



CITY OF
HAYWARD
HEART OF THE BAY



July 28, 2009

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BY: VICKI DAYBELL *VP*

Hon. Frank Roesch,
Department 31
Alameda County Superior Court
201 13th Street
Oakland, CA 94612

Re: Rental Housing Owners Association, etc. v. City of Hayward
No. HG09433908

Dear Judge Roesch,

The purpose of this letter is to advise the court of the status of the proposed judgment and peremptory writ of mandate which the court directed be prepared in accordance with the proposed Statement of Decision, filed July 1, 2009. The court directed counsel for petitioner to prepare the proposed judgment and writ and submit same to undersigned counsel for review.

Petitioner's counsel submitted a proposed form of judgment and a proposed form of writ to the court and undersigned counsel on or about July 14, 2009. Undersigned counsel have met and conferred with petitioner's counsel but cannot come to an agreement on how to effectuate the court's Statement of Decision. Consequently, the City has prepared and herewith submits its form of judgment and writ, which we believe correctly reflect the narrow ruling invalidating those sections of the City's Residential Rental Inspection Program (RRIP) which compel an owner to facilitate entry into an occupied unit and impose a fine or penalty if the owner fails to do so.

The City's proposed writ has a return of 120 days. This period will allow the City Council, which recesses July 28, 2009 and reconvenes in September 2009, to consider alternative language and to conduct necessary hearings to seek public input. During the return period, the City will comply with the terms of the City's proposed judgment and proposed writ of mandate.

By contrast, petitioner's proposed judgment invalidates the entire RRIP, and the proposed writ enjoins the entire RRIP during the return period. The City does not believe the Statement of Decision seeks to impose such a drastic remedy.

OFFICE OF THE CITY ATTORNEY

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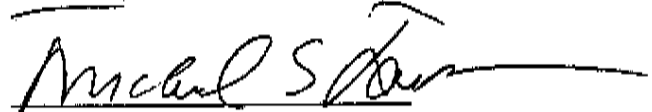
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*Letter to Hon. Frank Roesch
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The court is respectfully requested to approve the City's proposed documents. Alternatively, it is requested that the court set a hearing to resolve the matter.

Respectfully submitted,

By:



Michael S. Lawson
City Attorney

Attachments: Proposed Judgment and
Proposed Peremptory Writ of Mandate

Cc: Verne Perry, Esq., w/attachments
James McBride, Esq., w/ attachments

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7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF ALAMEDA - OAKLAND

9
10 RENTAL HOUSING OWNERS
ASSOCIATION OF SOUTHERN ALAMEDA
11 COUNTY, INC.

Case No: HG09433908

Petitioner,

JUDGMENT (PROPOSED)

12 v.

13 CITY OF HAYWARD

14
15 Respondent.

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17 The above-captioned matter came on regularly for hearing on June 3, 2009, 9:00 a.m., in
18 Department 31 of the Alameda County Superior Court, the Honorable Frank Roesch, judge,
19 presiding. Petitioner appeared by and through its legal counsel, Verne Perry, Esq., and James
20 McBride, Esq. Respondent appeared by and through its legal counsel, Michael S. Lawson, Esq.,
21 and Jeffrey Cambra, Esq.

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23 The court, having considered the petition and supporting memoranda, respondent's
24 demurrer and supporting memorandum, and oral argument of counsel at the hearing, and in
25 furtherance of its proposed Statement of Decision, filed July 1, 2009, now finds, adjudges and
26 decrees as follows:
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1. Petitioner has standing to bring this action;
2. Respondent's demurrer is overruled;
3. Sections 9-5.302, 9-5.306 and 9-5.401 of the Hayward Municipal Code (HMC), which sections constitute the relevant sections of respondent's Residential Rental Inspection Program (RRIP), on their face violate the Fourth Amendment of the U.S. Constitution and California Civil Code section 1954, in that said sections impermissibly compel rental property owners otherwise covered by the RRIP to provide access to a tenant-occupied unit without the consent of the tenant;
4. Further, said relevant sections impermissibly purport to penalize rental property owners through fines and penalties for their failure to provide access to a tenant-occupied unit, even if the tenant refused to provide access to the unit.

Let a peremptory writ of mandate issue, commanding respondent to cure said defects or repeal the relevant sections of the HMC which allow a penalty to be imposed on a rental property owner for failing to provide the access that the owner is not legally entitled to give, without either the tenant's consent or an inspection warrant.

SO ORDERED:

Dated: _____

JUDGE OF THE SUPERIOR COURT

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7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF ALAMEDA - OAKLAND

9
10 RENTAL HOUSING OWNERS
ASSOCIATION OF SOUTHERN ALAMEDA
11 COUNTY, INC.

Case No: HG09433908

Petitioner,

PEREMPTORY WRIT OF
MANDATE (PROPOSED)

12 v.

13 CITY OF HAYWARD

14 Respondent.

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17 The court, having entered judgment in favor of petitioner, finding that sections 9-5.302,
18 9-5.306 and 9.5.401 of the Hayward Municipal Code, which constitute the relevant sections of
19 respondent's Residential Rental Inspection Program (RRIP), impermissibly require owners of
20 rental property to make the units of non consenting tenants available for inspection and impose
21 fines or penalties if they do not, orders and directs the issuance of a peremptory writ of mandate.

22 Respondent is commanded to cure the defects in the relevant sections of the RRIP that
23 allow a fine or penalty to be imposed on owners for failing to allow access for an inspection
24 without either the consent of the tenant or an inspection warrant, or, in the alternative, to repeal
25 said relevant sections of the RRIP.
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Respondent is further commanded to file its return to the court within 120 days of service of this writ, advising the court of actions taken to comply with the writ.

Attest my hand and the seal of this Court on August __, 2009.

By: _____
Clerk of the Court