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January 23, 2025

memorandum
confidentiality

To
Mountain View Rental Housing Committee

From
Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Estrella Lucero, Special Counsel to the Rental Housing Committee

RE
Appeal of Hearing Officer's Decision Re: Petition Nos. C23240057 and C23240058.

RECOMMENDATION

To consider the Tentative Appeal Decision and either accept the Tentative Appeal Decision or modify the Tentative Appeal Decision with instructions to staff citing appropriate evidence in the Hearing Record to support the changes.

BACKGROUND

The instant appeal arises out of a petition for downward adjustment of rent ("Petition") based on failure to maintain habitable premises and a decrease in housing services and a demand for and retention of unlawful rent. The hearing on the Petition was held on July 25, 2024. The Hearing Officer's decision was issued on September 24, 2024, and served on the parties on October 7, 2024 ("HO Decision"). Landlord-Respondent to the Petition filed a timely appeal of the HO Decision on October 7, 2024. The appeal hearing before the RHC was initially scheduled for December 12, 2024, but was postponed to January 23, 2025, to accommodate all parties.

Table 1: Relevant Timeline

<u>Date</u>	<u>Action</u>
April 11, 2024	RHC accepted Petition Nos. C23240057 and C23240058.
May 13, 2024	Pre-hearing telephone conference held.

May 15, 2024	Hearing Officer Order summarizing Pre-hearing conference and request for additional evidence served on parties.
July 25, 2024	Hearing held and closed.
August 1, 2024	Post Hearing Order served on parties.
August 8, 2024	Hearing Record closed.
September 24, 2024	HO Decision issued.
October 7, 2024	HO Decision served on parties.
October 7, 2024	Appeal submitted by Appellant-Landlord.
December 2, 2024	Tentative Appeal Decision issued and served.
December 9, 2024	Appellant-Landlord Response to the Tentative Appeal Decision received.
December 12, 2024	Appeal hearing before the Rental Housing Committee scheduled; appeal hearing postponed due to request of Appellant-Landlord.
January 23, 2025	Appeal hearing before the Rental Housing Committee.

The Petition requested a downward adjustment of rent on the basis that the Landlord had (1) failed to maintain a habitable Unit by failing to maintain a safe environment in allowing Petitioner's neighbor to harass Petitioner and destroy her quiet enjoyment of the Unit; (2) had decreased housing services by taking Petitioner's hose; and (3) Landlord had unlawfully increased Petitioner's Rent by failing to roll back her Rent as required by the Community Stabilization and Fair Rent Act ("CSFRA") and by being substantially out of compliance with the CSFRA at the time Landlord raised Petitioner's Rent.

The Hearing Officer determined that Petitioner had met her burden of proof on the issues of the Landlord's failure to maintain a safe and secure environment by failing to sufficiently address the neighbor's harassment of Petitioner. The Hearing Officer ordered a rent refund of \$8,000.00 for disturbing Petitioner's quiet enjoyment of her Unit, decreasing Petitioner's housing services, and failing to maintain a safe, habitable Unit.

The Hearing Officer also determined that Petitioner had met her burden of proof that Landlord had unlawfully increased Petitioner's Rent and failed to roll back Petitioner's

Rent pursuant to the CSFRA. The Hearing Officer ordered a rent refund of \$8,530.00 for retention of unlawful rent.

The Hearing Officer concluded that Petitioner had failed to meet her burden of proof regarding the Landlord's taking of Petitioner's hose. The Hearing Officer found that there was no decrease in housing services.

The Appellant-Landlord raised the following fourteen issues on appeal:

- A. The Hearing Officer erred in stating Petitioner failed to pay rent in September and October of 2023.
- B. The Hearing Officer erred in stating Petitioner filed her Petition 133 days after Petitioner vacated Unit.
- C. The Hearing Officer's decision regarding the failure to roll back rents should be reversed because the rent rollback provision of the CSFRA is unconstitutional.
- D. The Hearing Officer erred in stating that some of the Appellant-Landlord's increases of Petitioner's Rent occurred more frequently than every 12 months.
- E. The Hearing Officer erred in failing to properly address Appellant-Landlord's evidence on the issue of whether Unit was properly registered in 2021 or 2022.
- F. Appellant-Landlord argues Petitioner failed to take the necessary actions to stop her harassment.
- G. The Hearing Officer's decision regarding the rent refund should be reversed because lack of safety does not fall within the scope of the CSFRA.
- H. The Hearing Officer's decision regarding the rent refund due to the lack of safety should be reversed because "harassment" is not a reduction in housing services, a failure to maintain or repair a Unit, or a failure to maintain a habitable Unit.
- I. The Hearing Officer's decision to award "damages" is not supported by the evidence.
- J. The Hearing Officer erred in failing to give Petitioner's inconsistent testimony regarding the hose sufficient weight.
- K. The Hearing Officer decision should be reversed as to any claims going back more than one year.
- L. The Hearing Officer decision should be revised to allow Appellant-Landlord to offset debts Petitioner allegedly owes Appellant against the rent refund Appellant is ordered to pay to Petitioner.

