  
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 **February 19, 2021** in Oakland, CA.



Teresa Brown-Morris

Oakland Rent Adjustment Program

000217

1 Ethan Silverstein SBN 334836  
Jackie Zaneri SBN 318088  
2 ACCE Institute  
P.O. Box 7226  
3 Oakland, CA, 94601  
Phone Number: 323-842-8614  
4

5 Attorneys for Tenant-Appellant Victoria Wentworth

6 **CITY OF OAKLAND RENT ADJUSTMENT PROGRAM**  
7

8 VICTORIA WENTWORTH

Case No.: L19-0159

**APPEAL BRIEF OF TENANT VICTORIA  
WENTWORTH**

9  
10 Tenant-Appellant,

11 vs.

12 378 GRAND AVE ASSOCIATES, LP

13  
14 Landlord-Respondent.  
15

16 **I. INTRODUCTION**

17 This case concerns a large corporation that abuses the capital improvements process to  
18 circumvent Oakland’s tenant protections. Landlord 378 Grand Associates, L.P. (“Landlord”), an  
19 entity associated with The Mosser Companies, Inc., filed a capital improvement petition seeking  
20 special rent increases. The petition claimed six different items: painting, new light fixtures, new  
21 carpet, a smartphone-connected entry system, roofing, and an unpermitted boiler replacement. Six  
22 tenants, representing one-third of the building’s occupied units, testified at the hearing without  
23 representation by an attorney. The tenants presented evidence at the hearing about the impropriety  
24 of each of these claims. Further, the Landlord’s own evidence and testimony undermined much of  
25 its petition. Despite the clear record, the Hearing Officer approved the Landlord’s petition in its  
26 entirety, permitting it to charge its rent-controlled tenants rent increases that would otherwise be  
27 unlawful. Tenant Victoria Wentworth, who testified at the original hearing, now submits her appeal  
28 of this decision. For numerous reasons, the decision was plainly erroneous.

1 First, the Landlord did not obtain a required permit for the most expensive item in the  
2 petition, the boiler replacement. Without a permit, such costs cannot be passed to the tenants.

3 Second, the decision passed through costs for work in commercial areas of the property. The  
4 Landlord's agent herself conceded these costs were improper and asked the Hearing Officer to  
5 remove them from the Landlord's claim. The decision granted the pass-throughs regardless.

6 Third, the decision approves costs for tiling work that was not in the Landlord's petition.

7 Fourth, the hearing officer failed to analyze the claimed capital improvements for gold-  
8 plating, even when the tenants made prima facie showings of two separate instances of the practice.

9 Fifth, the Landlord failed to present evidence or explain why several items in its petition  
10 benefited the tenants. For example, the Landlord did not justify why it painted the common areas  
11 when the prior Landlord had painted the common areas just one year prior.

12 Finally, the Hearing Officer failed to consider the strong likelihood that the Landlord is  
13 exploiting the capital improvements process to unjustly enrich itself and circumvent Oakland's  
14 tenant protections.

15 For these reasons, the Board must modify the hearing decision to remove these  
16 impermissible pass-throughs.

17 **II. THE DECISION ERRONEOUSLY APPROVED A RENT INCREASE BASED ON**  
18 **AN UNPERMITTED BOILER REPLACEMENT.**

19 In a capital improvements case, the landlord has the burden of proving compliance with all  
20 applicable regulations. When a permit is required to perform work for which the landlord seeks  
21 capital improvements pass-throughs, the landlord must prove that they secured that permit. (*Falcon*  
22 *v. Bostrum*, T13-0279.) A permit requirement ensures that landlords perform all work safely,  
23 comply with Oakland building and construction codes, and that renovations are inspected after  
24 completion. (Oakland Mun. Code §§ 15.08.120, 15.08.140.) The Rent Board denies capital  
25 improvements pass-throughs when Landlords fail to obtain necessary permits for the work claimed.  
26 (*See Falcon v. Bostrum*, T13-0279; *see also Fong v. Tenants*, L17-0230.)

27 The Oakland Building Maintenance Code, which governs which renovations require  
28 permits, incorporates the California Plumbing Code. (See Oakland Mun. Code §§ 15.04.100,

1 15.04.110, 15.04.2.500.) Per the California Plumbing Code, it is “unlawful for a person to install,  
2 remove, or **replace** ... a water heater without first obtaining a permit”. California Plumbing Code §  
3 502.1 (emphasis added).<sup>1</sup> Landlords are required to obtain a permit to replace a boiler. (*Id.*)

4 In the present case, the hearing officer permitted a capital improvement passthrough of  
5 \$23,500 for a new boiler. The Landlord’s construction property manager, Hugh Vanho, testified that  
6 the Landlord **did not obtain a permit for the boiler replacement.**

7 “[Tenant representative]: “Was there a permit obtained for the boiler replacement?”

8 Hugh Vanho: Uh, no.”

9 (Hearing Recording dated February 19, 2020, hereinafter “Hearing Recording,” at 43:19-43:23.)

10 The hearing record makes it clear that the Landlord failed to obtain permits for the work as  
11 required by law. Therefore, the Hearing Officer erred in allowing the passthrough to the tenants. In  
12 addition to these costs being impermissible under the Rent Adjustment Ordinance, sound public  
13 policy demands that the Board not reward Landlords who jeopardize their tenants’ safety by failing  
14 to obtain permits. The Board must remove the passthrough for the unpermitted boiler replacement.

15 **III. THE DECISION ERRONEOUSLY APPROVED A RENT INCREASE BASED ON**  
16 **WORK IN THE COMMERCIAL AREAS OF THE PROPERTY.**

17 The hearing decision approved a capital improvement claim of \$8,964 for carpet and \$6,656  
18 for roofing. However, during the hearing, the Landlord’s agent stated that these claim amounts were  
19 too high because they included costs for the building’s commercial areas. The Landlord’s agent  
20 voluntarily requested that these amounts be reduced by 7% to account for the work performed in  
21 non-residential suites. Despite this request, the hearing officer approved the original amounts  
22 without any reduction. When discussing the roofing, the Landlord’s custodian of records stated that

23 “93% should be billed to the residents, and 7% should be allocated to the commercial  
24 suites. Our original claim amount was for \$6,656. Our new claim, with the adjustments  
made, is \$6,190.08.”

25 (Hearing Recording, at 35:58-36:18.) Despite this request, the decision inexplicably approved  
26 \$6,656 in roofing costs.

27 \_\_\_\_\_  
28 <sup>1</sup> The California Plumbing Code applies this requirement to all “water heater[s]” and “hot water boiler[s]” interchangeably. (*See* Cal. Plumbing Code § 225.0).

1           Regarding the carpet, the Landlord’s custodian of records stated that they initially claimed  
2           “[a] total amount of 8,964 dollars, however after reviewing the records of this account  
3           and speaking with the vendor himself we are omitting the amount of the very last line  
4           item for the two lobbies in the amount of 610 dollars. That is being removed from the  
5           total should be removed from this invoice, as we’re allocating that amount to the  
6           commercial suites.”

7           (Hearing Recording, at 31:06-31:32.)

8           Once again, the Hearing Officer disregarded this request and permitted a passthrough for the  
9           original amount of \$8,964, failing to remove the \$610 that the Landlord’s agent admitted was not  
10           permissible.

11           The Board must remove a total of \$465.16 from the roofing costs and \$610 from the carpet  
12           costs, as the Landlord’s agent admitted these charges were improper and asked the Hearing Officer  
13           not to pass them to the tenants.

14           **IV. THE DECISION ERRONEOUSLY APPROVED A RENT INCREASE BASED ON  
15           WORK THAT WAS NOT LISTED IN THE LANDLORD’S PETITION.**

16           The constitutional principle of due process requires an individual to be given adequate  
17           notice of the claims at issue in a hearing so that they can reasonably respond. As the California  
18           Supreme Court has held, “[n]otice reasonably calculated to apprise interested parties of the  
19           pendency of the action and afford them an opportunity to present their objections is, of course, an  
20           essential element of the right to a hearing.” *Arrieta v. Mahon* (1982) 31 Ca.3d 381, 389 (internal  
21           citations omitted); *see also* Cal. Gov. Code § 11425.10(a)(1).

22           A Rent Board Hearing Officer cannot hear an issue not raised in a petition. (*See, e.g., Fisher*  
23           *v. HC Properties*, T01-0353 & T01-0359.) For example, if a tenant alleges a decrease in housing  
24           services yet does not state in their petition which services were decreased, the claim is properly  
25           denied. (*Aswad v. Fields*, T03-0027.) A capital improvement cost similarly cannot be passed to a  
26           tenant without notice before the hearing. (*See Cutts v. Eagle Investment*, T02-0136.)

27           In the instant matter, the hearing decision improperly approved a passthrough for \$3,740 in  
28           tiling costs even though tiling was not an item listed in the Landlord’s petition. It appears that the  
29           entire basis for this passthrough was that the Landlord’s custodian of records claimed the costs were  
30           part of an item inexplicably listed in the petition as “lighting.” The Landlord’s custodian of records

1 asserted during the hearing that the Landlord was “changing the [lighting] claim amount from the  
2 9,720.85 to 6,820.85.” (Hearing Recording, at 26:38-:44.) The remaining \$3,740, she stated, would  
3 now be used for a passthrough for a different category, “flooring”; she later said that this entire  
4 charge was for tile work. (*Id.*, at 26:16-26:38, 32:13-32:55.)

5 The original petition claims costs for light fixtures in three different items: for \$1,106, for  
6 \$3,740, and for \$4,875, totaling \$9,721 for all three. (Petition, at p. 8.) The decision approved a  
7 passthrough for \$9,720.85 for “interior lighting.” (Hearing Decision, at attachment p. 1.)

8 This \$3,740 passthrough was admittedly not for lighting. The hearing officer approved it as  
9 such nonetheless. Even if the hearing decision properly justified this rent increase as tiling costs,  
10 which it did not, the passthrough would still be improper. The original petition did not claim tile  
11 work. As such, the tenants did not have notice of the claim. In fact, one tenant testified during the  
12 hearing that she did not believe any tiling had been replaced but could not take any pictures of it as  
13 evidence because she was not previously aware of this claim. (Hearing Recording, at 1:10:20-44).

14 By failing to remove the \$3,740 and approving tiling work as “lighting,” the Hearing Officer  
15 denied the tenants due process and impermissibly allowed the Landlord to pass through costs that  
16 were not listed in its original petition. As such, the Hearing Officer erred in authorizing this rent  
17 increase. The Board must remove this amount from the hearing decision.

18 **V. THE HEARING OFFICER DID NOT CONSIDER EVIDENCE OF GOLD**  
19 **PLATING.**

20 Landlords cannot pass through capital improvement costs for “gold plating” projects.  
21 (Oakland Mun. Code § 8.22.020 (capital improvements definition).) “Gold plating” or “over  
22 improving” are “improvements that are greater in character or quality than existing improvements.”  
23 (*Id.*) Landlords may still make these improvements but cannot pass the costs to tenants. (*Id.*)

24 To demonstrate gold plating, “[t]he tenant has the initial burden to prove that the  
25 improvement is greater in character or quality than existing improvements.” (Oakland Rent  
26 Adjustment Program Regs. 10.2.2(4)(c)(ii)(a).) Once the tenant makes this initial showing, the  
27 burden shifts to the landlord to “prove that the tenant approved the improvement in writing, the  
28 improvement brought the unit up to current building or housing codes, or the improvement did not

1 cost more than a substantially equivalent replacement.” (Oakland Rent Adjustment Program Regs,  
2 10.2.2(4)(c)(ii)(b).) If the landlord does not make this required showing, the Board must deny the  
3 passthrough as gold plating. (*Id.*) In the present matter, the tenants made an initial showing of gold  
4 plating two times. In both instances, the Landlord did not meet its burden. As such, the pass-  
5 throughs must be denied.

6 **A. Smartphone Entry System**

7 The Landlord’s petition includes a passthrough for a new smartphone-connected entry  
8 system for the building’s front door. The prior entry system functioned as a buzzer system with a  
9 call box where visitors could be buzzed into the building when a tenant pressed a button. (Hearing  
10 Recording, at 55:43-58.) The replacement system requires tenants to push a button on their cellular  
11 phones to permit visitors to enter. (Hearing Recording, at 1:33:37-34:25.) Changing a working  
12 buzzer system to a smartphone system is gold plating as the buzzer utilizes new (though not  
13 necessarily superior) technology that is “greater in character in quality” than the existing system.  
14 Once the tenants demonstrated that the difference between the old buzzer system and the new  
15 buzzer system was its connectivity to smartphones, the disparity should have triggered a gold  
16 plating analysis by the hearing officer. This analysis did not occur, and the Landlord failed to  
17 present any evidence rebutting the presumption of gold plating.

18 There is no evidence suggesting that the tenants approved this “improvement” in writing,  
19 that the new entry system brought the unit into compliance with current housing codes, or that the  
20 smartphone buzzer did not cost more than a manual buzzer. After the tenants demonstrated gold  
21 plating, this was the Landlord’s burden to prove.

22 This improvement’s sole purpose was to make the building more attractive to those who  
23 would appreciate using a smartphone to open their door. This smartphone technology is not a cost  
24 that can be properly passed to the building’s existing rent-controlled tenants. Further, the Landlord  
25 cannot meet its burden to prove that the system is not gold plating, as it presented no evidence to  
26 meet its burden. The Board should deny this improvement on its face.

27 **B. Chandelier**

28 The Landlord’s lighting costs in their passthrough include a chandelier. (*See* Exhibit 2.) A

1 tenant testified during the hearing that the Landlord placed a chandelier where none was previously  
2 present. (Hearing Recording, at 1:03:28-38.) The Landlord did not rebut this evidence.

3         Once again, the tenants made a prima facie showing that the chandelier was “greater in  
4 character” than the existing lighting, which did not include a chandelier. The Landlord submitted no  
5 evidence to rebut the tenants showing of gold plating. Despite the tenants’ showing, the hearing  
6 officer failed to conduct a gold plating analysis. As the installation of a chandelier is blatant gold  
7 plating, the Board should deny the chandelier cost on its face.

8 **VI. THE DECISION ERRONEOUSLY APPROVED RENT INCREASES BASED ON**  
9 **WORK THAT OBJECTIVELY DID NOT BENEFIT THE TENANTS.**

10         A capital improvement, which allows a tenant to be charged rent increases above and  
11 beyond the CPI amount, must primarily benefit the tenant. (Oakland Rent Ordinance Regs.,  
12 Appendix A, Sec. 10.2.) The Board has construed this requirement to be objective. (*Bernhardt v.*  
13 *Gee Realty*, T06-0093.) While the Board has not defined the “objective” standard of review used in  
14 Capital Improvements cases, courts generally use the “reasonable person” tests in applying  
15 “objective” standards of review. (*See People v. Humphrey* (1996) 13 Cal. 4th 1073, 1082; *Potter v.*  
16 *Firestone Tire & Rubber Co.* (1993) 6 Cal. 4th 965, 989; *In re Marriage of Flaherty* (1982) 31 Cal.  
17 3d 637 649.)

18         While the objective standard does not allow an inquiry into the subjective personal value  
19 that individual tenants place on work performed by their Landlords, the standard of review is not  
20 meaningless. The Board cannot ignore evidence that capital improvements objectively did not  
21 benefit the tenants. In this case, a plethora of evidence was presented suggesting that much of the  
22 work, objectively, had no benefit to the tenants and was done solely to justify otherwise  
23 impermissible rent increases.

24         The Landlord did not counter this showing despite their superior evidentiary position. The  
25 Landlord, who presumably was aware that it intended to pass on capital improvements costs, was in  
26 a better position than the tenants to document the projects’ need (had there been any). For example,  
27 the Landlord could have easily taken photographs before the projects occurred and submitted them  
28

1 into evidence. The Landlord failed to perform the minimum effort necessary to prove that such  
2 changes benefited the tenants.

3 **A. Lighting**

4 The Hearing Officer permitted a passthrough for \$6,820.85 of new light fixtures in the  
5 common areas. The Landlord presented no evidence of why new light fixtures were required. The  
6 available evidence demonstrates no issue with the original fixtures, and the Landlord did not  
7 demonstrate that the replacement extended the life of the light fixtures. For example, the  
8 replacement light fixtures could be of worse quality and need replacement in less time than the old  
9 fixtures would have.

10 During the hearing, the Landlord's construction project manager could not explain why new  
11 light fixtures were installed and stated only that they replaced the prior fixtures. (Hearing  
12 Recording, at 27:20-32.) He said that he did not know the details of the new fixtures. (Hearing  
13 Recording, at 41:03-22.) He also did not know what the prior light fixtures looked like. (Hearing  
14 Recording, at 43:35-44:42.) He did not state that the light fixtures were replaced on  
15 recommendation from a contractor, nor did anyone else.

16 In contrast, six tenants, representing one-third of the building's occupied units, testified that  
17 they observed no issues with the light fixtures before replacement. (Hearing Recording, at 50:38-50,  
18 1:03:02-1:03:08, 1:18:22-40, 1:24:04-25, 1:28:57-1:29:07, 1:34:42-52.) One tenant testified that the  
19 light fixtures seemed to have simply been replaced with a different style. (Hearing Recording, at  
20 1:03:11-28.) A tenant also testified that some of the new light fixtures made the lobby darker. (*Id.*)

21 One tenant submitted a photograph of the prior light fixtures as evidence, which does not  
22 show any issues with the fixtures. (Hearing Recording, at 58:18-29; Exhibit 1.) The hearing  
23 decision does not mention this evidence. (Hearing Decision, at p. 2.)

