

**CITY COUNCIL MEETING
TUESDAY, JULY 19, 2016**

DOCUMENTS RECEIVED AFTER PUBLISHED AGENDA

Item # 1 MIN 16-063

Amendment to City Council Minutes of June 28, 2016



OFFICE OF THE CITY CLERK

DATE: July 19, 2016
TO: City Council
FROM: City Clerk
RE: Amendment to City Council Minutes of June 28, 2016

My office has received a request to amend the City Council Minutes of June 28, 2016. Item#14
(MIN 16-063)

Last paragraph on Page 7 currently reads:

“The following individuals spoke in support of the establishment of California Crosspoint Middle and High School in Hayward because it would strengthen Hayward’s economy; **it would add quality education to Hayward**; it has an outstanding academic record; it instills Christian values; the geographical location is beneficial for prospective students/parents; and the institution would add an international component to the vitality of the business sector.”

Proposed to read:

“The following individuals spoke in support of the establishment of California Crosspoint Middle and High School in Hayward because it would strengthen Hayward’s economy; **it would add additional quality education to Hayward**; it has an outstanding academic record; it instills Christian values; the geographical location is beneficial for prospective students/parents; and the institution would add an international component to the vitality of the business sector.”

With the change noted above, I respectfully request approval of the amended minutes.

Item # 14 CONS 16-415

Residential Rent Stabilization Ordinance

CITY OF HAYWARD

DATE: July 18, 2016

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: *Adoption of an Ordinance Amending Section 2(1)(2) of the Residential Rent Stabilization Ordinance.*

On July 15, 2016, Upside Gading Management Co. Inc. (“Upside Gading”) submitted comments regarding the City Council’s adoption of an Ordinance amending Section 2(1)(2) of the Residential Rent Stabilization Ordinance (“Rent Ordinance”), set to take place at the July 19, 2016 City Council meeting. This memorandum seeks to clarify information and tracks the numbering of Upside Gading’s letter:

1. Pending Litigation: We aware of the two lawsuits filed by Upside Gading to evict certain tenants from 24609 Gading Road in Hayward for non-payment of rent increases. The City of Hayward is not a party to this civil ligation and our office has taken no position on the matter.¹
2. Superior Court Ruling: The eviction actions in Alameda County Superior Court are still pending. Centro Legal de la Raza serves as defense counsel for the tenants and filed a motion to dismiss the eviction action. The motion was denied by the Superior Court and defense counsel has appealed to the Appellate Division of Alameda County Superior Court.

As the two cases concern the issue of eviction, the Court’s ruling on the tenants’ motion for summary judgment is not binding on the City regarding interpretation of its own Rent Ordinance. Contrary to Upside Gading’s assertion that the court supports their interpretation of the exemption, the Court’s ruling acknowledges that it cannot and does not make findings regarding the exemption of units in Hayward. Rather, the Court found that there exists a triable issue of fact that should be resolved at trial.

Nonetheless, we are concerned with the factual mistakes made by the judge regarding the role of the City Attorney’s Office in administering the Rent Ordinance. Attached you will find the letter our office submitted as part of the appeal. As you will observe, the letter focuses on clarifying that the City Attorney serves as the “Rent Review Officer”

¹ The actions are titled *Upside Gading, LP v. Gabriela Del Hoyo, et al.*, Alameda County Superior Court, Case No. HG16808836, and *Upside Gading, LP v. Jesus Ochoa Espinoza, et al.*, Alameda County Superior Court, Case No. HG16808840.

empowered to administer and enforce the provisions of the Rent Ordinance. This is the extent of our office's involvement in the appeal. It should be noted that the Oakland City Attorney's Office also submitted a letter that addresses the issue of city attorney authority to interpret local ordinances and is attached for the Council's reference.