M. The Hearing Officer erred in stating that Petitioner's 30-day notice to vacate her unit is valid.

N. The Hearing Officer decision should be reversed because Petitioner's claims are not supported by a preponderance of the evidence.

All other elements of the appeal are discussed in the Tentative Appeal Decision, as noted in Section C of this report below. All parties to the Appeal are entitled to respond to the Tentative Appeal Decision. Responses to the Tentative Appeal Decision were due on December 9, 2024.

The Appellant-Landlord submitted a timely response to the Tentative Appeal Decision on December 9, 2024. The Appellant-Landlord argues that: the Hearing Officer's factual errors in the HO Decision demonstrate the entire decision is in error and biased; the Hearing Officer should conclude the CSFRA is unconstitutional and refuse to enforce it; the Appellant did not intend to increase Petitioner's rent more than every 12 months and that Petitioner is responsible for paying the correct amount of rent each month; disputes between tenants cannot be resolved through the CSFRA hearing process; harassment is not a reduction in housing services or a failure to maintain a habitable Unit; the Hearing Officer may not rely on City records; the Hearing Officer did not adequately consider Petitioner's testimony regarding the value of the hose; and that California Civil Code Sections 340 and 431.70 apply to all proceedings unless expressly stated otherwise.

The appeal hearing before the Rental Housing Committee was initially scheduled for December 12, 2024. At the December 12, 2024, initial hearing, the Appellant-Landlord requested postponing the appeal hearing due to illness. The Rental Housing Committee deliberated and accepted the Appellant-Landlord's request in the interest of fairness and upholding the due process of all parties to the Petition. The appeal hearing was postponed to January 23, 2025.

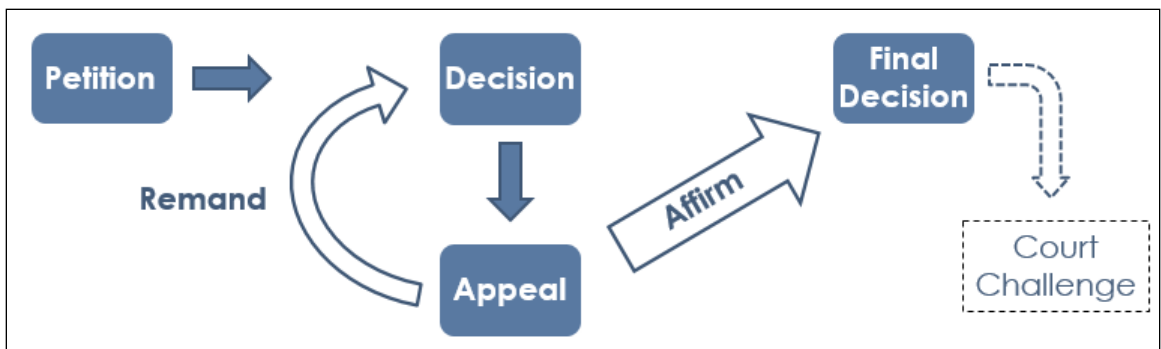
ANALYSIS

A. Role of the RHC

The role of the RHC is not to re-weigh evidence submitted in support of or opposition to the Petition, unless the RHC chooses to hear the appeal "*de novo*" pursuant to Regulation Chapter 5, Section H(5)(a). *De novo* review would require the RHC to open the Hearing Record and hold a new, formal hearing. Staff does not recommend *de novo* review for this Appeal because there is sufficient evidence in the Hearing Record on which the Committee may base its decision.