24 Based on no particular evidence, the hearing decision states that the new light fixtures  
25 "make the building safer for the tenants." (Hearing Decision, at p. 3.) This conclusion is not  
26 supported by any of the Landlord's evidence and was contradicted by the testimony of six credible  
27 witnesses who reside in the building. In fact, the available evidence suggests that the new lights  
28 made the building darker. The Hearing Officer's baseless speculation is not sufficient to fill in the

1 Landlord’s evidentiary gap. It is certainly not adequate to contradict the credible testimony of six  
2 tenants.

3 The Landlord is free to change the style of lights in the tenants’ building if it chooses.  
4 However, it cannot charge its rent-controlled tenants extra for this superficial work. A “reasonable  
5 person” cannot infer that the tenants benefited from this stylistic alteration where the Landlord  
6 failed to demonstrate any issue with the original fixtures or that the new fixtures would last longer.

7 **B. Carpet**

8 The hearing decision also approved a claim for carpet replacement. Six tenants, representing  
9 one-third of occupied units, testified that there were no issues with the lobby carpet before  
10 replacement; one called it “beautiful.” (Hearing Recording, at 52:11-18, 1:08:11-53, 1:14:40,  
11 1:18:44-1:19:13, 1:24:17-38, 1:29:22-36, 1:34:52-1:35:03.) One tenant submitted a photo of the  
12 prior carpet as evidence, which does not show any issues with the carpet. (Hearing Recording, at  
13 1:09:10-1-1:10:14; Exhibit 1, p. 10.)

14 The Landlord’s construction manager did not testify about the carpet replacement at all. The  
15 Landlord presented no evidence that the carpet was replaced on recommendation from a contractor  
16 and did not offer any reason why it was replaced.

17 Further, a tenant testified that the carpet appears to be in worse condition since the  
18 replacement and now contains tears and stains. (Hearing Recording, at 1:09:04-20.) The tenant  
19 submitted as evidence a photograph of the currently frayed carpet. (Hearing Recording, at 1:09:10-  
20 1-1:10:14, Exhibit 1, p. 21.) Another tenant testified that the new carpet was an “eyesore.” (Hearing  
21 Recording, at 1:35:09-15.)

22 This testimony was disregarded. Instead, with no evidence, the hearing office speculated that  
23 the tenants were “made safer” by the new carpets. It is unclear what, if any, basis this conclusion  
24 was made on. A “reasonable person” would not infer that unnecessarily replacing the carpets  
25 increased the tenants’ safety.

26 **C. Paint**

27 The Landlord’s construction manager testified that the lobby’s paint was necessary due to  
28 “wear and tear over the year [singular].” (Hearing Recording, at 21:00) His testimony was

1 contradicted by three tenants who testified that the prior Landlord painted the common areas the  
2 year before or shortly before the capital improvements paint job occurred. (Hearing Recording, at  
3 50:15-32, 57:19-39, 1:28:32-56.) One tenant submitted into evidence a photograph of the previous  
4 paint job taken the year before the capital improvement paint job, which does not appear to show  
5 any issues with the paint. (Hearing Recording, at 57:44-58:26.)

6 Four tenants also testified that the paint job previously was not in any bad condition.  
7 (Hearing Recording, at 50:03-:15, 57:19-39, 1:23:45-52, 1:34:30-41.) An additional tenant testified  
8 that the new paint job seemed to have just changed the color. (Hearing Recording, at 17:56-18:20.)

9 Once again, the Hearing Officer justified these costs by asserting that the paint “make[s] the  
10 building safer for the tenants as ... the building appears well-maintained and cared for.” This is  
11 unsubstantiated speculation. Instead of filling an evidentiary void with speculation, the Hearing  
12 Officer should have weighed the credibility of the Landlord’s agent against the credibility of the  
13 tenants who testified on this matter. Four tenants who live in the building, and look at the paint  
14 every day, alleged that re-painting was unnecessary and provided no benefit. They also submitted a  
15 photograph of the prior paint job. Their testimony and evidence were improperly disregarded.

#### 16 **D. Entry System**

17 The Landlord’s capital improvement petition included a passthrough for a new smartphone-  
18 connected front door entry system. The tenants testified that previously the buzzer system worked  
19 through a call box where visitors could be buzzed into the building by the press of a button.  
20 (Hearing Recording, at 55:43-58, 1:15:42-16:02, 1:23:05-21.) One tenant called the prior system  
21 “much more efficient.” (Hearing Recording, at 1:16:02-1:16:10.) Another said that the prior system  
22 “worked perfect.” (Hearing Recording, at 1:27:45-54.)

23 All six tenants present at the hearing testified to difficulties with the new system. Four  
24 tenants testified that they had had difficulty using the new smartphone system or found themselves  
25 unable to use it at times. (Hearing Recording, at 56:00-56:48, 1:16:11-55, 1:23:21-42, 1:33:37-  
26 34:25). The remaining two tenants testified that they did not or could not use the new system at all.  
27 (Hearing Recording, at 49:30-37, 1:27:55-1:28:20.) Multiple tenants also testified that there were  
28 blackouts when the new system became inoperable. (Hearing Recording at 1:16:11-55, 1:23:21-42.)

1           Once again, without evidence, the Hearing Officer justified disregarding the tenants'  
2 testimony by speculating that the new entry system made the building more secure. There is no  
3 evidence supporting this conclusion. This entry system, if anything, introduced new security  
4 vulnerabilities to the building by introducing potentially dozens of internet-connected smartphones  
5 to the building's physical security. That coupled with numerous tenants describing the entry system  
6 as a decrease in housing services, which was at times unusable, should not have led the hearing  
7 officer to conclude that the work was "improvement."

8           **E.       The Hearing Officer Failed to Consider the Tenants' Photographic Evidence**

9           To bolster their testimony, the tenants submitted photographic evidence. Tenant Victoria  
10 Wentworth submitted an evidence packet to the Rent Adjustment Program in advance of the hearing  
11 and testified about several submitted photographs during the hearing. (Declaration of Victoria  
12 Wentworth; Exhibit 1; Hearing Recording, at 57:44-58:26, 1:09:10-1:10:14.)

13           According to date stamps from the Rent Adjustment Program, the Tenant evidence packet  
14 and the Landlord evidence packet were submitted on the same day. (Exhibit 1; Exhibit 2.) Despite  
15 this, the Hearing Officer stated during the hearing that she did not have the Tenant's evidence in  
16 front of her. (Hearing Recording, at 58:30-58:50.) The Landlord's representative did not object to  
17 the Tenants' evidence, although he did note that it was not in the file. (Hearing Recording, at 58:30-  
18 58:50, 1:09:10-1:10:14.) The Hearing Officer did not rule that the Tenant evidence was  
19 inadmissible but did not reference it in the Decision. (Hearing Decision, at p. 2.)

20           The tenant evidence helps demonstrate that several of the Landlord's capital improvements  
21 did not benefit the tenants. A photograph of the new carpet taken less than three weeks before the  
22 hearing shows that the new carpet had already begun to tear; the tenants testified that there were no  
23 issues with the prior carpet. A photograph of the previous paint job and light fixtures taken before  
24 the capital improvements work similarly demonstrates no particular need for light replacement or  
25 new paint. By failing to analyze this evidence, the hearing officer failed to address important  
26 evidence that the alleged improvements did not occur for the tenants' benefit.

1 **VI. THE HEARING DECISION FACILITATES UNJUST ENRICHMENT AND THE**  
2 **CIRCUMVENTION OF OAKLAND’S TENANT PROTECTIONS.**

3 Capital Improvements must “primarily benefit the tenant rather than the owner.” (Oakland  
4 Mun. Code § 8.22.020; Reg., Appendix A, Sec. 10.2.) As these increases are meant to benefit  
5 tenants, an allowable increase can be quite large. (Oakland Mun. Code §§ 8.22.070(A)(2)-(3),  
6 (C)(1)(a).) A capital improvements petition allows Landlords to seek up to a thirty percent rent  
7 increase over five years, with increases as high as ten percent a year. (Oakland Mun. Code §§  
8 8.22.070(A)(2)-(3), (C)(1)(a).) These authorized increases are so large that the City had to change  
9 the Ordinance to clarify that they were not permissible to the extent the state of California considers  
10 them “rent gouging.” (See Cal. Civ. Code §§ 1947.12(a), (k)(1); Oakland Mun. Code §  
11 8.22.070(A)(2).)

12 Oakland’s capital improvement process allows Landlords to pass through “(70) percent of  
13 **actual** costs, plus imputed financing.” (Oakland Mun. Code § 8.22.020.) Under Oakland’s Rent  
14 Adjustment Ordinance, a Landlord is not entitled to recapture 70% of any qualifying invoice.  
15 (Oakland Mun. Code § 8.22.020.) Instead, the Hearing Officer must consider the Landlord’s “actual  
16 costs.” (*Id.*)

17 “Where a person obtains a benefit that he or she may not justly retain, the person is unjustly  
18 enriched.” (*Unilab Corp. v. Angeles-IPA* (2016) 244 Cal.App.4th 622, 639.) “The term ‘benefit’  
19 ‘denotes any form of advantage.’ Thus, a benefit is conferred not only when one adds to the  
20 property of another, but also when one saves the other from expense or loss.” (*Ghirardo v.*  
21 *Antonioli*, 14 Cal. 4th 39, 51 (1996).) “Determining whether it is unjust for a person to retain a  
22 benefit may involve policy considerations.” (*First Nationwide Sav. v. Perry* (1992) 11 Cal. App. 4th  
23 1657, 1663.)

24 It is indisputable that the Landlord will retain a benefit if the decision stands. The Landlord  
25 will receive increased rent that it is not otherwise entitled to collect. It is also clear that retaining this  
26 benefit is unjust, as ultimately, the Landlord will likely recover far more than 70% of its “actual  
27 costs” through circumventing Oakland’s tenant protections and gaining the ability to charge new  
28 tenants more rent.

1           **A.     The Landlord Will Be Unjustly Enriched if Rent Controlled Tenants Vacate**  
2           **due to the Improper Rent Increase**

3           Oakland’s Just Cause Ordinance prohibits Landlords from “endeavor[ing] to recover  
4 possession” of a rental unit without a just cause. (Oakland Mun. Code § 8.22.360(A).) This  
5 endeavor need not be through a formal eviction proceeding. (*Id.*) While a Landlord is certainly  
6 allowed to petition the Rent Adjustment Program for a rent increase and file a non-payment eviction  
7 against a tenant who can’t pay, the spirit of the Just Cause Ordinance is violated when tenants  
8 surrender their rent-controlled units due to excessive, unreasonable, or arbitrary rent increases.  
9 Oakland. Mun. Code §§ 8.22.320(2), (6), 8.22.330. While the monetary value of a rent-controlled  
10 tenancy is difficult to calculate, courts have valued rent-controlled tenancies in the Bay Area as high  
11 as \$381,825 per unit. (*Chacon v. Litke* (2010) 181 Cal. App. 4th 1234, 1246.)

12           If even one tenant moves out due to being unable to afford the proposed rent increase, the  
13 Landlord will recover a precious asset. If this occurs, the Landlord will likely recover significantly  
14 more than the 30% of the capital improvements it was supposed to shoulder. The Landlord will  
15 recover an asset worth tens, if not hundreds of thousands of dollars, which will never be accounted  
16 for in determining the “actual costs” of its alleged “improvements.” This wrongful recovery will  
17 have a stamp of approval from Oakland’s Rent Adjustment Program.

18           **B.     The Landlord Will Be Unjustly Enriched Through Increased Property**  
19           **Values and Rents.**

20           While only current rent-controlled tenants are subject to capital-improvements pass-  
21 throughs, future tenants will also use the “improvements.” For example, a prospective tenant in the  
22 tech industry may be attracted to the building due to the entry system using smartphone technology.  
23 This appeal is an asset to the Landlord as it likely allows the Landlord to charge more rent and  
24 therefore increases its property values. As such, when the cost of items such as smartphone entry  
25 systems are passed to rent-controlled tenants, the Landlord increases its property values at the  
26 expense of its rent-controlled tenants.

27           As tenant Ricardo Tavarez, a teacher, pointed out in his response to the Landlord petition,  
28 “It’s true that the building’s previous condition may not have had the ‘curb appeal’ that is popular  
today, but the rugs, light fixtures, and entry system were functional with minimal wear and tear.”

1 To avoid unjust enrichment, the value of increased “curb appeal” must be factored into the “actual  
2 costs” of the Landlord. If not, the Landlord is unjustly enriched.

3 **C. The Potential for Unjust Enrichment Requires The Board to Seriously Consider**  
4 **Tenant Testimony Concerning Benefit.**

5 The Board must be aware of and consider the strong potential for unjust enrichment through  
6 the Capital Improvements process. Even if “improvements” are not “gold plating,” not “a result of  
7 differed maintenance,” and “not performed to correct a Priority 1 or 2 condition,” Hearing officers  
8 cannot presume, without evidence, that the improvements are objectively for the tenants’ benefit.  
9 Hearing officers must consider the strong financial incentive Landlords have to conduct pointless  
10 and arbitrary work to justify otherwise unlawful rent increases.

11 As the decision points out, “Each tenant was given an opportunity to speak and they testified  
12 that the improvements were not necessary.” If testimony such as this is categorically ignored,  
13 Landlords in Oakland become free to paint, replace locks, re-carpet, and do any other work they  
14 please on a yearly basis for the sole purpose of raising rents. Where constant rent increases above  
15 the CPI amount force long-term, rent-controlled tenants to move out, Landlords, ultimately, will  
16 recover far more than 70% of their actual costs and circumvent Oakland’s tenant protections.

17 **VI. CONCLUSION**

18 The hearing record presents the following issues with the capital improvements costs:

- 19 (1) Boiler replacement: no required permit;
- 20 (2) Roof replacement: 7% of costs are for commercial space;
- 21 (3) Carpet replacement: no benefit to the tenant, as no prior issue was demonstrated; the new carpet  
22 was shown to tear more easily; 7% of costs are for commercial space;
- 23 (4) Paint: no benefit to the tenant, as the building was painted one year prior;
- 24 (5) Light fixtures: no evidence of objective benefit to the tenant, as no prior issue was demonstrated  
25 with the light fixtures; gold plating in regard to the chandelier; also includes tiling costs that were  
26 not lighting and not in the original petition; and
- 27 (6) Entry system: no benefit to the tenant, as tenants testified the original system worked well and  
28 the new system does not; gold plating as a smartphone-based system replaced a buzzer system.

1 The hearing record thus demonstrates impermissible costs in every category of capital  
2 improvements. The boiler replacement was approved without the required permit. Over a thousand  
3 dollars of the capital improvements pass-throughs correspond to work done on commercial units.  
4 Over three thousand dollars worth of rent increases were based on work that was not listed in the  
5 Landlord's petition, which the tenants had no notice of. Further, the hearing officer refused to  
6 consider the tenants' photographic evidence or the tenants' prima facie showing of gold plating.  
7 Much of this work, objectively, did not benefit the tenants. Instead, this work was done to  
8 circumvent Oakland's strong tenant protections and unjustly enrich the Landlord.

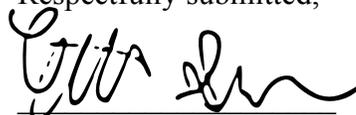
9 The opinions of rent boards, deservedly, are held in high regard by the courts. "Determining  
10 [rent] prices that will provide a fair return 'involves a balancing of the investor and the consumer  
11 interests.'" (*Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal. 4<sup>th</sup> 761, 771 (citations  
12 omitted).) Municipal rent boards are presumed to have "expert judgment which carries a  
13 presumption of validity." (*Id.*) As such, the voices of tenants and Landlords must be heard. This  
14 involves carefully weighing all testimony, scrutinizing all evidence, following proper procedures,  
15 and ensuring that biases and outside speculation do not play a role in the hearing. Unfortunately, the  
16 tenants in this case did not receive the fair and impartial hearing they deserved. In these situations,  
17 the Board must quickly remedy these mistakes to protect tenants and Landlords alike.

18 Tenant-Appellant Wentworth respectfully requests that the Rent Board make the following  
19 corrections to the hearing decision:

20 (1) Remove all boiler costs; (2) remove all painting costs; (3) remove all "light fixture"  
21 costs, including the chandelier cost of \$325.50 and \$3,740 in tiling costs improperly listed as  
22 lighting; (4) remove all carpet costs; (5) remove all entry system costs; and (6) reduce the roofing  
23 costs to \$6,190.08.

24  
25 Dated: April 8, 2021

Respectfully submitted,

26 

27 Ethan Silverstein, Esq.

28 ACCE Institute

000232

# EXHIBIT 1

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CITY OF OAKLAND  
RENT ARBITRATION PROGRAM

2020 FEB 13 PM 4:01

February 11, 2020

Analyst Keith Mason  
City of Oakland  
Rent Adjustment Program  
Department of Housing and Community Development  
250 Frank H. Ogawa Plaza  
Oakland, CA 94612

Via Hand Delivery

**RE: Tenant Evidence Submission for Case No. L19-0519**

Dear Analyst Keith Mason:

Please find the evidence submission of Victoria Wentworth in support of Case No. L19-0519. Thank you for your attention to this matter. Please contact me if you have any questions or concerns at (206) 819-4849.