3. Federal Preemption: Generally speaking, federal preemption occurs where the federal government promulgates a law or regulation that conflicts with a state or local law. The federal regulation at issue here concerns HUD's preemption of local rent control for projects that are financed or insured by HUD. With respect to 24609 Gading Road, HUD no longer has a financial or insurance interest in the property and federal preemption is not applicable.² HUD preemption operates *only* where the state or local law jeopardizes HUD's economic interest in a multi-family housing project financed or insured by HUD. HUD's economic interests are not at issue in this case.

Moreover, federal regulations do not provide automatic preemption of rent rates set by a local agency. The owner of a project financed or insured by the federal government must petition HUD to preempt the rental rate set by a local agency. HUD will preempt a local rent rate upon a determination that such rate will not produce a level of income sufficient to meet the financial obligations of the HUD mortgage. Here, again, HUD has no financial or insurance interest in 24609 Gading Road and preemption is inapplicable.

HUD Use Agreement: Upside Gading asserts, without a reference to any federal regulation that supports its position, that a "HUD Use Agreement" for the property preempts the Rent Ordinance. 24609 Gading Road is subject to a 2000 HUD Use Agreement that requires Upside Gading LP to maintain the Property for low income families by placing limits on rent increases through July 1, 2023. However, the Use Agreement, which is a contractual obligation and not a law, does not preempt local rent control nor does it exempt the property from the Rent Ordinance.

Section 4(E) of the Use Agreement recognizes that a local agency may regulate rents. It provides in pertinent part: "Any rent increases resulting from such an increase in the Area Median Income are herein authorized and accepted, without necessity of any further approval or application, and may be implemented by the Housing Owner at any time after such increase in the Area Median Income is released by HUD, *subject to the requirements of any lease, and to any requirements of State or local law not superseded by Federal law.* The plain language of the Use Agreement recognizes that a rent increase at the property may be subject to the requirements of State and/or local law.

² The Property is listed on HUD's "Terminated Multifamily Mortgages Database":
http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/comp/rpts/mfh/mf_f47t

The existence of the HUD Use Agreement does not create a conflict between federal and local law or a conflict between federal and local rent control requirements. An owner subject to a HUD Use Agreement may increase a rent in accordance with said agreement, so long as the increase does not exceed the modest rent controls imposed by the Rent Ordinance. However, where a rent increase allowed by the HUD Use Agreement exceeds the limits imposed by our Rent Ordinance, the tenant of the unit will be allowed to challenge the rent increase through the petition process created by local law.

The interpretation proffered by Upside Gading would have two unacceptable effects. It would: (1) provide a permanent exemption from local rent control to properties formerly financed or insured by the federal government, even after the expiration of any HUD Use Agreement, and (2) allow Upside Gading to increase rents above the 5% annual limit provided by the Rent Ordinance. Such an interpretation is inconsistent with Council policy to preserve affordable housing and the 2014 General Plan update.

In conclusion, staff recommends adoption of the ordinance at the July 19, 2016 City Council meeting.

Respectfully submitted,
MICHAEL S. LAWSON
City Attorney



Rafael E. Alvarado Jr.,
Assistant City Attorney

Cc: City Manager
Upside Management Co. Inc.
Centro Legal De La Raza
Rental Housing Owner's Association



CITY OF
HAYWARD
HEART OF THE BAY

July 1, 2016

Letter in Support of Petition for Writ,

The City Attorney's Office represents the interests of the City of Hayward and its residents. Although my office does not have a position on the outcome of this particular case, we disagree strongly with the trial court's decision to "give[] little or no deference" to my office's formal interpretation of local law. I write this letter to ask the appellate court to hold that the City of Hayward's Residential Rent Stabilization Ordinance ("Rent Ordinance") only exempts properties that are currently financed or insured by a government agency.

In declining to give deference, the trial court first notes that there is "no indication that this interpretation was made by the Hayward City Council or the Hayward Rent Board." The City has no "Rent Board." However, the Rent Review Program is a division of the Hayward City Attorney's Office and the City Attorney serves as the "Rent Review Officer" designated to administer and enforce the provisions of the Rent Ordinance. Consequently, the City Attorney's Office is officially tasked with interpreting the Rent Ordinance and enforcing its provisions.