For questions of law (including statutory interpretation), the RHC must exercise its independent judgment without assuming that the Hearing Officer's ruling is correct or affording deference to the Hearing Officer's interpretation. Even though the RHC exercises its independent judgment, its review is still based on the evidence in the Hearing Record for the Petition hearing.

For questions of fact, the RHC's role will be to determine whether the appealed elements of the Hearing Decision are supported by substantial evidence. This process mimics a trial court and an appeal court: the trial court drafts a decision after weighing all the evidence, and the appeal court reviews the decision to verify whether the decision was adequate. Legally, reviewing whether substantial evidence exists to support an appealed element of the decision simply means that there is adequate information in the record to support the decision. Stated differently, substantial evidence means that a reasonable person reviewing the evidence could have reached the same decision. Substantial evidence does **not** mean that the RHC members (or RHC staff or special counsel) would have reached the same conclusion if they were present for every aspect of the Hearing.



B. Review: Affirming, Reversing, and/or Remanding the Appealed Elements of the Decision After Remand

Petitions define the scope of the Hearing Officer's review. Appeals define the scope of RHC's review of the Hearing Decision. The portions of the Hearing Decision that were not appealed by any party are considered final. The Tentative Appeal Decision reviews only those portions of the Hearing Decision that were appealed by the parties.

The process for an appeal can result in multiple appeal hearings before the RHC if a Hearing Decision is remanded to the Hearing Officer. A summary graphic visualizing the appeal procedure is provided below.

Graphic 1: Visualization of Appeal Procedure

C. Tentative Appeal Decision – Appeal Elements

The Tentative Appeal Decision recommends affirming the Hearing Decision in its entirety. In summary:

- A. Appellant-Landlord argues that the Hearing Officer erred in stating the months that Petitioner failed to pay rent in 2023. The Hearing Officer stated Petitioner failed to pay rent in September and October 2023; Appellant-Appellant asserts Petitioner failed to pay rent in October and November 2023. The Hearing Officer made a small error in the HO Decision—evidence in the record shows Petitioner

failed to pay rent in October and November 2023. The error does not impact the decision.

- B. Appellant-Landlord argues the Hearing Officer did not state the correct number of days that Petitioner filed her Petition after vacating her Unit. The Hearing Officer stated 133 days, when 164 days had elapsed between the date Petitioner vacated her Unit and the date Petitioner filed her Petition. Petitioner is entitled to file her Petition up to 180 days after vacating her Unit. Regulations Chapter 4 Section (D)(7).
- C. Appellant-Landlord argues that the rent roll back provision of the CSFRA is unconstitutional and argues that the Hearing Officer has the authority to determine the constitutionality of the CSFRA. The Hearing Officer is an RHC-appointed officer with a limited set of enumerated powers, including having the authority to administer oaths and affirmations; cause the RHC to issue subpoenas and to produce books, records, papers and other material related to the issues raised in the Petition; cause inspections to be made of the property; rule on offers of proof and receive relevant evidence; control the course of the hearing; rule on procedural requests; render decisions on Petitions; and take other action authorized by RHC rules and regulations. Regulations Chapter 5 Section (B)(4). Hearing Officers do not have the authority to determine the constitutionality of the CSFRA – that decision making power lies with a court of competent jurisdiction.
- D. Appellant-Landlord argues the Hearing Officer erred in stating that Appellant increased Petitioner's Rent more frequently than every 12 months. Appellant-Landlord argues that they send a lease renewal agreement, which extends the term of the lease and increases the Rent for the Unit, once every 12 months. However, evidence provided by the Petitioner in the form of bank statements shows that Petitioner paid, and Appellant accepted, increased Rent more frequently than every 12 months. For example, the Petitioner paid \$988.00 in November 2018, \$1023.00 in December 2018, and—10 months later—paid \$1058.00 in October 2019. Appellant did not dispute Petitioner's evidence, and Appellant did not provide evidence of rent rolls or other rent records to dispute Petitioner's evidence.
- E. Appellant-Appellant argues that the Hearing Officer erred by not properly addressing Appellant's 2023 evidence about the Unit's registration on the City's rental registry and that Hearing Officer erred by not applying the 2023 evidence to years 2021 and 2022. The Hearing Officer found that the Unit was not registered with the City of Mountain View for 2021 and 2022. Appellant provided evidence of clerical errors on the part of the City that delayed registration **in 2023**, but Appellant did not provide any evidence of registration in 2021 and 2022 to counter City records that show the Unit was not properly registered in those years. Appellant implied that evidence of errors in 2023 meant there were likely errors in

2021 and 2022. But a Hearing Officer cannot make a finding without substantial evidence, thus Hearing Officer did not err in concluding the Unit was not registered in 2021 and 2022. As shown below, the failure to register was **not** a determinative factor in Hearing Officer's ultimate conclusion that Appellant failed to roll back Petitioner's Rent.