Sincerely,



Victoria Wentworth

000233

Tenant Evidence Submission

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RENT ARBITRATION PROGRAM

2020 FEB 13 PM 4:01

Exhibit

Document Description

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**City of Oakland Rent Adjustment Program**

**Case Number: L19-0159**

**Tenant Evidence Submission**

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2020 FEB 13 PM 4:01

**Exhibit B**

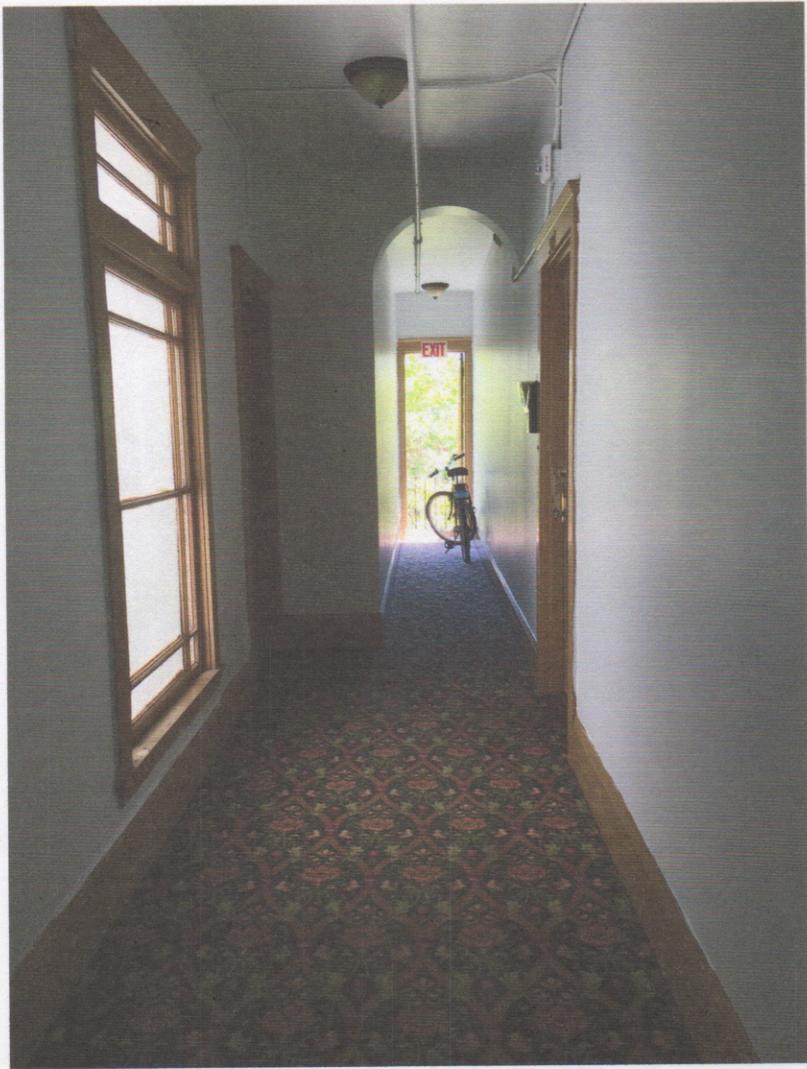
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RENT ARBITRATION PROGRAM

2020 FEB 13 PM 4: 01



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RENT ARBITRATION PROGRAM

2020 FEB 13 PM 4:02



**City of Oakland Rent Adjustment Program**

**Case Number: L19-0159**

**Tenant Evidence Submission**

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**Exhibit E**

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# EXHIBIT 2



**THE McCONNELL GROUP**  
Consultants and Advocates

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AGENT ARBITRATION PROGRAM  
2020 FEB 13 AM 10:04

## Memorandum

To: Keith Mason, Hearing Analyst

From: JR McConnell, Owner Representative 

Date: 2/11/20

Subject: L19-0159 : Owner Petition Supporting Documentation

---

Attached, please find the following evidentiary documentation in support of Owner Capital Improvement petition L19-0159:

Invoice & Checks for the following:

- Entry System
- Interior Paint
- Common Area Lighting
- Boiler Replacement
- Common Area Flooring
- Roofing

Thank you.

# Lightology

1718 W. Fullerton Ave.  
Chicago, IL 60614  
(312) 944-1000  
www.lightology.com

## QUOTE

CUST.#: 7481989

UPG VENDOR	QUOTE DATE	ORDER NO.
000000	06/27/17	487987-00
P.O. NO		PAGE #
378 Grand Avenue		1

SHIP TO: 378 Grand Avenue

CORRESPONDENCE TO: Lightology  
1718 West Fullerton Ave.  
Chicago, IL 60614

BILL TO: Mosser Companies  
220 Montgomery Street  
20th Floor  
San Francisco, CA 94104

SALES-REP.IN	SALES-REP.OUT	TAKEN BY
Xavier Yager	Xavier Yager	Xavier Yager
INSTRUCTIONS		TERMS
		Due tomorrow
SHIP POINT	SHIP VIA	SHIPPED
Lightology - 1	UPS Ground	

LINE NO.	PRODUCT AND DESCRIPTION	QUANTITY ORDERED	QUANTITY B.O.	QTY. SHIPPED	QTY. U/M	UNIT PRICE	AMOUNT (NET)
1	20671ledd-ch/op1 Aero 2 Light Flush-Mount Opal/Chrome LED		12		each	161.00	1932.00
2	163-5 Ibis 5 Light Chandelier Matte Opal/Chrome		1		each	325.50	325.50
3	ra-c1325 Halo 11IN Sconce White/B rushed Chrome-PCH		9		each	241.50	2173.50
4	1326bk-led Shelter 5 inch LED Wall Light Clear Seedy/Black		2		each	147.88	295.76
5	1665sk Luna Out FM Etched/Satin BK 8W 8IN		1		each	147.88	147.88
5	Lines Total		Qty Shipped Total	25		Total Invoice Total	4874.64

Last Page

Please be sure to open and inspect your Lightology order within 48 hours, or two business days of receiving your order. Lightology cannot be held responsible for any missing, or damaged goods if we are not notified within this time period. Do not schedule installation until all items have been delivered and inspected.

Products not eligible for return/exchange include: Intendantent bulbs, custom / special orders, floor models, large orders - single fixtures over \$5,000, or orders totaling over \$5,000 on multiple quantities of the same fixture, overstock items, open box items and closeout items.

Products eligible for return/exchange include: Items in original, new, uninstalled condition with all original parts, tags, and packaging. All returns must be pre-approved within 30 days of receipt, and have a valid Return Number. 1 Year Warranty on all items Excluding Light Bulbs. You are responsible to cover the cost of return shipping back to Lightology. Details about a product's return policy may be found on each product page. The complete Lightology Return Policy can be found on our website. Restocking fees may apply as noted below.

- 0% restocking fee on Preferred Brand purchases (Browse our selection of preferred on Lightology.com)
- 25% restocking fee of original purchase price on some brands / products. This restocking fee will be deducted from your refund/credit.
- 50% restocking fee on some brands / products and made-to-order purchases from some brands. This restocking fee will be deducted from your refund/credit.

Our professionals are standing by to assist you with anything that you may need. Use link below to reach the right team:

Check order status? - Click order tracking link on lightology.com

Need help with your order? - customer-care@lightology.com

Order damage, returns, cancellations - returns@lightology.com

Unhappy with your order? Contact our Management team and let us help you - ita\_management@lightology.com

Thank you, Lightology Staff

000241

9

## **Declaration of Victoria Wentworth**

### **Appeal of Case No. T19-0159**

I, Victoria Wentworth, state and declare as follows:

1. The following facts are true of my own personal knowledge and I could and would testify to them under oath if called to do so.
2. I am a tenant at 378 Grand Avenue, Unit 304, Oakland, California.
3. On February 13, 2020, I submitted my evidence to the Oakland Rent Adjustment Program for Case No. T19-0159 in-person at the Rent Adjustment Program office. I stamped each evidence packet page individually using the Rent Adjustment Program date stamp and kept one copy. The other copy I submitted to the Rent Adjustment Program staff member who was present at the time.
4. True and correct copies of several pages from my original stamped evidence packet are attached to this Declaration as Exhibit 1.
5. I had previously attempted to file the attached evidence on Wednesday, February 12, 2020. That day, I arrived at the building that the Rent Adjustment Program is located in with my evidence and found that the door was locked. A security guard told me and approximately thirty other people who had also arrived at the same time that the building was closed for a holiday. I have since learned that the building was closed because of "Lincoln's birthday."

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 8, 2021 in Oakland, California.



Victoria Wentworth



## 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)

## PROOF OF SERVICE

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

- 1) Use this PROOF OF SERVICE form to indicate the date and manner of service and the person(s) served.
- 2) Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.
- 3) File a completed copy of this PROOF OF SERVICE form with RAP together with your Petition. Your Petition will not be considered complete until this form has been filed indicating that service has occurred.

On the following date: 04 / 08 / 21 I served a copy of (check all that apply):

- TENANT PETITION plus \_\_\_\_\_ attached pages (number of pages attached to Petition not counting the Petition form, NOTICE TO PROPERTY OWNER OF TENANT PETITION, or PROOF OF SERVICE)
- NOTICE TO PROPERTY OWNER OF TENANT PETITION
- Other: Appeal Brief of Victoria Wentworth + 10 attached pages

by the following means (check one):

- United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below.
- Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

### PERSON(S) SERVED:

Name	Gregory McConnell
Address	The Rotunda Building, 300 Frank Ogawa Plaza, Suite 460
City, State, Zip	Oakland, California 94612

Name	
Address	
City, State, Zip	

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

Ethan Silverstein

PRINTED NAME



SIGNATURE

April 8, 2021

DATE SIGNED

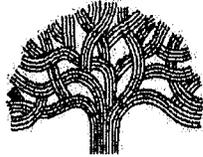
## CHRONOLOGICAL CASE REPORT

Case No.: T21-0019  
Case Name: Yu v. Bruins  
Property Address: 2012 Linden Street, Oakland CA  
Parties: Jane Yu, Tenant  
Julia Bruins, Owner

### TENANT APPEAL:

<u>Activity</u>	<u>Date</u>
Tenant Petition filed	February 11, 2021
Owner Response filed	March 11, 2021
Administrative Decision mailed	March 15, 2021
Tenant Appeal filed	March 25, 2021
Owner response to Appeal Decision	April 7, 2021

T21.0019 AS/MF



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 file stamp.

**RECEIVED**

FEB 11 2021

RENT ADJUSTMENT PROGRAM  
OAKLAND

6/7

### TENANT PETITION

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

Rental Unit Information			
2012	Linden St.		Oakland, CA 94607
Street Number	Street Name	Unit Number	Zip Code
Move-in Date: \$900	Initial Rent at Move-in: \$900	Current Rent: \$931.50	
Is your rent subsidized or controlled by a government agency (such as HUD or Section 8), other than Oakland Rent Adjustment Program? (See page 5 "Jurisdiction" for more information)			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not sure
Are you current on rent?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No*	
<small>(*Note: You must be current on your rent or lawfully withholding rent in order to file a petition. Checking "No" without providing an adequate explanation may result in your petition being dismissed.)</small>			
If not current on rent, explain why: _____			
When (if ever) did the property owner first provide you with the City form, NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM ("RAP Notice")?		<input type="checkbox"/> I first received the RAP Notice on: _____ <input checked="" type="checkbox"/> I was never provided with the RAP Notice → see explanation <input type="checkbox"/> I do not remember if I ever received the RAP Notice	
Case number(s) of any relevant prior Rent Adjustment case(s): T20-0056			
Tenant Information (List each tenant/petitioner in unit. If you need more space, attach additional sheet.)			
Jane		Yu	
First Name		Last Name	
Mailing Address (if different from above): _____			
Primary Telephone: (650)773-3466		Other Telephone: _____ Email: janey129@gmail.com	
First Name		Last Name	
Mailing Address (if different from above): _____			
Primary Telephone: _____		Other Telephone: _____ Email: _____	
Tenant Representative (Check one)			
<input checked="" type="checkbox"/> No Representative <input type="checkbox"/> Attorney <input type="checkbox"/> Non-Attorney			
First Name		Last Name	Firm/Organization (if any)
Mailing Address: _____			
Phone Number: _____		Email: _____	

Property Owner Information		
Property Owner		
First Name	Last Name	
Julia	Bruins	
Company/LLC/LP (if applicable):		
Mailing Address: 53 1/2 Albion Street, San Francisco, CA 94103		
Phone Number: (510) 499-8553	Email: juliebruins@gmail.com	
Property Manager (if applicable)		
First Name	Last Name	Name of Management Company
Mailing Address:		
Phone Number:		
Email:		

GROUNDS FOR PETITION		
<p>Select the grounds for this petition from the list below. Check all that apply. You must check at least one box. To contest a rent increase, select item(s) from Category A. If you have experienced a decrease in housing services and/or have issues with the condition of your unit, or are being charged for utilities in violation of the law, select item(s) from Category B. For more information on each of the grounds, see Oakland Municipal Code (O.M.C.) Sections 8.22.070 and 8.22.090 (Rent Adjustment Ordinance) and the corresponding Regulations. A copy of the Ordinance and Regulations are available here: <a href="http://www.oaklandca.gov/resources/read-the-oakland-rent-adjustment-program-ordinance">www.oaklandca.gov/resources/read-the-oakland-rent-adjustment-program-ordinance</a>.</p>		
A.	<b>Unlawful Rent Increase(s)</b> <small>(Complete section A on page 3)</small>	<input checked="" type="checkbox"/> (A1) I received a rent increase above the allowable amount.
		<input checked="" type="checkbox"/> (A2) I received a rent increase that I believe is unlawful because I was not given proper notice, was not properly served, and/or was not provided with the required RAP Notice ("Notice to Tenants of the Residential Rent Adjustment Program").
		<input type="checkbox"/> (A3) I received a rent increase and do not believe I should be required to pay it because a government agency has cited my unit for serious health, safety, fire, or building code violations. <i>(You must attach a copy of the citation to your petition.)</i>
B.	<b>Decreased Housing Services</b> <small>(Complete section B on page 3)</small>	<input type="checkbox"/> (B1) The property owner is providing me with fewer housing services than I previously received and/or I am being charged for services originally paid for by the owner. <i>(Check this box for petitions based on bad conditions/failure to repair.)</i>
		<input type="checkbox"/> (B2) I am being unlawfully charged for utilities.
C.	<b>Other</b>	<input type="checkbox"/> (C1) My rent was not reduced after a prior rent increase period for capital improvements.
		<input type="checkbox"/> (C2) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake.
		<input type="checkbox"/> (C3) The initial rent amount when I first moved in was unlawful because the property owner was not permitted to set the initial rent without limitation. O.M.C. § 8.22.080 (C).

A. Unlawful Rent Increase(s)					
(Complete this section if any of the grounds for petition fall under category A, above)					
<p><b>List all rent increases you wish to contest.</b> Begin with the most recent increase and work backwards. If you never received the RAP Notice, you can contest all past increases. See the "Important Information" page at the end of this petition packet for more information on time limits for contesting rent increases. If you need additional space, attach a separate sheet or an additional copy of this form.</p> <ul style="list-style-type: none"> <li>For petitions contesting a rent increase on the grounds that the unit has been cited by a government agency for serious health, safety, fire, or building code violations, <b>you must attach a copy of the citation</b> to your petition. Failure to attach a copy of the citation may result in your petition being dismissed.</li> </ul>					
Date received rent increase notice: (Month/Day/Year)	Date rent increase went into effect: (Month/Day/Year)	Amount of Increase:		Received RAP Notice with notice of rent increase?	
		FROM	TO	YES	NO
6/1/2020	12/1/2020	\$ 900	\$ 931.50	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>

→ see explanation

B. Decreased Housing Services					
(Complete this section if any of the grounds for petition fall under category B, above)					
<p><b>List all the conditions that you believe entitle you to a rent decrease.</b> If your petition is based on problems related to your unit, or because the owner has taken away service(s) or is charging for services originally provided by the owner, you must complete this section. If you need more space, attach a separate sheet or an additional copy of this form.</p> <ul style="list-style-type: none"> <li><b>You are strongly encouraged to submit documentary evidence</b> (photographs, inspection reports, correspondence with your landlord, etc.) together with your petition. Evidence may be submitted up to seven calendar days prior to your hearing.</li> <li><b>You may wish to have a City Inspector come inspect your unit</b> for possible code violations in advance of your hearing. Copies of any inspection report(s) may be submitted in support of your petition. To schedule an inspection, contact the City of Oakland Code Enforcement Unit at (510) 238-3381, or file a complaint online at <a href="https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement">https://www.oaklandca.gov/services/file-a-complaint-with-code-enforcement</a>. <i>Note: if additional items are cited in an inspection report that were not included in your original petition (below), you must file an additional petition listing those items in order for RAP staff to consider them as a part of your claim.</i></li> </ul>					
	Description of problem or decreased housing service (list separately):	Date problem or decreased service started: (Month/Day/Year)	Date first notified owner or manager of problem: (Month/Day/Year)	Date problem or service was fixed, if ever: (Month/Day/Year)	What is the dollar value of your claimed loss?
1.					\$
2.					\$
3.					\$
4.					\$

**TENANT VERIFICATION**

*(Required)*

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

  
\_\_\_\_\_  
Tenant 1 Signature

2/9/2021  
\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**CONSENT TO ELECTRONIC SERVICE**

*(Highly Recommended)*

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

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

**MEDIATION PROGRAM**

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

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

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

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

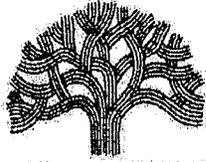
\_\_\_\_\_  
Date

**INTERPRETATION SERVICES**

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

- I request an interpreter fluent in the following language at my Rent Adjustment proceeding:
- Spanish (Español)
  - Cantonese (廣東話)
  - Mandarin (普通话)
  - Other: \_\_\_\_\_

**-END OF PETITION-**



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**

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- 2) Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.
- 3) File a completed copy of this PROOF OF SERVICE form with RAP together with your Petition. Your Petition will not be considered complete until this form has been filed indicating that service has occurred.

