

CITY OF OAKLAND—OFFICE OF THE CITY ADMINISTRATOR

COUNTY OF ALAMEDA

**DECISION OF THE INDEPENDENT HEARING OFFICER**

<b>In re: 1770 Broadway</b>	)	
<b>Oakland, California</b>	)	<b>Case No. 1770 Broadway</b>
	)	
<i>Appellant,</i>	)	
	)	
19 <sup>th</sup> & Broadway Associates, LP	)	Hearing Officer: Michael H. Roush
	)	
	)	Hearing Date: March 23, 2026
	)	Time: 10:00 a.m.
	)	Location: Via Zoom

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I

**INTRODUCTION**

The instant appeal concerns whether the staff of the City of Oakland’s Housing and Community Development Department/Code Compliance Relocation Program erred or abused its discretion in its determination that the property owner of 1770 Broadway in Oakland is responsible for providing temporary relocation payments to the tenants who were displaced from that property on January 19, 2026. The appeal was heard on March 23, 2026 and conducted via Zoom before the undersigned independent hearing officer. The record was left open for City, the property owner and some of the tenants who were represented by counsel, to submit arguments in favor of or in opposition to the appeal.

At the hearing, the City was represented by Braz Shabrell, Deputy City Attorney. Corean Todd, Management Specialist III, Oakland Housing and Community Development Department, testified on behalf of the City. Property owner 19<sup>th</sup> & Broadway Associates, LP (hereafter, “Owner”) was represented by Clifford Fried and Michael Moore, with the law firm of Fried Williams & Grice Conner. Ted Dang, general partner of Owner, and Jason Stewart testified at the hearing on behalf of Owner. Erik Thompson, certified court reporter, reported the hearing. In addition to the sworn testimony received during the hearing, the City and Owner submitted numerous documents including Declarations, photographs and video. To the extent the documents, photographs, and video were relevant and not, for example, arguments of the parties, they were received into evidence.

The Hearing Officer also considered (i) Owner’s arguments, both pre-hearing and post-hearing (the latter in response to post hearing arguments of the City and certain displaced tenants), (ii) the City’s post hearing arguments in response to Owner’s pre-hearing arguments, and (iii) arguments of counsel for some of the displaced tenants in response to Owner’s pre-hearing arguments.

II

**EXHIBITS AND TESTIMONY**

**City Exhibits**

- Exhibit 1 January 19, 2026 Red Tag
- Exhibit 2 January 19, 2026 Owner Notice to Tenants
- Exhibit 3 January 26, 2026 Fire Investigative Report
- Exhibit 4 June 2025 and December 2025 emails between tenants and Ted Dang
- Exhibit 5 January 16, 2026 email from tenant to Ted Dang
- Exhibit 6 November and December 2025 and January 2026 emails from property manager to Ted Dang
- Exhibit 7 January and February 2026 emails between Ms. Todd and Mr. Dang and his attorney
- Exhibit 8 February 18, 2026 Determination of Eligibility

**Owner Exhibits**

- Exhibit A December 5, 2025 Video of “Moses” in Unit 211
- Exhibit B February 25, 2025 Request for Appeal Hearing
- Exhibit C March 11, 2025 Notice of Remote Appeal Hearing
- Exhibit D January 25, 2026 Letter from D Samuel to Corean Todd
- Exhibit E January 26, 2026 Letter from D Samuel to Ninal Baj Beri
- Exhibit F January 26, 2026 Notice of Violation
- Exhibit G January 28, 2026 Report from Structural Engineer
- Exhibit H February 18, 2026 Determination of Eligibility
- Exhibit I January 20, 2026 Notices re: Red Tag
- Exhibit J January 20, 2026 Authorization and Release
- Exhibit K January 20, 2026 Authorization and Release
- Exhibit L September 8, 2025 Certification of Compliance from the Oakland Fire Department

- Exhibit M April 1, 2025 Complaint for Unlawful Detainer re: Unit 411
- Exhibit N April 30, 2025 Answer to Unlawful Detainer Complaint (Unit 411)
- Exhibit P January 15, 2026 Amended Judgment (Unit 411)
- Exhibit Q Invoices for Repairs (various dates)
- Exhibit R January 14, 2026 Photograph of Unit 211
- Exhibit S March 9, 2026 Fire Investigative Report from Fire Cause Analysis
- Exhibit T March 18, 2025 Declaration of Ted W Dang
- Exhibit U March 17, 2026 Declaration of Jason Stewart

The testimony of Coreon Todd at the hearing and relevant exhibits provide the following:

On January 19, 2026, at 7 a.m., the Oakland Fire Department (“OFD”) responded to a structural fire at 1770 Broadway Avenue in Oakland (“the Property”). See City Exhibit (“CX”) 3. The Property had been developed with 48 residential rental units. The fire was such that it was necessary for all tenants then residing on the Property to vacate the building. Later that same day, at approximately noon, the Oakland Planning and Building Department (“PBD”) inspected the Property and posted a notice to vacate, a “red tag”, prohibiting anyone from entering the building due to “fire, smoke, and water damage”. CX 1.

On January 19 and 20, 2026, Owner provided tenants with notices stating, in part, that due to the fire, their tenancies were terminated and their security deposits would be returned after the tenants had retrieved their belongings and returned their keys. CX 2.

On January 26, 2026, the OFD issued a Fire Investigative Report regarding its findings as to the cause of the fire. CX 3. The Report stated, “fire damage was most significant in the living room...of Apartment 211...”. The Report concluded the ignition sequence was undetermined but “based on available information, one possible hypothesis considered was lithium-ion battery thermal runaway associated with electric scooter batteries/cells reportedly present in the unit.” *Id.*

Also on January 26, 2026, the City’s Code Enforcement Division issued to Owner a Notice of Violation for several units on the Property, citing building code violations relating to fire, smoke, and water damage. Owner Exhibit (“OX”) F.