- F. Appellant-Landlord argues that Petitioner should have done more to stop the harassment by the Petitioner's neighbor. Appellant's assertion that Petitioner should have stopped her neighbor from harassing her is irrelevant to the fact that Appellant, as landlord, has a duty to protect tenants' quiet enjoyment of their Unit and a duty to provide a habitable, secure Unit. Regardless of Petitioner's actions, Appellant still has a duty to provide certain housing services and a habitable Unit. Appellant fails to acknowledge that Petitioner **did** take various self-help actions including notifying the Appellant in 2010, 2021, and 2023 about the harassment, asking for permission and installing security cameras, re-installing security cameras at Appellant's request, contacting the police, filing for a Restraining Order, and ultimately vacating the Unit.
- G. Appellant-Landlord alleges that lack of safety and security does not fall within the scope of the CSFRA. Appellant argues that the harassment Petitioner experienced should be characterized as a "dispute between neighbors" and that such disputes are outside the purview of the CSFRA. However, the harassment rose to the level that Petitioner's health and safety were compromised. Appellant has a duty to provide Petitioner with a safe and secure, habitable Unit. Failing to provide this is grounds for a reduction in rent under the CSFRA.
- H. Appellant-Landlord argues that ongoing harassment does not fall into one of the three categories the CSFRA authorizes for downward adjustments of rent: (1) maintenance of a habitable Unit, (2) maintenance of housing services, (3) demand for or retention of unlawful rent. However, Hearing Officer correctly determined that the harassment Petitioner experienced constituted (1) a breach of quiet enjoyment, (2) a decrease in housing services, and (3) a lack of habitability in the Unit. Quiet Enjoyment: Inherent in all California leases is a landlord's duty to protect a tenant's quiet enjoyment of their unit. In *Andrews v. Mobile Aire Estates* (2005) 125 Cal. App. 4th 578, a court found that a landlord has a duty to protect against interference of a tenants' quiet enjoyment—even if that interference is not perpetrated by the landlord personally. The *Andrews* court stated that a tenant may have an actionable breach where the interference with quiet enjoyment is caused by another tenant of the landlord. Here, Appellant was on notice of the harassment and how the harassment was interfering with Petitioner's ability to enjoy her Unit. However, Appellant did not take sufficient actions to protect Petitioner's quiet enjoyment of her Unit. (For example, Appellant never followed up with Petitioner about her claims of the harassment; Appellant allowed security cameras to be installed but then forced Petitioner to uninstall the cameras due to damage to the building; and Appellant sent a letter to the harassing neighbor more than two years

after receiving notice and only after Petitioner provided Appellant with a copy of her restraining order against the neighbor.) Appellant's failure to act disturbed Petitioner's quiet enjoyment of her Unit. Housing Services. The Hearing Officer valued the housing services Petitioner received at \$705.00 per month. As defined by the CSFRA, housing services include "any benefit, privilege or facility connected with the use or occupancy of any Rental Unit." One of the benefits and privileges of using or occupying a Unit is the benefit of quiet enjoyment. By breaching the covenant of quiet enjoyment, Appellant reduced Petitioner's housing services. Lack of Habitability. Appellant argues that California Civil Code Section 1941.1 does not list "harassment" as a condition of a habitable unit. But the CSFRA mandates compliance with a number of state codes and regulations, including but not limited to Cal. Civ. Code Section 1941.1. Landlords have a duty to provide a safe, secure Unit to their tenants – the ongoing harassment by Petitioner's neighbor posed a security threat to Petitioner (in a particularly egregious example of the harassing behavior, the neighbor would put nails in Petitioner's tires). Appellant was on notice about the lack of personal safety and security and failed to respond sufficiently.