On the following date: 2 / 9 / 2021 I served a copy of (check all that apply):

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

by the following means (check one):

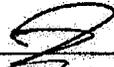
- United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below.
- Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

**PERSON(S) SERVED:**

Name	Julia Bruins
Address	53 1/2 Albion st.
City, State, Zip	San Francisco, CA 94103

Name	
Address	
City, State, Zip	

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

  
\_\_\_\_\_  
PRINTED NAME      Jane Yu

  
\_\_\_\_\_  
SIGNATURE

2/9/2021  
\_\_\_\_\_  
DATE SIGNED

To the City of Oakland Rent Adjustment Program,

This is a proposed re-negotiation of the settlement agreement I and the property owner signed June 24, 2020 with a Rent Adjustment Hearing Officer present. The matter at that time involved an illegal rent increase and an unlawful charge of utilities. The issue of an illegal rent increase still arises from the original settlement agreement which I want to address here. I am writing to re-open this case and rectify the rent increase issue, explicated below:

- 1) **CPI was/is incorrect:** The CPI rate in June 2020 was 3.15%; the CPI rate when my rent increase began on December 1, 2020 was 2.7%. The 2.7% rate is still current.

This settlement does not conform to Oakland moratorium as the 3.15% increase from December appears to violate the Oakland moratorium. In fact, the moratorium, instilled on March 27, 2020 (before my settlement hearing) "prohibits rent increases above 2.7% of the CPI unless required to provide a fair return." This moratorium is still ongoing as we are in a state of local emergency. The legally allowable rent increase for a unit that is covered by the Rent Adjustment Ordinance is 2.7% at this time due to the CPI limit under the Emergency Moratorium. We could not have foreseen this change in the CPI.

Upon discovering this discrepancy, I spoke with a housing attorney at Centro Legal who confirmed that this rent increase amount I agreed to was illegal. I asked the landlord on 1/26/2021 to re-negotiate the settlement. I wrote that my current rental amount should be \$927 instead of \$931.50, and that I was willing to have my rent overpayment be credited towards my future payment. The landlord disagreed and said she wanted to stick to the agreement.

- 2) **Initial RAP notice served on 6/1/2020 was incomplete, rendering the notice invalid:** the landlord actually served me an incomplete RAP notice by serving it to me only in English. Pursuant to Section 8.22.060 (A) (1-3), the law mandates that the initial RAP notice *must* be served in three languages—English, Spanish, and Chinese.

I recently discovered that the initial notice must be served in three languages aforementioned (and had this confirmed by the RAP counselors). When I confirmed with the Hearing Officer at the June settlement agreement that the landlord had served me a RAP notice, I did not know about this ordinance and assumed it was issued correctly. The Hearing Officer, Elan, also did not know that I was served an incomplete RAP notice, and perhaps assumed that my initial RAP notice served comprised of multiple languages as mandated, which is why we proceeded at the time.

I thus contest the parameters of the original settlement agreement on 6/24/2020 due to these factual errors and argue that the law is *above* any settlement agreement. The landlord did not comply with the law and in short, I challenge this initial rent increase altogether as I still

Jane Yu  
February 8, 2020  
Tenant Petition Explanation

2 of 2

have not been served a proper initial RAP notice. I am asking for all of my rent increase overpayments starting December of 2020.

Sincerely,



Jane Yu

000253



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

## NOTICE TO PROPERTY OWNER OF TENANT PETITION

### ATTENTION: IMMEDIATE ACTION REQUIRED

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

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

- **TO RESPOND:**

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

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

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

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



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For Rent Adjustment Program date stamp  
**RECEIVED**  
**MAR 11 2021**  
**RENT ADJUSTMENT PROGRAM  
OAKLAND**  
CASE NUMBER T - 21-0019

## PROPERTY OWNER RESPONSE TO TENANT PETITION

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

### Rental Unit Information

2012 Street Number      Linden St. Street Name      Unit Number      Oakland, CA 94607 Zip Code

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

Type of unit(s) (check one):  Single family home      Number of units on property: 2  
 Condominium      Date acquired property: 2009  
 Apartment, room, or live-work

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

### Tenant Information

Name of Tenant Petitioner(s): Jane Yu

Date tenant(s) moved into rental unit: January 2019 Initial rent amount: \$ 900      Is/are tenant(s) current on rent?  Yes  No

### Property Owner Information

Julia ~~Br~~ First Name      Bruins Last Name

Company/LLC/LP (if applicable): \_\_\_\_\_

Mailing address: 210 53 1/2 Albion St.

Primary Telephone (510) 499-8553 Other Telephone: \_\_\_\_\_ Email: juliebruins@gmail.com

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

First Name \_\_\_\_\_ Last Name \_\_\_\_\_ Firm/Organization (if any) \_\_\_\_\_

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

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

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

<input type="checkbox"/> I am an Oakland business license holder	Attach proof of payment of your most recent Oakland business license.
<input checked="" type="checkbox"/> I am current on Rent Adjustment Payment (RAP Fee)	Attach proof of payment of the current year's RAP Fee for the subject property.
<input checked="" type="checkbox"/> I have provided a signed and dated copy of the first RAP Notice provided to the petitioning tenant(s) or check the appropriate box below.	Attach a signed and dated copy of the <u>first</u> RAP Notice provided to the petitioning tenant(s) or check the appropriate box below. <input checked="" type="checkbox"/> I first provided tenant(s) with the RAP Notice on (date): <u>1/31/20</u> <input type="checkbox"/> I have never provided a RAP Notice. <input type="checkbox"/> I do not know if a RAP Notice was ever provided.

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

- The unit is a single-family residence or condominium exempted by the Costa Hawkins Rental Housing Act (Civil Code 1954.50, et seq.). **If claiming this exemption, you must answer the following questions. Attach a separate sheet if necessary.**
  1. Did the prior tenant leave after being given a notice to quit (Civil Code Section 1946)?
  2. Did the prior tenant leave after being given a notice of rent increase (Civil Code Section 827)?
  3. Was the prior tenant evicted for cause?
  4. At the time the prior tenant vacated were there any outstanding violations of building housing, fire or safety codes in the unit or building?
  5. Is the unit separately alienable, meaning it can be sold separately from any other unit on the parcel?
  6. Did the petitioning tenant have roommates when he/she moved in?
  7. If the unit is a condominium, did you purchase it? If so: 1) From whom? 2) Did you purchase the entire building?
- The rent for the unit is controlled, regulated, or subsidized by a governmental unit, agency, or authority other than the City of Oakland Rent Adjustment Ordinance. (Attach documentation.)
- The unit was newly constructed and issued a Certificate of Occupancy on or after January 1, 1983. (Attach copy of Certificate of Occupancy.)
- The unit is located in a motel, hotel, or rooming/boarding house, which the tenant petitioner has occupied for less than 30 days.
- The unit is in a building that was previously issued a certificate of exemption from RAP based on substantial rehabilitation. (Attach copy of Certificate of Exemption.)
- The unit is an accommodation in a hospital, convent, monastery, extended care facility, convalescent home, non-profit home for the aged, or dormitory owned and operated by an educational institution. (Attach documentation.)

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

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

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

(mm/dd/yy)	(mm/dd/yy)	FROM	TO	YES	NO	
12/01/19	12/01/20	\$ 900	\$ 931.50	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	CPI
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>	RAPSHEET WAS DELIVERED 1/20
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>	
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>	
		\$	\$	<input type="checkbox"/>	<input type="checkbox"/>	

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

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

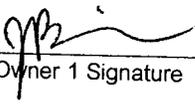
**B** Decreased Housing Services  
Complete this section if any of the grounds for the Tenant Petition fall under Category B on the Tenant Petition.

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

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

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

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

  
\_\_\_\_\_  
Property Owner 1 Signature

3/2/21  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner 2 Signature

\_\_\_\_\_  
Date

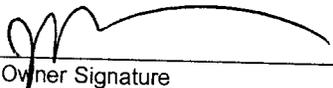
Check the box below if you agree to have RAP staff send you documents related to your case electronically. If all parties agree to electronic service, the RAP will send certain documents only electronically and not by first class mail.

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

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

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

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

  
\_\_\_\_\_  
Property Owner Signature

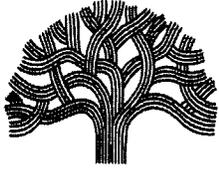
3/2/21  
\_\_\_\_\_  
Date

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

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

- Spanish (Español)
- Cantonese (廣東話)
- Mandarin (普通话)
- Other: \_\_\_\_\_

**-END OF RESPONSE-**



CITY OF OAKLAND

**CITY OF OAKLAND  
RENT ADJUSTMENT PROGRAM**

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

For Rent Adjustment Program date stamp.

## PROOF OF SERVICE

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

- 1) Use this PROOF OF SERVICE form to indicate the date and manner of service and the person(s) served.
- 2) Provide a completed copy of this PROOF OF SERVICE form to the person(s) being served together with the documents being served.
- 3) File a completed copy of this PROOF OF SERVICE form with RAP together with your Response. Your Response will not be considered complete until this form has been filed indicating that service has occurred.

On the following date: 3 / 2 / 21 I served a copy of (check all that apply):

- PROPERTY OWNER RESPONSE TO TENANT PETITION** plus 3 attached pages (number of pages attached to Response not counting the Response form or PROOF OF SERVICE)
- Other: \_\_\_\_\_

by the following means (check one):

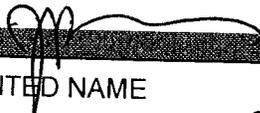
- United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) listed below and at the address(es) below and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- Commercial Carrier.** I deposited the document(s) with a commercial carrier, using a service at least as expeditious as first-class mail, with all postage or charges fully prepaid, addressed to the person(s) listed below and at the address(es) below.
- Personal Service.** I personally delivered the document(s) to the person(s) at the address(es) listed below or I left the document(s) at the address(es) with some person not younger than 18 years of age.

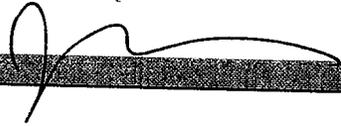
**PERSON(S) SERVED:**

Name	Jane Yu
Address	2012 Linden St.
City, State, Zip	OAKLAND, CA 94607

Name	[REDACTED]
Address	[REDACTED]
City, State, Zip	[REDACTED]

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

  
[REDACTED] JULIA BRUINS  
PRINTED NAME

  
[REDACTED]  
SIGNATURE

  
[REDACTED]  
DATE SIGNED

Julia Bruins  
February 20, 2021  
Property Owner Response

To the City of Oakland Rent Adjustment Program,

- 1) The rent increase in question is indicated in the Final Settlement of case T20-0056, Yu v. Bruins was delivered as specifically directed the settlement documents from June 24, 2020. As the settlement states in the first two terms of the agreement listed, *"The Parties agree that Petition number T20-0056, Yu v. Bruins resolves all claims in the tenant's petition and will be dismissed with prejudice,"* as well as *"The parties intend this Agreement be binding and enforceable in a court of law."*
- 2) As far as I know, the RAP notice was delivered in all three languages, and no mention of any issues of this were brought up by either the case analyst or the hearing officer.

A handwritten signature in black ink, appearing to be 'JB' followed by a long horizontal flourish.

**CITY OF OAKLAND  
BUSINESS TAX CERTIFICATE**

**ACCOUNT  
NUMBER**  
00223996

**DBA**

**BRUINS JULIA C & SCOTT C ETAL  
LINDEN STREET HAG COLLECTIVE**

**BUSINESS LOCATION**

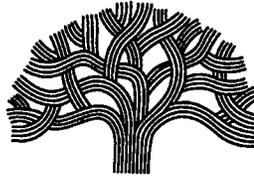
**2012 LINDEN ST  
OAKLAND, CA 94607**

**BUSINESS TYPE**

**M RAP-Single Family Residence**



**LINDEN STREET HAG COLLECTIVE  
53 ALBION ST APT 1/2  
SAN FRANCISCO, CA 94103-3329**



**EXPIRATION DATE**

**12/31/2021**

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

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

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

PUBLIC INFORMATION ABOVE THIS LINE TO BE CONSPICUOUSLY POSTED!

2

000262



# CITY OF OAKLAND

Revenue Division - Business Tax Section  
250 Frank H. Ogawa Plaza, #1320  
Oakland, CA 94612  
(510) 238-3704 TDD (510) 238-3254  
[www.oaklandnet.com](http://www.oaklandnet.com)

## Acknowledgement of Payment Received

Date: February 19, 2021

The City of Oakland acknowledges receipt of the following payment on the date printed above.

This payment will be tendered against the following account(s)

Account #: 00223996  
Account Name: LINDEN STREET HAG COLLECTIVE  
Account Address: 53 ALBION ST APT 1/2 SAN FRANCISCO, CA 94103-3329  
Account Paid: M - RESIDENTIAL RENTAL PROPERTY  
Business Address: 2012 LINDEN ST OAKLAND, CA 94607

Please keep this acknowledgement for your records. Thank you.

Payment received by: MD



3



# CITY OF OAKLAND

Revenue Division - Business Tax Section  
250 Frank H. Ogawa Plaza, #1320  
Oakland, CA 94612  
(510) 238-3704 TDD (510) 238-3254  
www.oaklandnet.com

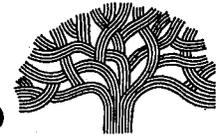
## Acknowledgement of Payment Received

<b>2020</b>	
Business Tax Credit Card	\$664.02
BT Penalty Credit Card	\$166.00
BT Interest Credit Card	\$99.60
BT Recordation and Tech Credit Card	\$3.00
BT Failure to File Fee Credit Card	\$50.00
BT SB1186 (AB1379) Credit Card	\$4.00
<b>2021</b>	
Business Tax Credit Card	\$583.45
BT Recordation and Tech Credit Card	\$3.00
BT SB1186 (AB1379) Credit Card	\$4.00
RAP Rent Adjustment Program (M) Credit Card	\$303.00
<b>Total</b>	<b>\$1,880.07</b>



4

# CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

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

## **ADMINISTRATIVE DECISION**

**CASE NUMBER:** T21-0019, Yu v. Bruins  
**PROPERTY ADDRESS:** 2012 Linden Street, Oakland, CA  
**PARTIES:** Jane Yu, Tenant  
Julia Bruins, Owner

## **SUMMARY OF DECISION**

The tenant's petition is dismissed.

## **INTRODUCTION**

The tenant filed a petition on February 11, 2021, contesting a rent increase she received on June 1, 2020, effective December 1, 2020, from \$900 per month to \$931.50 per month on the following grounds: that she received a rent increase above the allowable amount; and that she received a rent increase she believes is unlawful because she was not given proper notice, was not properly served, and/or was not provided with the required RAP Notice.

## **Reason for Administrative Decision**

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

As noted on her petition, the tenant filed a previous petition in the case of T20-0056. That case was settled during a Settlement Conference with both the tenant and owner that was conducted by Hearing Officer Élan Lambert on June 24, 2020. Pursuant to the Settlement Agreement and Dismissal signed by the parties on June 24, 2020, the parties agreed as follows under "II. TERMS AND CONDITIONS":

000265

4.a. The base rent of the subject unit is \$900.00 per month.

....

4.c. The RAP Notice was served on the tenant and effective June 1, 2020.

4.d. The rent for the subject unit is \$931.50, effective December 1, 2020.

The Settlement Agreement also states as follows under "II. TERMS AND CONDITIONS":

1. The parties agree that Petition No. T20-0056, Yu v. Bruins, resolves all claims in the tenant's petition and will be dismissed with prejudice.

Pursuant to the Settlement Agreement in T20-0056, the parties have already agreed to the rent increase that the tenant is contesting in this case. The parties also agreed that the tenant's petition would be dismissed with prejudice. Therefore, the tenant cannot contest the rent increase, effective December 1, 2020, through this petition and her petition is hereby dismissed.

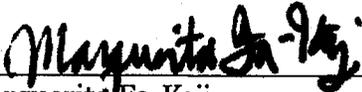
### ORDER

1. The tenant's petition is dismissed.

2. The Remote Settlement Conference and Hearing, scheduled for June 7, 2021, is canceled.

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

Dated: March 9, 2021

  
\_\_\_\_\_  
Marguerita Fa-Kaji  
Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**

**Case Number T21-0019**

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

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

**Documents Included**

Administrative Decision

**Owner**

Julia Bruins  
53 1/2 Albion Street  
San Francisco, CA 94103

**Tenant**

Jane Yu  
2012 Linden Street  
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 **March 15, 2021** in Oakland, CA.