Second, the trial court finds that "Hayward's Rent Review Office stated a different interpretation of the Ordinance in a letter dated October 17, 2012." This is incorrect. In 2012, my office responded to a letter from a property owner claiming that the property was exempt from the Rent Ordinance because it was subject to rent controls from HUD. However, the owner did not inform us, nor were we then aware, that the property was no longer financed or insured by HUD. My office did not address the legal question at issue here. Our interpretation that the Rent Ordinance applies to multi-family housing projects – unless the project is currently financed or insured by a federal, state or local government – has not changed.

Finally, although we ask the appellate court to confirm my office's interpretation of local law, we are also taking steps to fully resolve this matter. On July 5, 2016, the Hayward City Council is scheduled to consider an amendment clarifying that that the Rent Ordinance only exempts properties currently financed or insured by another government agency. At a minimum, I therefore ask the appellate court to give the Council time to confirm my office's interpretation.

Sincerely,
City Attorney

Michael S. Lawson

OFFICE OF THE CITY ATTORNEY

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CITY OF OAKLAND



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City Attorney

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July 1, 2016

Superior Court of California,
County of Alameda, Appellate Division
1225 Fallon Street
Oakland, CA 94612

Re: **Del Hoyo et al. & Espinoza et al. v. Upside Gading LP**
Alameda County Superior Court Case Nos.: HG16808836, HG16808840

Dear Honorable Judge(s):

As the City Attorney for the City of Oakland, I write this letter in support of the petitions for writ of mandate in the above cases. While I do not have a position on these cases in particular or the meaning of the City of Hayward's rent ordinance, I do have serious misgivings about both the lack of deference given to the Hayward City Attorney by the superior court and the very broad construction of a rent ordinance exemption in the court's decision.

My office, like other city attorney offices, is tasked with providing advice and interpretations to our rent board, when legal issues arise with regard to our local rent laws. It is my understanding that the city attorney role is even more direct in Hayward, as the city does not have a rent board. Rather, its rent program is part of the city attorney's office which thus is the "agency charged with [the] administration and interpretation" of the local rent ordinance." *Cole v. City of Oakland Residential Rent Arb. Bd.*, 3 Cal. App. 4th 693, 697-98 (1992).

In either case, city attorneys are entitled to deference when they provide reasonable interpretations of city laws. See *Tower Lane Props. v. City of Los Angeles*, 224 Cal. App. 4th 262, 277 (2014) ("City attorney opinions construing a local ordinance are entitled to consideration, just as Attorney General opinions construing a state statute are entitled to consideration.") Further, because Hayward's city attorney is directly charged with interpreting its rent ordinance, its interpretation is "entitled to great weight and should be respected by the courts unless it is clearly erroneous or unauthorized." *Cole*, 3 Cal. App. 4th at 697-98.

Alameda County Superior Court, Appellate Division

July 1, 2016

Re: Del Hoyo et al. & Espinoza et al. v. Upside Gading LP

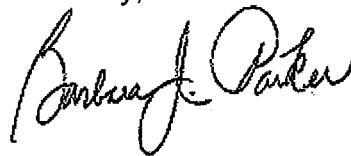
ACSC Nos.: HG16808836, HG16808840

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In light of this precedent, I am very concerned that the Superior Court declined to defer to the Hayward City Attorney's reasonable interpretation of ambiguous language in one of the exemptions to the city's rent ordinance.

I am also concerned that the superior court instead decided to broadly construe an exemption to a local rent law. When drafting local laws, city attorney offices are quite cognizant of the courts' mandate that "[e]xceptions to the general rule of a statute are to be strictly construed." *Da Vinci Group v. S.F. Residential Rent Stabilization & Arb. Bd.*, 5 Cal. App. 4th 24, 28 (1992). For the court to instead construe exemptions broadly would undermine our ability to properly draft ordinances of general applicability, such as local rent control laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara J. Parker". The signature is written in a cursive style with a large, prominent "P" at the end.

BARBARA J. PARKER
City Attorney