- I. Appellant-Landlord argues that the Hearing Officer's decision regarding a reduction in rent is not supported by a preponderance of the evidence. However, the Hearing Officer's decision regarding a reduction in rent for the rent roll back issue and the harassment issue are both supported by a preponderance of the evidence in the hearing record. Rent Roll Back: The evidence provided by Petitioner—evidence which was not disputed by Appellant—shows that Appellant (1) accepted more rent than what Petitioner owed for 5 months in 2017, (2) issued an illegal rent increase in June 2017, and (3) failed to roll back Petitioner's rent at any point after the illegal June 2017 increase. Harassment: The harassment that Petitioner experienced as well as the health and safety effects of the harassment were well documented in Petitioner's evidence. Petitioner submitted hundreds of pages of evidence provided to the court to successfully obtain a restraining order against the harassing neighbor. Evidence in the hearing record shows that Appellant had written notice of the harassment but failed to take sufficient action to ensure Petitioner had access to a safe, secure, habitable Unit free to use and enjoy without interference.
- J. Appellant-Landlord argues that the Hearing Officer should have placed more weight on Petitioner's inconsistent testimony about the hose. Petitioner submitted evidence that the hose Petitioner used to water outside plants was gifted to her; Petitioner also submitted testimony that the hose was worth \$50. The inconsistent testimony would only be relevant if the Hearing Officer determined the taking of the hose represented a decrease in housing services. However, the Hearing Officer found that because outside watering was never allowed at the Unit, the taking of Petitioner's hose could not, and did not, represent a decrease in housing services. Thus testimony, inconsistent or otherwise, about the value of the hose became irrelevant. Appellant argues that the inconsistent testimony about the hose means

that all of the Petitioner's testimony should not be believed. However, Appellant did not provide any evidence that Petitioner's other testimony and evidence (about the rent roll back or the harassment) was untruthful.

- K. Appellant-Landlord argues that the one-year statute of limitations set forth in California Civil Procedure (CCP) Section 340 applies to this hearing. Appellant argues that the treble damage clause in CSFRA Section 1714(b) (which allows for a Petitioner who successfully brought a case in court under the CSFRA, won, and showed that a landlord was acting maliciously to be awarded treble damages) triggers CCP Section 340 here. However, this hearing is not a civil lawsuit, so CCP would not apply here. Further, Appellant argues that CSFRA Section 1714(b) is a mandatory treble damage provision, however the treble damage provision only applies if a Petitioner is successful in court and shows a landlord has acted maliciously. The rent refund allowed through the hearing process does not allow for treble "damages." and hearing officers are not authorized to award damages. For these reasons, CCP Section 340 does not apply, and the one-year statute of limitations does not apply to the rent reduction ordered by the Hearing Officer.
- L. Appellant-Landlord argues that CCP Section 431.70 applies to this hearing. However, CCP Section 431.70—which allows parties to offset damages awarded to each other—applies in civil actions, not in this hearing. The CSFRA only allows a Hearing Officer to order a reduction in rent; the CSFRA does not allow a Hearing Officer in a downward adjustment of rent petition to order a Petitioner to pay money back to their landlord for debts they may owe the landlord. The petition process for a downward adjustment of rent is not the correct venue for Appellant to pursue sums owed by Petitioner to Appellant.
- M. Appellant-Landlord argues that Hearing Officer erred in concluding that Petitioner's 30-day notice to vacate her Unit was "generally legally valid." Petitioner's 30-day notice to vacate was not relevant to Hearing Officer's decision, and the Hearing Officer did not state that the specific notice provided to Petitioner was valid. Rather, the Hearing Officer stated that she will "not address" the validity of the letter and that "a legal notice by an authorized legal representative is generally valid."
- N. Overall, Appellant-Landlord argues that Petitioner's claims are not supported by a preponderance of the evidence. However, as discussed in Section IV(I)(1) (rent roll back) and Section IV(I)(2) (harassment), the Petitioner's claims were supported by a preponderance of the evidence in the hearing record. And the Hearing Officer's decision regarding rent refunds for failure to roll back rent and failure to sufficiently respond to protect Petitioner's right to enjoy her Unit free from constant harassment is supported by substantial evidence.