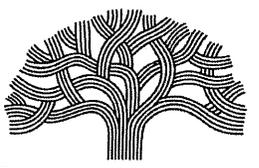


Teresa Brown-Morris

Oakland Rent Adjustment Program

**000267**

T20.0056 RC | EL

 CITY OF OAKLAND	<b>CITY OF OAKLAND                  RENT ADJUSTMENT                  PROGRAM</b> 250 Frank H. Ogawa Plaza, Suite 5313 Oakland, CA 94612 (510) 238-3721	RECEIVED For date stamp: RENT ADJUSTMENT AND RENT ARBITRATION PROGRAM 2020 JAN 31 AM 9:31
		<b>TENANT PETITION</b>

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

**Please print legibly**

Your Name Jane Yu	Rental Address (with zip code) 2012 Linden St. Oakland, CA 94607	Telephone: (650) 773-3466
		E-mail: janey129@gmail.com
Your Representative's Name	Mailing Address (with zip code)	Telephone:
		Email:
Property Owner(s) name(s) Julia Bruins	Mailing Address (with zip code) 771 Guerrero St. #3 San Francisco, CA 94110	Telephone: (510) 499-8553
		Email: juliebruins@gmail.com
Property Manager or Management Co. (if applicable)	Mailing Address (with zip code)	Telephone:
		Email:

Number of units on the property: 3

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

I rent 1 bedroom in a 2 bedroom house + unit in backyard

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

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

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

<input checked="" type="checkbox"/> (d) No written notice of Rent Program was given to me together with the notice of increase(s) I am contesting. (Only for increases noticed after July 26, 2000.)
<input checked="" type="checkbox"/> (e) The property owner did not give me the required form "Notice of the Rent Adjustment Program" at least 6 months before the effective date of the rent increase(s).
<input checked="" type="checkbox"/> (f) The rent increase notice(s) was (were) not given to me in compliance with State law.
<input checked="" type="checkbox"/> (g) The increase I am contesting is the second increase in my rent in a 12-month period.
<input type="checkbox"/> (h) There is a current health, safety, fire, or building code violation in my unit, or there are serious problems with the conditions in the unit because the owner failed to do requested repair and maintenance. (Complete Section III on following page)
<input checked="" type="checkbox"/> (i) The owner is providing me with fewer housing services than I received previously or is charging me for services originally paid by the owner. (OMC 8.22.070(F): A decrease in housing services is considered an increase in rent. A tenant may petition for a rent adjustment based on a decrease in housing services.) (Complete Section III on following page)
<input type="checkbox"/> (j) My rent was not reduced after a prior rent increase period for a Capital Improvement had expired.
<input checked="" type="checkbox"/> (k) The proposed rent increase would exceed an overall increase of 30% in 5 years. (The 5-year period begins with rent increases noticed on or after August 1, 2014).
<input type="checkbox"/> (l) I wish to contest an exemption from the Rent Adjustment Ordinance because the exemption was based on fraud or mistake. (OMC 8.22, Article I)
<input type="checkbox"/> (m) The owner did not give me a summary of the justification(s) for the increase despite my written request.
<input type="checkbox"/> (n) The rent was raised <u>illegally</u> after the unit was vacated as set forth under OMC 8.22.080.

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

Date you moved into the Unit: January 2019 Initial Rent: \$ 900 /month

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

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

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

Date you received the notice (mo/day/year)	Date increase goes into effect (mo/day/year)	Monthly rent increase		Are you Contesting this Increase in this Petition?*	Did You Receive a Rent Program Notice With the Notice Of Increase?
		From	To		
12/1/2019	1/1/2020	\$ 900	\$ 930	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
1/29/2020	3/1/2020	\$ 930	\$ 931.5	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		\$	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Have you ever filed a petition for this rental unit?

- Yes  
 No

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

**III. DESCRIPTION OF DECREASED OR INADEQUATE HOUSING SERVICES:**

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

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

Yes  No

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

Yes  No

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

Yes  No

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

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

Please attach documentary evidence if available.

You have the option to have a City inspector come to your unit and inspect for any code violation. To make an appointment, call the City of Oakland, Code of Compliance Unit at (510) 238-3381.

**IV. VERIFICATION:** The tenant must sign:

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

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

1/30/2020  
\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

\_\_\_\_\_  
Date

## **VI. IMPORTANT INFORMATION:**

### **Time to File**

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

### **File Review**

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

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

- Printed form provided by the owner
- Pamphlet distributed by the Rent Adjustment Program
- Legal services or community organization
- Sign on bus or bus shelter
- Rent Adjustment Program web site
- Other (describe): Luhar new year festival - oakland chinatown

To the City of Oakland Rent Adjustment Board,

I am writing to contest my rent increase based on several grounds and bring this action for rent adjustment - for the sum total of my overpayment in utilities in 2019 and in tandem my current \$30 rental increase starting on January 2020 - from Julia Bruins, property owner/landlord:

1) Pursuant to Rent Adjustment Board Regulations Appendix A, 16.1.10, a landlord is not allowed to divide the utility bill between units. Ms. Bruins currently has three individual leases/units on this property. I have paid utilities on a shared meter split among three people (myself included) since my move-in in January 2019.

2) Since the landlord's move-out date in August 2019 of the back unit and her renting out that unit, there has been a noticeable decrease in the utility bills subsequently. This lowered utility bill is largely attributable to Ms. Bruins leaving the property and her electric car no longer being charged daily in the garage (please refer to the list of my utility bills).

3) Since the owner charged for utility bills separately, this is also an unlawful increase in rent and a decrease in housing services (OMC § 22.070 [F])

4) Ms. Bruins served my \$30 monthly increase on 12/1/2019 via email for the increase to be in effect on 1/1/2020. I did not receive a proper RAP notice prior to this at any point.

5) I notified the landlord over the phone of her violating the Oakland rental housing laws on 1/28/2020. She was not agreeable to my request for rent adjustment to account for the overpayment in utility bills and

000272

the improper monthly rent increase.

6) The landlord delivered yet another rent increase on 1/29/2020, for the monthly rent to be increased to \$931.50 (from \$930), effective 3/1/2020. This also was served without a RAP notice and does not comply with the Oakland rental law stipulating that rent increases can only happen after 12 months of the last rent increase.

utility bill

---

1/27/19 - \$70.01

3/4/19 - \$112.33

3/31/19 - \$74.31

4/30/19 - \$42.18

6/1/19 - \$51.33

7/1/19 - \$54.57

7/29/19 - \$37.01

9/30/19 - \$41.08

12/1/19 - \$32.07

12/30/19 - \$52.03

---

Total cost : \$566.92

CITY OF OAKLAND



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

Housing and Community Development Department  
Rent Adjustment Program

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

**SETTLEMENT AGREEMENT AND DISMISSAL**

**CASE NUMBER AND NAME:** T20-0056, Yu v. Bruins

**PROPERTY ADDRESS:** 2012 Linden Street  
Oakland, CA

**APPEARANCES:** Jane Yu, Tenant  
Julia Bruins, Owner

**I. INTRODUCTION**

The following Agreement is intended to end the dispute to resolve the issues presented in the Petition and Response in the case described above.

Jane Yu, tenant, and Julia Bruins, owner, (“the Parties”) have reached a settlement of the tenants’ claims on June 24, 2020, in the offices of the Rent Adjustment Program, as a result of a settlement conference conducted by Hearing Officer Élan Consuella Lambert.

In consideration of the mutual promises contained herein, the parties agree as follows:

**II. TERMS AND CONDITIONS**

1. The parties agree that Petition No. T20-0056, Yu v. Bruins, resolves all claims in the tenant’s petition and will be dismissed with prejudice.
2. The parties intend this Agreement to be binding and enforceable in a court of law.

000275

3. The parties understand that this Agreement is a compromise and does not constitute a finding or admission of any violation of law.
4. The parties agree to the following:
  - a. The base rent of the subject unit is \$900.00 per month.
  - b. The owner agrees to pay, and the tenant agrees to accept the sum of \$249.07. per month from September 2020 to November 2020, in full and final satisfaction of all issues to date. Accordingly, the tenant will pay rent in the amount of \$650.93, from September 2020 to November 2020.
  - c. The RAP Notice was served on the tenant and effective June 1, 2020.
  - d. The rent for the subject unit is \$931.50, effective December 1, 2020.
5. The parties acknowledge that there is a covenant of good faith and fair dealing included in this Agreement and further acknowledge their obligation to fulfill the terms of this Agreement in good faith and to deal fairly with each other in doing so.
6. The Rent Adjustment Program shall have continuing jurisdiction over any dispute that arises concerning this Agreement. The parties agree to submit disputes arising out of this Agreement to arbitration before a Rent Adjustment Program Hearing Officer.

### **III. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement between the Parties and takes the place of any and all prior agreements, either oral or in writing. This Agreement is considered a contract by the parties.

### **IV. GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be governed by and interpreted in accordance with, the laws of the State of California.

//

**V. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY**

If any provision of this Agreement is held in whole or in part to be invalid, void, contrary to public policy or any law, or unenforceable for any reason, the remainder of that provision and the entire Agreement will be severable and shall remain in full force and effect.

**VI. COUNTERPART CLAUSE**

This Settlement agreement may be executed in any number of counterparts, by using signatures, including but not limited to facsimile or electronic (PDF), each of which when executed and delivered shall constitute a duplicate original. Still, all counterparts together shall constitute a single agreement.

**VI. ATTORNEYS' FEES AND COSTS**

The parties acknowledge and agree that each of them will bear their own costs, expenses, and attorneys' fees arising out of or connected with each party's Petition or Response.

The parties hereby represent that they are authorized to enter into this Agreement. The parties further acknowledge that they have signed the Agreement of their own free will and not under duress from any participant in the mediation process, including the mediator.

The foregoing is agreed to and executed on June 24, 2020, Oakland, California, by:

DocuSigned by:  
*Jane Yu*  
 \_\_\_\_\_ Tenant  
 Jane Yu

*[Handwritten Signature]*  
 \_\_\_\_\_ Owner  
 Julia Brains

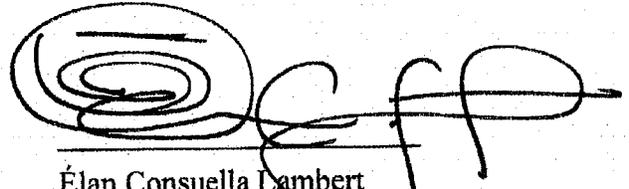
//

//

**ORDER OF DISMISSAL**

Pursuant to the withdrawal of the petition in the settlement agreement above, Petition Number T20-0056, Yu v. Bruins, is dismissed with prejudice.

DATED: June 24, 2020



Élan Consuella Lambert  
Administrative Hearing Officer  
Rent Adjustment Program

**PROOF OF SERVICE**  
**Case Number T20-0056**

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, 5<sup>th</sup> Floor, Oakland, California 94612.

Today, I served the attached **SETTLEMENT AGREEMENT AND DISMISSAL** 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, 5<sup>th</sup> Floor, Oakland, California, addressed to:

**Owner:**

Julia Bruins  
771 Guerrero Street, Unit #3  
San Francisco, CA 94110

**Tenant:**

Jane Yu  
2012 Linden Street  
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 11, 2020** in Oakland, California.

  
\_\_\_\_\_  
Robert F. Costa  
Oakland Rent Adjustment Program

**000279**

please note that I signed the settlement agreement T20-005, Yu v. Bruins on 8/27/2020 as noted/validated by DocuSign records (signed through my work email account)



**Certificate Of Completion**

Envelope Id: 0911FE997886410793CDC28DF29522A6

Status: Completed

Subject: Please DocuSign: T20-0056 Settlement Agreement.pdf

Source Envelope:

Document Pages: 4

Signatures: 1

Envelope Originator:

Certificate Pages: 4

Initials: 0

Jeffrey Kalief

AutoNav: Enabled

1875 Connecticut Ave NW, 10th Floor  
nil

Envelope Stamping: Enabled

Washington, DC 20009

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

admin@kaliellpc.com

IP Address: 68.94.225.163

**Record Tracking**

Status: Original

Holder: Jeffrey Kalief

Location: DocuSign

8/27/2020 5:40:05 PM

admin@kaliellpc.com

**Signer Events**

Jane Yu

janey129@gmail.com

Security Level: Email, Account Authentication (None)

**Signature**



Signature Adoption: Pre-selected Style  
Using IP Address: 68.94.225.163

**Timestamp**

Sent: 8/27/2020 5:40:34 PM

Viewed: 8/27/2020 5:41:35 PM

Signed: 8/27/2020 5:42:02 PM

**Electronic Record and Signature Disclosure:**

Accepted: 8/27/2020 5:41:35 PM

ID: 8b23576d-1eea-4011-9679-6f1b23824859

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/27/2020 5:40:34 PM
Certified Delivered	Security Checked	8/27/2020 5:41:35 PM
Signing Complete	Security Checked	8/27/2020 5:42:02 PM
Completed	Security Checked	8/27/2020 5:42:02 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **CONSUMER DISCLOSURE**

From time to time, Kaniel PLLC (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures

electronically from us.

**How to contact Kaliel PLLC :**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [admin@kalielpllc.com](mailto:admin@kalielpllc.com)

**To advise Kaliel PLLC of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [admin@kalielpllc.com](mailto:admin@kalielpllc.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

**To request paper copies from Kaliel PLLC**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [admin@kalielpllc.com](mailto:admin@kalielpllc.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with Kaliel PLLC**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [admin@kalielpllc.com](mailto:admin@kalielpllc.com) and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

\*\* These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC CONSUMER DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Kaliel PLLC as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Kaliel PLLC during the course of my relationship with you.



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 form - Yu v. Bruins

(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	<u>Julia Bruins</u>
Address	<u>53 1/2 Albion st.</u>
City, State, Zip	<u>San Francisco, CA 94103</u>

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 3/25/2021 (insert date served).

Jane Yu  
PRINT YOUR NAME

  
SIGNATURE

3/25/2021  
DATE

 CITY OF OAKLAND	<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>

Appellant's Name <i>Jane Yu</i>		<input type="checkbox"/> Owner <input checked="" type="checkbox"/> Tenant	
Property Address (Include Unit Number) <i>2012 Linden St., Oakland, CA 94607</i>			
Appellant's Mailing Address (For receipt of notices) <i>2012 Linden St., Oakland, CA 94607</i>		Case Number <i>T21-0019</i>	Date of Decision appealed <i>3/25/2021</i>
Name of Representative (if any)		Representative's Mailing Address (For notices)	

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

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

For more information phone (510) 238-3721.

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

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

**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 March 25, 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>	Julia Bruins
<b><u>Address</u></b>	53 1/2 Albion St., San Francisco, CA 94103
<b><u>City, State Zip</u></b>	
<b><u>Name</u></b>	
<b><u>Address</u></b>	
<b><u>City, State Zip</u></b>	

	3/25/2021
SIGNATURE of APPELLANT or DESIGNATED REPRESENTATIVE	DATE

For more information phone (510) 238-3721.

### **IMPORTANT INFORMATION:**

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

- Appeals filed late without good cause will be dismissed.
- You must provide all of the information required or your appeal cannot be processed and may be dismissed.
- Any supporting argument or documentation to be considered by the Board must be received by the Rent Adjustment Program with a proof of service on opposing party within 15 days of filing the appeal.
- 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 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.
- 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.**

## Appeal to Hearing Decision – Yu v. Bruins T21-0019

**INTRODUCTION**

I object to the Hearing Officer's administrative dismissal of my recent petition. I understand my situation is unique in that I am contesting a resolution to a former petition. However, this presents a potentially beneficial bridge for clearer policies to be outlined for a miscellaneous case such as this. On June 24, 2020, the T20-0056 settlement agreement I had signed with the Property Owner was to resolve the issues therein, but it still had a few cracks upon discovery that constitute a violation of the law and contradict Oakland's Municipal Code. It is my intention to fulfill the covenant of good faith in that settlement agreement, minimize future burdens (on all parties including RAP as I understand a perpetually reopened case is impractical), and appeal to a higher order of justice.

My matter, as you know, concerns the procedural oversight with the initially served RAP notice and an illegal rent increase amount applied. This dismissal of my petition (T21-0019) denies the partial RAP notice served and fails to correct the misrepresentation of the allowable Consumer Price Index according to proof as set forth.

**FACTUAL ALLEGATIONS**

First: The property owner's claims (in her response to my recent T21-0019 petition) are false. **I swear under penalty of perjury** that the landlord did not serve me the initial RAP notice in three languages but only in English, which renders it void, and any subsequent rent increase void as well. Pursuant to OMC 8.22.060, it emphasizes that "The Owner must give the initial RAP notice in three languages: English, Spanish, and Chinese."

One can conclude this omission was misrepresented in the settlement conference since the RAP board did not require the property owner to submit a copy of the initial RAP notice to their office. The office received a copy of the Property Owner Response whereas I received the Property Owner Response along with my first partial RAP notice. Otherwise, this discrepancy would have been flagged by the Hearing Officer or Analyst, I assume, and addressed before the conference. I deferred to the Hearing Officer as she confirmed with me the date I received my RAP notice. However, the Hearing Officer stating in the dismissal that the "RAP Notice was served on the tenant" obscures the simple fact the RAP notice served did not comply with OMC 8.22.060.