D. Response to Appellant-Landlord Response to Tentative Appeal Decision

In response to the Appellant-Landlord's Response to the Tentative Appeal Decision, in summary:

- The Hearing Officer's clerical errors in the HO Decision (such as misstating certain months or miscalculating the number of days Petitioner had filed Petition after vacating the Unit) do not materially impact the ultimate outcome of the HO Decision or the Tentative Appeal Decision. There is no evidence these two mistakes are indicative of an entirely biased HO Decision or Tentative Appeal Decision.
- As stated clearly in both the HO Decision and Tentative Appeal Decision, a Hearing Officer is not authorized by the CSFRA to determine the constitutionality of the statute or its implementing regulations.
- Landlords may not demand or accept rent above the legal rent amount set forth in the CSFRA. Even if the Appellant-Landlord never intended to unlawfully increase Petitioner's Rent, Appellant-Landlord has a duty to ensure they are not accepting and depositing unlawful rent amounts.
- The harassment Petitioner faced is not fairly characterized as a mere "dispute" between neighbors. Disruption of a tenant's quiet enjoyment, reduction in housing services, and failure to maintain a habitable Unit may all be resolved through the CSFRA hearing process.
- The severity and continuous nature of the harassment of the Petitioner, and the lack of meaningful intervention by the Appellant-Landlord, resulted in a breach of Appellant-Landlord's duty as landlord to protect Petitioner's quiet enjoyment of her Unit; represented a decrease in housing services in that Petitioner was no longer receiving access to a safe and secure Unit in exchange for her monthly Rent; and resulted in lack of a habitable Unit.
- A Hearing Officer is authorized pursuant to CSFRA regulation Chapter 5 Section (B)(4) to cause to be produced "books, records, papers and other material related to the issues raised in the Petition." The Hearing Officer is allowed to reference the data from the Community Portal report so long as it is relevant to the issues presented in the Petition. Whether the Unit was properly registered with the Community Portal was relevant to this Petition, though not ultimately determinative of the outcome.
- California Civil Code Sections 340 and 431.70 apply to civil proceedings in a court, but do not apply to the CSFRA hearing process.
- The Hearing Officer did not need to consider or rely on Petitioner's inconsistent testimony regarding value of the hose, as the issue of the hose did not amount to a decrease in housing services. Further, the Hearing Officer correctly relied on both the Petitioner's testimony and evidence provided by Petitioner and Appellant-Landlord when rendering her decision regarding other issues raised in the Petition.

E. Appeal Hearing Procedure

Each party to the Appeal will have an opportunity to present their arguments to the RHC and respond to the other party's presentation. As noted above, the parties are not allowed to present new evidence. Likewise, the public may provide comment to the RHC before it hears any appeals. Cal. Gov. Code Section 54954.3(a). Finally, RHC members may have questions for staff and/or the parties. The following schedule for the appeal hearing is proposed to facilitate the orderly participation of all parties.

Schedule of Appeal(s) of Hearing Decisions(s)	
<ul style="list-style-type: none"> Public Comment Period applicable for all Appeals on the agenda Appeal Hearing (CSFRA Petition Nos. C23240057 and C23240058) 	
Staff Report & Presentation	
Appellant-Landlord Presentation of Argument	10 minute maximum
Respondent-Tenant Presentation of Argument	10 minute maximum
Appellant-Landlord Presentation of Rebuttal	5 minute maximum
Respondent-Tenant Presentation of Rebuttal	5 minute maximum
RHC Question and Answer with Staff	
RHC Question and Answer with Appellant-Landlord	
RHC Question and Answer with Respondent-Tenant	
RHC Deliberations and Decision	
<ul style="list-style-type: none"> Conclude Agenda Item 	

FISCAL IMPACT

Adoption of the Tentative Appeal Decision, as drafted, could potentially lead to litigation, which would have fiscal impacts. Notably, one purpose of appealing a Hearing Decision to the RHC (as opposed to directly appealing to the courts) is to ensure that Hearing Decisions are legally defensible, and so the appeal process to the RHC reduces the overall risk of legal liability and litigation expenses. As discussed above, the Tentative Appeal Decision recommends upholding the Hearing Decision in its entirety. If the RHC accepts the Tentative Appeal Decision, the Hearing Decision will be final.

PUBLIC NOTICING

See agenda posting for the January 23, 2025, RHC meeting.

ATTACHMENTS

1. Tentative Appeal Decision for Petition Nos. C23240057 and C23240058
(December 2, 2024)
2. Decision of Hearing Officer (September 24, 2024)
3. Appellant-Landlord Appeal of Decision (October 7, 2024)
4. Appellant-Landlord Response to Tentative Appeal Decision (December 9, 2024)