I have a complete copy saved of the Owner's response to my petition that contains the partial RAP notice. I take oath that I did not discard, delete or modify her response to my petition with the RAP notice. Additionally, prior to the settlement conference, I emailed my assigned Case Analyst (Robert Costa) to confirm receipt of the Landlord's response as well as having received the RAP notice—in English alone. Whether he read my email in full is another question (see unaltered electronic proof attached). I preserved this evidence as I have with my tax documents in case they may be relevant later. After all, even the IRS can make mistakes. The landlord's allegations that she had served me the RAP notice in multiple languages do not override the material facts and proof. If obeying this law literally, then any initial rent increase

is still rendered invalid altogether because the initial RAP notice itself was incomplete and modified by the landlord. This would eliminate the need for my next argument but I will go on.

Second: My rent increase must be governed by law and subject to Chapter OMC 8.22. My effective date for my rent increase was set for December 1, 2020 during the Local Emergency. Pursuant to Chapter OMC 8.22 and the CPI index, the applicable rate for the relevant time period should be 2.7%, not 3.15%. This administrative dismissal is inconsistent with this chapter:

#### **8.22.065**

**Notwithstanding any other provision of this Chapter, owners may increase rents only for increases based on the CPI Rent Adjustment or Banking, or by filing a petition to increase rent in excess of that amount. Any rent increase not based on the CPI Rent Adjustment or Banking that is not first approved by the Rent Adjustment Program is void and unenforceable.**

**Rent increases are subject to the requirements of this Chapter and Regulations.**

The changes reflected in this section 8.22.065 apply only to rent increases noticed on or after February 1, 2017.<sup>1</sup>

When contemplated, the administrative dismissal does not adhere to California ethical rules or philosophy. The allowable rent increase topic on the Oakland CA gov website highlights that, "The Oakland Rent Adjustment Ordinance provides for an Allowable Annual Rent Increase based on the regional Consumer Price Index ("CPI") without a petition. A new CPI rate takes effect each July 1, and remains in effect for rent increases through June 30 of the following calendar year. **The annual CPI rate for rent increases effective July 1, 2020 through June 30, 2021, is 2.7%.**"<sup>2</sup>

My initial rent increase for this unit was to begin on December 1, 2020. Please note that my rent increase took effect not before July 1, 2020 but six months after in December 1, 2020. Nowhere does it stipulate in a disclaimer or even imply above that an agreement to a CPI index takes legal precedence before the actual start date of the rent increase. The settlement agreement also acknowledges that disputes can still arise concerning the agreement, so the case reopening is not out of question. Also, if we want get technical about dates, I signed that agreement on August 27, 2020 (DocuSign certificate of completion attached). I went along with this agreement without being aware of the CPI cycle and with the assumption that a CPI rate would be relevant six months later. To me, an "effective date" is tautological: The rent increase was effective December 1, 2020. Unequivocally, the maximum allowable amount is 2.7%.

---

<sup>1</sup>[https://library.municode.com/ca/oakland/codes/code\\_of\\_ordinances?nodeId=TIT8HESA\\_CH8.22REREDEV\\_ARTVTEPROR](https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.22REREDEV_ARTVTEPROR)

<sup>2</sup> <https://www.oaklandca.gov/topics/allowable-rent-increases>

Furthermore, on another Oakland CA gov page, it highlights the same purpose of the Oakland Eviction Moratorium to protect Oakland's tenants:

**This ordinance extends the eviction moratorium that was originally adopted by City Council on Friday, March 27, 2020.**

**The extended moratorium will prohibit most evictions, effective immediately and continuing through the end of the Local Emergency. Additionally, the moratorium prohibits residential rent increases above 2.7% (the Consumer Price Index, or CPI) and prohibits any late fees related to COVID-19 issues in residential units.<sup>3</sup>**

The Consumer Price Index is noted in parentheses to ensure that their mission is to abide by what is allowable, although this reads that Oakland issued a maximum allowable increase of CPI of 2.7% since 3/27/2020, well before my settlement hearing on 6/24/2020. Whatever the CPI rate was in the July 1, 2019 – June 30, 2020 cycle would not apply to my rent increase amount on December 1, 2020. Again, the fact that I verbally agreed to before or signed after July 1, 2020 is immaterial, as it is obvious that we were already *in a state of emergency* when we had the settlement conference which is why a unique moratorium had to be enacted immediately to address this crisis. What matters is when the rent increase is *in effect* under the technicality of the CPI index, as explained by Section 4 of the Eviction Moratorium:

**SECTION 4. Rent Increase Moratorium.** For rental units regulated by Oakland Municipal Code 8.22.010 et seq, any notice of rent increase in excess of the CPI Rent Adjustment, as defined in Oakland Municipal Code Section 8.22.020, shall be void and unenforceable if the notice is served or has an effective date during the Local Emergency, unless required to provide a fair return [...].<sup>4</sup>

One of the footholds for my initial petition T20-0056 was that despite the fact that I had signed an allegedly binding rental lease with the landlord to pay for utilities, several provisions pertaining to that rental lease agreement turned out to be void, and therefore, are unenforceable as the law has jurisdiction over illegal agreements. Similarly, the Hearing Officer also invoked that same principle when the landlord asked what ramifications she could pursue given that she had had no knowledge of RAP prior to the settlement and that I, the tenant, had agreed to pay for utilities. The Hearing Officer stated that no one is allowed to unilaterally bend the law to accommodate illegalities in a rental lease. In parallel, my current petition/appeal is analogous to the structure of case T20-0059--that even though I agreed to the CPI rate of 3.15%, that rate is not allowable since my increase went into effect under a lower CPI rate of 2.7%. This illegal rent increase will affect and inflate every rent increase going forward, which is unjust.

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<sup>3</sup> <https://www.oaklandca.gov/resources/oaklands-moratorium-on-residential-and-commercial-evictions>

<sup>4</sup> <https://oakland.legistar.com/LegislationDetail.aspx?ID=4406542&GUID=EAF35294-F356-4895-A87A-0C1B9CE4D0C3&Options=&Search=>

To reiterate, since my tenancy is covered by Oakland's rent control ordinance and the Eviction Moratorium, then *during the emergency period*, my effective rent increase on December 1, 2020 cannot be higher than the approved maximum CPI. We were also in an emergency period starting on March 27, 2020, well before my settlement agreement date on June 24, 2020. If the rent increase is stated as "effective, December 1, 2020," then the correct CPI needs to apply.

#### **CONCLUSION**

Due to Oakland's Eviction Moratorium, this rent control protection is even stronger while we are still in the wake of the unprecedented Covid-19 pandemic that has already escalated the tensions among landlords and tenants. Put plainly, there is a structural and systemic inequality between the landlord (advantaged) and tenant (disadvantaged) which is why tenant protection laws have been put in place (such as the passage of AB-1482 and addendums to the OMC). This is even more pertinent in the era of Covid-19 and the Bay Area which deals with a housing crisis and displacement due to gentrification.

I have paid my rent on time, every month, since the beginning of my lease and have maintained the property respectfully. That is all a landlord could ask for from a tenant who gains no equity in the property. I agreed to an unfair engagement on June 24, 2020 under the laws asserted above. As a tenant, I ask for my full rights to be applied accordingly and seek an adjustment to my allowable rent increase amount, retroactively enforced.



Jane Yu <janey129@gmail.com>

**Exhibits for Case# T20-0056**

**Costa, Robert** <RCosta@oaklandca.gov>  
To: "janey129@gmail.com" <janey129@gmail.com>, Julie Bruins <juliebruins@gmail.com>

Ms. Yu:

Your message and exhibits will forwarded to the hearing officer for the hearing to take place on Tuesday June 23, 2020.

Ms. Julie Bruins is cc'd in this message to receive this information as well.

Should either party add more information to be considered by the hearing officer, please include the opposite party in your communication with our Rent Adjustment Office.

Best regards,

**Robert F. Costa**

City of Oakland Housing & Community Development Department  
Rent Adjustment Program Analyst II

**Mailing Address:** Rent Adjustment Program / 250 Frank Ogawa Plaza, Suite 5313

Oakland, CA 94612

TEL. 510-238-2079 – Direct

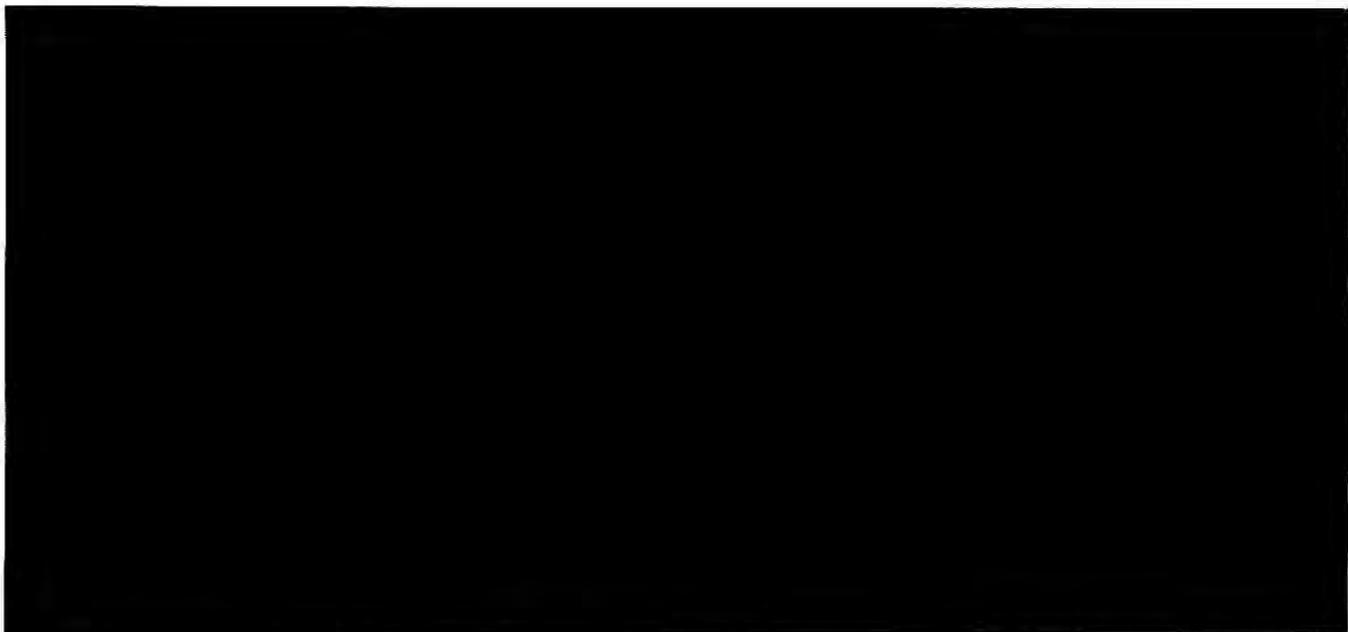
TEL. 510-238-3721 – Main Number

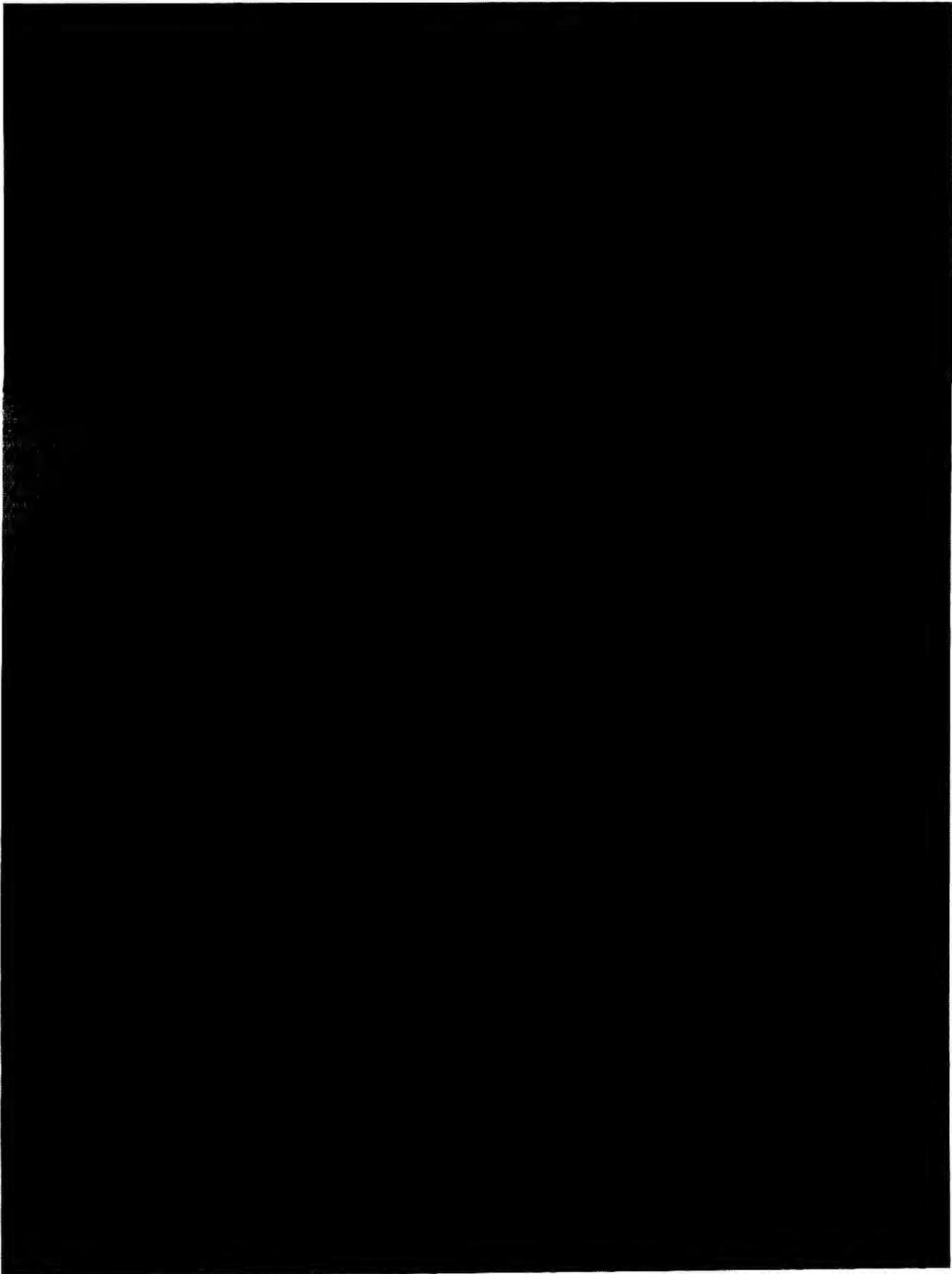
FAX. 510-238-6181

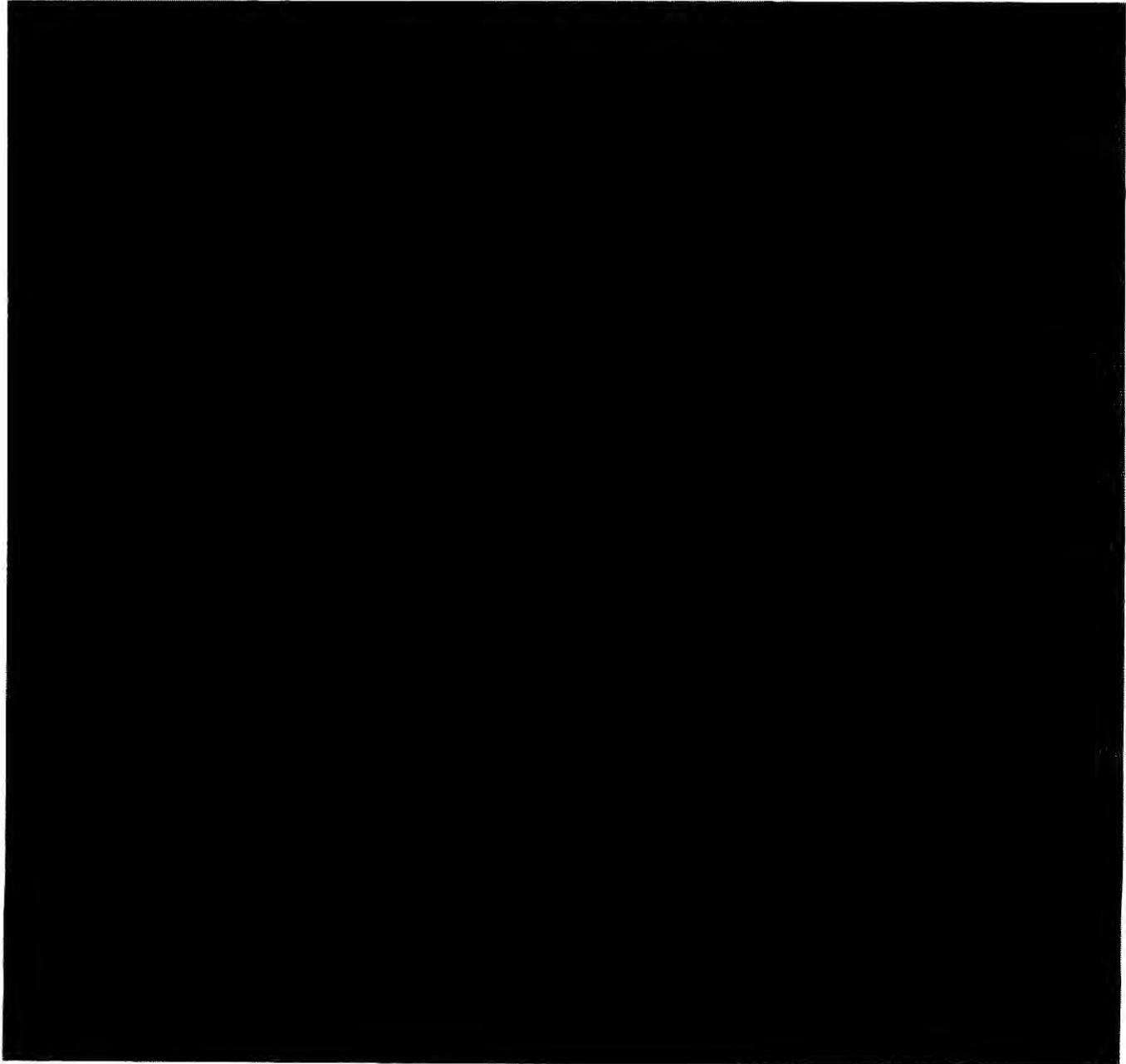
Email: [RCosta@oaklandca.gov](mailto:RCosta@oaklandca.gov)

**From:** Jane Yu [mailto:janey129@gmail.com]  
**Sent:** Friday, June 19, 2020 2:41 PM  
**To:** Costa, Robert <RCosta@oaklandca.gov>  
**Subject:** Re: T20-0056

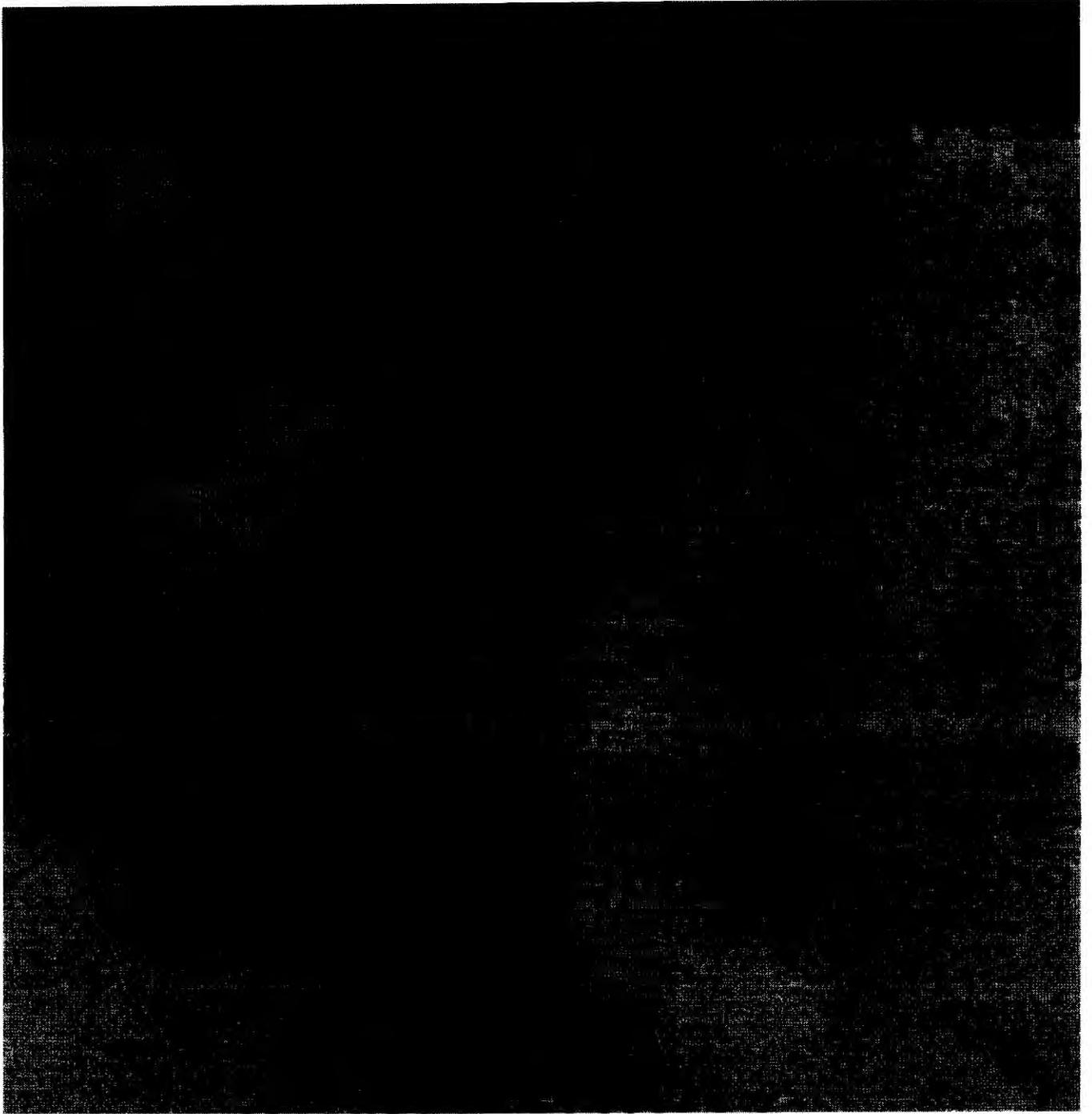
Hi Roberto, please note that I received the RAP notice in June in the mail and that I only received it in English.











On Wed, Jun 17, 2020 at 1:00 PM Jane Yu <janey129@gmail.com> wrote:

Thank you!

On Wed, Jun 17, 2020 at 12:56 PM Costa, Robert <RCosta@oaklandca.gov> wrote:

I can call you in approximately 45minutes. Thanks for reaching out about your case.

RCosta

3/24/2021

Gmail - Exhibits for Case# T20-0056

**From:** Jane Yu <janey129@gmail.com>  
**Sent:** Wednesday, June 17, 2020 12:47 PM  
**To:** Costa, Robert <RCosta@oaklandca.gov>  
**Subject:** Re: T20-0056

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Hi Roberto,

I was hoping to speak with you before my case next Tuesday and make sure I have the documents all ready. Can you let me know when you're free or call me at (650) 773-3466?

Thank you,

Jane

[www.nicheknits.com](http://www.nicheknits.com)

On Fri, Jun 5, 2020 at 2:26 PM Ma, Susan <SMa@oaklandca.gov> wrote:

The analyst assigned to T20-0056 is Roberto Costa. He can be reached at RCosta@oaklandca.gov or (510) 238 - 2079.

Cordially,

Susan  
City of Oakland  
Housing and Community Development Department  
Rent Adjustment Program

Program Analyst 2

250 Frank H. Ogawa Plaza, 5th Floor  
Oakland, CA 94612  
Main: (510) 238 - 3721

Telephone: (510) 238 - 7108

Fax: (510) 238 - 6181

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000298



P.O. BOX 70243, OAKLAND, CA 94612-2043  
 Department of Housing and Community Development  
 Rent Adjustment Program

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

### NOTICE TO TENANTS OF THE RESIDENTIAL RENT ADJUSTMENT PROGRAM

- Oakland has a Rent Adjustment Program ("RAP") that limits rent increases (Chapter 8.22 of the Oakland Municipal Code) and covers most residential rental units built before 1983. For more information on which units are covered, contact the RAP office.
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- **Contesting a Rent Increase:** You can file a petition with the RAP to contest unlawful rent increases or decreased housing services. To contest a rent increase, you must file a petition (1) within ninety (90) days of the notice of rent increase if the owner also provided this Notice to Tenants with the notice of rent increase; or (2) within 120 days of the notice of rent increase if this Notice to Tenants was not given with the notice of rent increase. If the owner did not give this Notice to Tenants at the beginning of your tenancy, you must file a petition within ninety (90) days of first receiving this Notice to Tenants. Information and the petition forms are available from the RAP drop-in office at the Housing Assistance Center: 250 Frank H. Ogawa Plaza, 6th Floor, Oakland and at: <http://www2.oaklandnet.com/Government/o/hcd/o/RentAdjustment>.
- If you contest a rent increase, you must pay your rent with the contested increase until you file a petition. If the increase is approved and you did not pay the increase, you will owe the amount of the increase retroactive to the effective date of increase.
- Oakland has eviction controls (the Just Cause for Eviction Ordinance and Regulations, O.M.C. 8.22) which limit the grounds for evictions in covered units. For more information contact the RAP office.
- Oakland charges owners a Rent Program Service Fee per unit per year. If the fee is paid on time, the owner is entitled to get half of the fee from you. Tenants in subsidized units are not required to pay the tenant portion of the fee.
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- The owner \_\_\_ is \_\_\_ is not permitted to set the initial rent on this unit without limitations (such as pursuant to the Costa-Hawkins Act). If the owner is not permitted to set the initial rent without limitation, the rent in effect when the prior tenant vacated was \_\_\_\_\_.

#### TENANTS' SMOKING POLICY DISCLOSURE

- Smoking (circle one) IS or IS NOT permitted in Unit Main House the unit you intend 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 tenant's building, attach a list of units in which smoking is permitted.)
- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on 6/3/2020  
 (Date)

[Signature]  
 (Tenant's signature)

此份屋崙(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.

# CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043  
Department of Housing and Community Development  
Rent Adjustment Program

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

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- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on 6/3/2020  
(Date)

  
(Tenant’s signature)

此份屋崙 (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.

----- Forwarded message -----  
 From: Jane Yu <janey129@gmail.com>  
 Date: Fri, Jun 19, 2020 at 2:41 PM  
 Subject: Re: T20-0056  
 To: Costa, Robert <RCosta@oaklandca.gov>

Hi Roberto, please note that I received the RAP notice in June in the mail and that I only received it in English.



**CITY OF OAKLAND**  
**RENT ADJUSTMENT PROGRAM**  
 250 Frank H. Ogawa Plaza, Suite 5313  
 Oakland, CA 94612-0243  
 (510) 238-3721

**RECEIVED**  
 For date stamp: **MAY 29 2020**  
**RENT ADJUSTMENT PROGRAM**  
**PROPERTY OWNER**  
**RESPONSE**

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

**CASE NUMBER T 20-0056**

Your Name <b>Julia Bruins</b>	Complete Address (with zip code) <b>771 Guerrero St. Apt. 3 San Francisco, CA 94110</b>	Telephone: <b>(510) 499-8553</b> Email: <b>juliebruins@gmail.com</b>
Your Representative's Name (if any)	Complete Address (with zip code)	Telephone: Email:
Tenant(s) Name(s) <b>Jane Yu</b>	Complete Address (with zip code) <b>2012 Linden St. Oakland, CA 94607</b>	
Property Address (If the property has more than one address, list all addresses) <b>see above address on Linden</b>		Total number of units on property <b>3</b>

Have you paid for your Oakland Business License? Yes  No  Lic. Number: **00223997**  
 The property owner must have a current Oakland Business License. If it is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Have you paid the current year's Rent Program Service Fee (\$68 per unit)? Yes  No  APN: \_\_\_\_\_  
 The property owner must be current on payment of the RAP Service Fee. If the fee is not current, an Owner Petition or Response may not be considered in a Rent Adjustment proceeding. Please provide proof of payment.

Date on which you acquired the building: **12/04/09**

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

Type of unit (Circle One): **House** / Condominium/ Apartment, room, or live-work

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

Rev. 7/12/2019

000301

CITY OF OAKLAND



P.O. BOX 70243, OAKLAND, CA 94612-2043  
Department of Housing and Community Development  
Rent Adjustment Program

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- Smoking (circle one) IS or IS NOT permitted in Unit 1114 the unit you intend to rent.
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- There (circle one) IS or IS NOT a designated outdoor smoking area. It is located at \_\_\_\_\_.

I received a copy of this notice on \_\_\_\_\_ (Date) \_\_\_\_\_ (Tenant's signature)

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.

On Wed, Jun 17, 2020 at 1:00 PM Jane Yu <[janey129@gmail.com](mailto:janey129@gmail.com)> wrote:  
Thank you!

On Wed, Jun 17, 2020 at 12:56 PM Costa, Robert <[RCosta@oaklandca.gov](mailto:RCosta@oaklandca.gov)> wrote:  
I can call you in approximately 45minutes. Thanks for reaching out about your case.

RCosta

---

**From:** Jane Yu <[janey129@gmail.com](mailto:janey129@gmail.com)>  
**Sent:** Wednesday, June 17, 2020 12:47 PM

000302

**To:** Costa, Robert <[RCosta@oaklandca.gov](mailto:RCosta@oaklandca.gov)>

**Subject:** Re: T20-0056

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Hi Roberto,

I was hoping to speak with you before my case next Tuesday and make sure I have the documents all ready. Can you let me know when you're free or call me at (650) 773-3466?

Thank you,  
Jane

[www.nicheknits.com](http://www.nicheknits.com)

On Fri, Jun 5, 2020 at 2:26 PM Ma, Susan <[SMa@oaklandca.gov](mailto:SMa@oaklandca.gov)> wrote:  
The analyst assigned to T20-0056 is Roberto Costa. He can be reached at [RCosta@oaklandca.gov](mailto:RCosta@oaklandca.gov) or (510) 238 - 2079.

Cordially,

Susan  
City of Oakland  
Housing and Community Development Department  
Rent Adjustment Program  
Program Analyst 2  
[250 Frank H. Ogawa Plaza, 5th Floor](#)  
[Oakland, CA 94612](#)  
Main: (510) 238 - 3721  
Telephone: (510) 238 - 7108  
Fax: (510) 238 - 6181

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[www.nicheknits.com](http://www.nicheknits.com)

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[www.nicheknits.com](http://www.nicheknits.com)

**000303**

Julia Bruins

April 7, 2021

Property Owner Response to the Appeal Decision Yu v. Bruins T21-0019

## Introduction

I support the dismissal of the case Yu v. Bruins T21-0019. I believe that petitioning to change the terms of a settlement (T20-0056) that both parties agreed to a few months ago is an unreasonable use of the petitioning process, and that the subsequent petition and appeal are based on a falsehood.

## Statement of Facts

1. The RAP notice was physically delivered in all three languages in person at the residence in question. The tenant claims that this delivery did not happen. As there is no paper trail here, it seems to be my word against hers.
2. The Final Settlement of case T20-0056, Yu v. Bruins states (1) *"The Parties agree that Petition number T20-0056, Yu v. Bruins resolves all claims in the tenant's petition and will be dismissed with prejudice,"* as well as (2) *"The parties intend this Agreement be binding and enforceable in a court of law."*
3. In her appeal to the dismissal of case T21-0019 Ms. Yu states that *"the fact that I verbally agreed to before or signed [the Final Settlement of case T20-0056] after July 1, 2020 is immaterial..."*

## Argument

Based on the facts above, the matter of whose word is to be believed concerning the delivery of the RAP sheet is of central importance. I swear that I did deliver these documents in all three languages, while Ms. Yu contends the opposite. The tenant's appeal states that her verbal and written agreements are "immaterial," (p.3 of Ms. Yu's appeal). I argue the contrary: that agreeing to something both verbally and by signing documents is in fact very important.

Ms. Yu, signed the "final" settlement documents on 8/27/20, fifty-eight days after the new CPI rate was established on July 1, 2020. Ms. Yu waited nearly 2 months between the hearing decision and when she decided to sign it. This two month period seems a good period of time for Ms. Yu to find what she calls "cracks" in the agreement. The CPI-based allowable rent increase does change each year on July 1st, a fact that is unchanged by the pandemic.

## Conclusion

I offer reasonable rent and maintain a safe property while also trying to earn a living teaching private piano lessons and as an elementary school teacher. In the

**000304**

original agreement of the Final Settlement of case T20-0056, I agreed to pay back six months of a rent increase as well as PG&E bills that Ms. Yu had initially agreed to pay for in her initial lease agreement, and have subsequently been paying these utility bills for her. This is a significant amount for me to pay monthly, her share equaling an average of roughly \$65 per month.

I issued the initial rent increase in December of 2019 simply to aid in maintaining the property well. The tenant and I went through the original lengthy process of the petition, and we both agreed to it and signed it. I have done everything in good faith to provide a safe and habitable home for Ms. Yu as well as follow the letter of the law. I ask that the original agreement be respected and that the petition process not be used to an unreasonable degree.

Julia Bruins

**000305**



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 Response by owner  
(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	Jane Yu
Address	2012 Linden St.
City, State, Zip	Oakland, CA 94607

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

Name	
Address	
City, State, Zip	

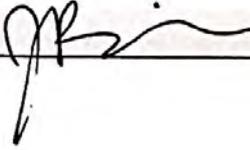
Name	
Address	
City, State, Zip	

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and the documents were served on 4/7/2021 (insert date served).

Julia Bruins

PRINT YOUR NAME



SIGNATURE

4/7/21

DATE



## MEMORANDUM

**Date:** May 7, 2021  
**To:** Members of the Housing, Rent Residential & Relocation Board (HRRRB)  
**From:** Oliver Luby, Deputy City Attorney  
**Re:** **Appeal Summary: T18-0311, Cervantes v. Fong**  
**Appeal Hearing Date:** June 17, 2021

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Property Address: 1791 28<sup>th</sup> Avenue, Oakland, CA  
Appellant/Owner: May Fong and Grant Fong  
Respondent/Tenant: Maria Amezcuita and Luis Ayala Cervantes

### BACKGROUND

On June 12, 2018, tenants Maria Amezcuita and Luis Ayala Cervantes filed a petition contesting rent increases and claiming code violations and decreased housing services. The contested rent increases included the following:

- 4/26/18 – from \$1,200 to \$1,400
- 10/3/17 – from \$945 to \$1,200
- 9/5/17 – from \$945 to \$1,233

On October 3, 2019, the Hearing Officer issued a Hearing Decision, denying the rent increases in the 2017 lease (\$1,233 for the first three months, \$1,400 thereafter) on the grounds that the owners did not seek prior approval from the Rent Adjustment Program of increases in excess of CPI or banking, and stating that the tenants' base rent remains \$945.00. The Decision ordered restitution for rent overpayment and past decreased housing services in the amount of \$6,965.25 (\$6,729 for rent paid 9/1/17 to 11/1/17 and 12/1/17 to 10/1/19; \$236.25 for problems with electrical outlets, windows, and drawers, 3/1/18 to 7/1/18), amortized over 24 months. The Decision denied the remaining decreased housing services claims.

Owner May Fong filed an appeal on October 9, 2019, on various grounds, including asserting that the rent was \$1,400 per the 2017 lease, that the original tenant had sublet the unit to the petitioners without the owners' consent, and that the owners were unaware that the petitioners were illegal subtenants until August 2017.

The owners also denied that they told the tenants that their rent would be increased because there were so many people living in the unit. On October 17, 2019, the Hearing Officer issued a Corrected Hearing Decision, removing the sentence on page 3 of the Hearing Decision stating "The owner also told the tenant her rent would be increased because there were so many people living in the unit."

On January 16, 2020, the Owners' 2019 appeal was heard by an Appeal Panel of the HRRRB. The Panel remanded the case to the Hearing Officer to address when the tenants' tenancy commenced, state the reasoning as to when the tenancy commenced, and restate the base rent, without considering any evidence submitted after the hearing.

### **RULING ON THE CASE**

On November 24, 2020, the Hearing Officer issued a Remand Hearing Decision, finding that the tenancy commenced in August of 2015 at an initial monthly rent of \$945, due to rent paid directly to and accepted by the owner, based on evidence in the record including rent receipts. The Decision noted testimony indicating that the owners were aware that the tenants were living in the unit as of 2015 and that the owner did not realize the lack of a lease until 2017.

### **GROUND FOR APPEAL**

On December 28, 2020, Owner May Fong filed a timely appeal on the following grounds:

- the decision is inconsistent with Oakland Municipal Code Chapter 8.22, Rent Board Regulations, or prior decisions of the Board;
- the decision is inconsistent with decisions issued by other Hearing Officers;
- the decision violates federal, state or local law;
- the decision is not supported by substantial evidence;
- denial of a sufficient opportunity to respond to the petitioner's claim.

The owner further contends that the the rent was \$1,400 per the 2017 lease, that the original tenant had sublet the unit to the petitioners without the owners' consent, and that the owners were unaware that the petitioners were illegal subtenants until August 2017, amongst other arguments, including regarding the decreased housing service claims not at issue with the Remand Decision. The three-page narrative explanation attached to the appeal is nearly identical to the narrative explanation attached to the 2019 appeal and is accompanied by the same attached documentation provided with the 2019 appeal, including new evidence submitted on appeal.

## ISSUE

1. Is the determination in the Remand Decision regarding the time of commencement of the tenancy supported by substantial evidence?

### APPLICABLE LAW AND PAST BOARD DECISIONS

#### **1. Applicable Law**

- a. Definition of "Tenant." Oakland Municipal Code Section 8.22.020 states, "Tenant" means a person entitled, by written or oral agreement to the use or occupancy of any covered unit."
- b. Evidence at Appeal Hearing - Rent Adjustment Program Regulations Section 8.22.120(F):
  1. As a general rule, the Board and Appeal Panels should not conduct evidentiary hearings. When the Board or Appeal Panel determines that additional evidence or reconsideration of evidence is necessary, the Board or Appeal Panel should remand the matter back to a Hearing Officer for consideration of the evidence.
  2. The Board or Appeal Panel should only consider evidence when the evidence is limited in scope and resolution of the matter is more efficient than having it remanded to a Hearing officer for consideration of the Evidence.
  3. In order for new evidence to be considered, the party offering the new evidence must show that the new evidence could not have been available at the Hearing Officer proceedings.
  4. If the Board or Appeal Panel deems an evidentiary hearing necessary, the appeal will be continued and the Board will issue a written order setting forth the issues on which the parties may present evidence.
  5. The parties must file any new documentary evidence with the Board or Appeal Panel and also serve it on the opposing party not more than ten (10) days after notice is given that a date has been set for the evidentiary appeal hearing.
    - a. Parties must also file with the Rent Program proofs of service of the evidence on the opposing party.
    - b. Failure to file the evidence and the proofs of service may result in the evidence not being considered by the Board or Appeal Panel.

6. When the Board or Appeal Panel conducts an evidentiary hearing, the same rules will apply as to hearings before Hearing Officers.

## **2. Past Board Decisions**

### **a. Substantial Evidence**

T00-0340, -0367, & -0368, Knox v. Progeny Properties

Board will not overturn factual findings made by Hearing Officer if there is substantial evidence to support the hearing decision.

### **b. Acceptance of Rent**

T07-0133, Huynh v. Ly

Board found substantial evidence to support hearing decision that new tenancy was created despite lack of written agreement when tenant paid rent and it was accepted for 20 months by owner.

T07-0210, Generalao v. Treadway, & T07-0214, Girasolimo v. Treadway

Petitioner is a tenant when he paid rent for four years while occupying apartment with knowledge of former and current owners, although unit was previously occupied by petitioner's mother.

### **c. New Evidence**

T05-0245, Hobbs v. Bernstein

Owner request to submit new evidence denied where evidence in the record is sufficient to support hearing decision.

T15-0368, Bivens v. Ali

Board declined to accept new evidence even though the owner provided copies of prior RAP notices signed by the tenant in 2013 where tenant signed tenant petition under penalty of perjury that she never received the RAP notice.

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**MEMORANDUM**

**Date:** June 18, 2021  
**To:** Members of the Housing, Rent Residential & Relocation Board (HRRRB)  
**From:** Braz Shabrell, Deputy City Attorney  
**Re:** Appeal Summary in L19-0159, 378 Grand Ave. Associates, LP v. Tenants  
**Appeal Hearing Date:** June 24, 2021

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Property Address: 378 Grand Ave., Oakland, CA  
Appellant/Tenant: Victoria Wentworth et al.  
Respondent/Owner: 378 Grand Ave. Associates, LP

**BACKGROUND**

On June 5, 2019, the owner filed a petition for approval of a rent increase based on capital improvements. The petition was based on work that took place at the subject property in 2017, including the following: entry system replacement, interior painting, new lighting fixtures, boiler replacement, carpet replacement, and roofing.

The subject property contains 19 residential units. The owner did not request a capital improvement pass-through for six of the units because they were either vacant when the petition was filed or the tenants moved in after completion of the project.

Several tenants filed responses and attended the hearing. The tenants alleged, among other things, that the work performed in the building was not necessary and that the conditions in the building were fine prior to the work performed.

**RULING ON THE CASE**

A hearing on the owner's petition took place on February 19, 2020. The Hearing Officer issued a Hearing Decision on May 27, 2020, granting the owner's petition. The

Hearing Officer found that the work performed primarily benefited the tenants. Specifically, the Hearing Officer found the following:

- Replacement of the new entry system, new paint, light fixtures, and new flooring made the building safer for the tenants as only authorized persons can enter the building and the building appears well-maintained and cared for;
- New boiler and insulation of pipes makes the units well heated and more energy-efficient;
- Roof coating prevents water intrusion and makes the building water-tight which prevents mold.

The Hearing Officer found that although each of the tenants testified that the improvements were not necessary, there was “no evidence” of gold-plating presented. Nor did the tenants submit evidence that the work was a result of deferred maintenance or that the work was performed to correct Priority 1 or 2 conditions, or that there were any code violations relating to any of the work that was performed.

The owner submitted proof of payments in the form of invoices and bank checks in a total of \$64,505.85. A pass-through of \$26.08 per month was granted for a period of nine years for all units listed in the petition.

### **GROUND FOR APPEAL**

Tenants filed an appeal on the grounds that the decision is inconsistent with the Rent Adjustment Ordinance, Rent Board Regulations, or prior decisions of the Board; the decision is inconsistent with decisions issued by other Hearing Officers; the decision raises a new policy issue that has not been decided by the Board; the decision is not supported by substantial evidence, and “other.”

Specifically, the appeal alleges the following:

- The owner did not obtain the required permit for the boiler replacement, and without a permit such costs cannot be passed on to the tenants;
- Some of the costs included work in commercial areas of the property, which the owner’s representative conceded at the hearing;
- The decision approves costs for tiling work that was not included in the owner’s petition;
- The Hearing Officer failed to analyze the claimed capital improvements for gold-plating, despite evidence presented by the tenants;
- The owner failed to establish that several items benefitted the tenants, including the painting of the common areas, which were painted by the previous owner just one year prior; and

- The Hearing Officer failed to consider the strong likelihood that the owner was exploiting the capital improvement process for unjust enrichment and circumvention of Oakland's tenant protections.

### **ISSUES**

1. Did the Hearing Officer err in failing to make a determination regarding whether a permit was required for the boiler replacement?
2. Did the pass-through calculations account for improvements to area that is non-residential?
3. Are hearing decisions granting capital improvement pass-throughs limited to the capital improvements listed in the owner's petition? Did the Hearing Officer err in including costs for tiling in the capital improvement pass-through calculation?
4. Is the Hearing Officer's finding that the work performed in this case did not constitute gold-plating supported by substantial evidence?
5. Is the Hearing Officer's finding that the work performed in this case primarily benefitted the tenants supported by substantial evidence?

### **APPLICABLE LAW AND PAST BOARD DECISIONS**

#### **1) Permit Requirements for Capital Improvements**

- Where building permits are required, a finalized permit is required for a capital improvement pass-through. T13-0279, *Falcon v. Bostrum*.
- Board affirmed hearing decision which denied capital improvement pass-through because owner did not provide finalized permit. T17-0201, *Shannon v. Bowman*; T17-0202, *Johnson v. Bowman*; T17-0282, *Warwick v. Bowman*.
- Board remanded hearing decision to determine which of the work performed required a permit. L16-0038, *Ludwig v. Tenants*.

#### **2) Calculation of Costs (Residential v. Commercial)**

- Rent Adjustment Program Regulations, Appendix A, sec. 10.2.3.1: For mixed-use buildings, only the percentage of residential square footage will be applied in calculating rent increases based on capital improvements. The same principal applies to owner-occupied dwelling (i.e., exclusion of owner-occupied unit).

### 3) Relief Limited to Petition

- As a general matter of due process, parties must be given adequate notice and opportunity to respond to claims.
- Several Rent Adjustment cases have held that relief cannot be granted for claims not raised or stated in a petition.

### 4) Gold-Plating

- Rent Adjustment Program Regulations, Appendix A, sec. 10.2.2:

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

...

c. "Gold-plating" or "Over-improvements"

i. Examples:

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

ii. Burden of Proof

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

### 5) Improvements Must Primarily Benefit Tenants

- Rent Adjustment Program Regulations, Appendix A, sec. 10.2.2:

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

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

of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs.

- 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. T06-0093, *Bernhardt v. Gee Realty*.
- 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. T08-0387, T08-0389, *Marquardt et al. v. Regency Tower Apts.*

## **6) Substantial Evidence**

- Board will not overturn factual findings made by Hearing Officer if there is substantial evidence to support the hearing decision. T00-0340, -0367, & -0368, *Knox v. Progeny Properties*.



## MEMORANDUM

**Date:** June 18, 2021  
**To:** Members of the Housing, Rent Residential & Relocation Board (HRRRB)  
**From:** Braz Shabrell, Deputy City Attorney  
**Re:** Appeal Summary in T21-0019, Yu v. Bruins  
**Appeal Hearing Date:** June 24, 2021

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Property Address: 2012 Linden Street, Oakland, CA  
Appellant/Tenant: Jane Yu  
Respondent/Owner: Julia Bruins

### **BACKGROUND**

On February 11, 2021, tenant Jane Yu filed a petition contesting a rent increase from \$900.00 to \$931.50. The rent increase went into effect on December 1, 2020, pursuant to the terms of a settlement agreement that was reached in a prior RAP case (T20-0056, *Yu v. Bruins*). The settlement agreement was dated June 24, 2020 and contained the following relevant terms:

*4. The parties agree to the following:*

*a. The base rent of the subject unit is \$900.00 per month.*

*...*

*c. The RAP Notice was served on the tenant and effective June 1, 2020.*

*d. The rent for the subject unit is \$931.50, effective December 1, 2020.*

Because a settlement was reached in that case, the petition in T20-0056 was dismissed with prejudice.

In the current petition, the tenant claims that the increase imposed by the settlement agreement is unlawful for two reasons. First, the tenant alleges that the 3.5% increase is unlawful because it exceeds the CPI rate of 2.7% that was in effect in

December of 2020, when the rent increase became effective.<sup>1</sup> Since the increase was above the CPI rate in effect at the time, the tenant claims that the increase violated Oakland's emergency moratorium prohibiting rent increases above CPI during the COVID-19 local emergency.

Second, the tenant alleged that the rent increase is invalid because the tenant only received the RAP Notice in English, not in all three languages as required by the rent ordinance.

The owner filed a response to the tenant petition on March 11, 2021. In the response, the owner alleged that the rent increase was part of the final settlement agreement entered in the prior RAP case (T20-0056) and that the increase was "delivered as specifically directed [by] the settlement documents from June 24, 2020." The response also alleged that as far as the owner knew, the RAP Notice was delivered in all three languages, and neither the case analyst nor the hearing officer mentioned any issues with this.

### **RULING ON THE CASE**

On March 9, 2021, the Hearing Officer issued an Administrative Decision dismissing the tenant's petition on the grounds that the parties already agreed to the rent increase being contested pursuant to the settlement agreement in T20-0056. The parties also agreed as part of the settlement that the tenant's petition would be dismissed with prejudice. Therefore, the tenant could not contest the rent increase through this petition, and the petition was thus dismissed.

### **GROUND FOR APPEAL**

The tenant filed a timely appeal of the Administrative Decision on the grounds that the decision is inconsistent with the Rent Adjustment Ordinance, Rent Board Regulations, or prior decisions or the Board; the decision raises a new policy issue that has not been decided by the Board; the decision violates federal, state, or local law; the decision is not supported by substantial evidence, and "other."

The tenant contends that the signed settlement agreement constitutes a violation of the law and contradicts Oakland's Municipal Code because the RAP Notice was not provided in all three languages and the rent increase should have been 2.7% instead of 3.15%, as this was the CPI rate for rent increases effective July 1, 2020 through June 30, 2021. Since Oakland's emergency moratorium prohibits rent increases above the

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<sup>1</sup> The annual CPI rate for rent increases effective July 1, 2019 through June 30, 2020 was 3.5%. The annual CPI rate for rent increases effective July 1, 2020 through June 30, 2021 was 2.7%. The tenant argues that since the stipulated rent increase began on December 1, 2020, it should be limited to 2.7% and not the 3.5% that was in effect at the time the agreement was entered into.

CPI, and the CPI in effect as of December 1, 2020 was 2.7%, the tenant alleges that the increase of 3.15% violated the moratorium.

### **ISSUES**

1. Can the tenant contest the same rent increase that was already the subject of a prior petition that was dismissed with prejudice after the tenant already agreed to the rent increase?
2. Is the rent increase contained in the settlement agreement in case T20-0056 prohibited by the Oakland moratorium?

### **APPLICABLE LAW AND PAST BOARD DECISIONS**

#### **1) Dismissal with Prejudice**

- Dismissing a case “with prejudice” means that the case cannot be re-filed. Dismissal with prejudice is the equivalent to a verdict and judgment on the merits and is deemed to bar another suit for the same cause between the same parties. *Manning v. Wymer* (1969) 273 Cal.App.2d 519.

#### **2) Oakland’s Emergency Moratorium**

- Text of Ordinance No. 13589:

**SECTION 4. Rent Increase Moratorium.** For rental units regulated by Oakland Municipal Code 8.22.010 et seq, any notice of rent increase in excess of the CPI Rent Adjustment, as defined in Oakland Municipal Code Section 8.22.020, shall be void and unenforceable if the notice is served or has an effective date during the Local Emergency, unless required to provide a fair return. Any notice of rent increase served during the Local Emergency shall include the following statement in bold underlined 12-point font: **“During the Local Emergency declared by the City of Oakland in response to the COVID-19 pandemic, your rent may not be increased in excess of the CPI Rent Adjustment (3.5% until June 30, 2020), unless required for the landlord to obtain a fair return. You may contact the Rent Adjustment Program at (510) 238–3721 for additional information and referrals.”**