Thereafter, a number of tenants contacted the City’s Code Compliance Relocation Program (“CCRP”) requesting information about relocation assistance. Pursuant to the City’s Code Compliance Relocation Program Ordinance, Chapter 15.60, Oakland Municipal Code (“CCRP Ordinance”), staff from the CCRP conducted outreach to tenants and to Owner for the purpose of making a determination regarding the tenants’ eligibility for relocation assistance from Owner. Sections 15.60.050 and 15.60.120, Oakland Municipal Code. (Hereafter, Section references will be to the Oakland Municipal Code unless otherwise noted.) CCRP staff also spoke with security personnel from the Property, the on-site property manager, and personnel from the OFD and PBD.

The tenants with whom staff from the CCRP spoke said that there had been ongoing complaints to Owner about unauthorized persons in the building, inadequate security, and persons associated with Units 211 engaging in dangerous activities involving electric scooter batteries. CX 4. Tenants also stated there had been a fire recently in the building which they believed was also associated with electric scooter batteries. *Id.* One tenant provided an email sent to Owner on January 16, 2026, reporting concerns about trespassers and the risk of fire due to the electric scooter battery activity of these trespassers in Unit 211. CX 5. Another tenant provided an email sent to Owner on December 27, 2025, pointing out ongoing issues with trespassers, a broken front door, and people coming and going from Unit 211. CX 4. The email said the tenant feared for her safety, and even though security person and on site manager were aware of these issues, they had taken inadequate steps to address these issues. *Id.*

CCRP staff also spoke with the resident security person concerning the complaints that tenants had related to staff about trespassers and other security issues. The security person stated that the door and locks to Unit 211 were broken, the unit not secure, and that persons who were not tenants had taken over Unit 211, causing that tenant to sleep in the hallway or in the laundry room. The security guard provided emails he had sent to Owner in November and December 2025 reporting a “major increase in unwanted visitors” and noting he expected a “continued increase in transits [*sic*] with the rain coming these next few days.” CX 6.

Shortly after the fire, i.e., on January 22 and January 26, CCRP staff also spoke with Ted Dang, the general partner of Owner. According to Ms. Todd, in those conversations Mr. Dang stated (a) his belief that the fire had been started by a former tenant who had recently been evicted and who had taken over the unit (Unit 211), (b) there had been numerous break-ins into the building and Unit 211, (c) that the door to Unit 211 had been broken, (d) he had been assisting the tenant in Unit 211 to move to a different unit given that trespassers had taken over her unit (Unit 211), (e) he was pursuing a restraining order against the person alleged to have taken over Unit 211, (f) he had taken legal action to address the situation, (g) he had pictures showing the fire had been started by the tenant who had been recently evicted, and (h) that same tenant had been responsible for other fires in the building. CX 7.

Following up on those conversations, on January 26, 2026 Ms. Todd informed Mr. Dang by email that the CCRP staff was tasked with determining whether the tenants who had been displaced from the Property were eligible for relocation assistance from the Owner and that the staff was gathering information relevant to the tenants’ eligibility. CCRP staff wanted “to ensure that we have an accurate picture and all relevant facts before issuing a determination.” CX 7.

In that email, Ms. Todd had some questions for Mr. Dang. In the earlier conversations, Mr. Dang expressed to Ms. Todd his belief that a former tenant who had recently been evicted had started the fire in Unit 211 and he was aware the door to Unit 211 had been broken but had been fixed. Ms. Todd asked him to share any information he had to support those statements and also to provide “any other evidence you think would be helpful for my determination.” CX 7.

Ms. Todd had a further conversation with Mr. Dang on January 27 and, on January 28, she sent a follow up email to Mr. Dang, again asking him to provide any information or documents that would demonstrate the tenants were not eligible for relocation assistance and also for “any evidence of the steps [*he*] took to address complaints related to trespassers and illegal activities in

Unit 211.” CX 7. She stated that any such information of documentation needed to be provided by close of business on February 2. Mr. Dang responded immediately that he had forwarded her message to his attorney and that he would respond after discussing the matter with his attorney. *Id.*

Ms. Todd did not receive any further information or documents from Mr. Dang by the close of business on February 2, 2026. At 5:20 p.m., Ms. Todd sent another email to Mr. Dang that, in addition to requesting the Resident Rent Roll, asked him to “provide the requested information as soon as possible.” CX 7. The next day she received a phone call from David Semel, an attorney representing Owner. (Mr. Semel had sent a letter to the City Attorney’s Office on January 26 stating that Fried, Williams & Grice Conner was now representing the Owner and the cause of the fire was being investigated. OX E. Following her conversation with Mr. Semel, Ms. Todd sent him an email asking him to provide any steps that had been taken to address trespassers on the Property, the information requested in Ms. Todd’s January 26 email, and a current Residential Rent Roll. *Id.*

On February 5, 2026, Ms. Todd sent another email to Mr. Semel reflecting that the City Attorney’s Office had granted Owner/Mr. Dang until February 8 to provide the requested information and that Mr. Dang had assured her in previous conversations that the requested items were available; she once again set forth what was being requested so that the CCRP staff could make an informed decision whether the tenants were eligible for relocation assistance. CX 7.

By close of business on February 8, 2026, Mr. Todd had not received any of the information that she had requested and, through February 17, 2026, she had not received any requests from Mr. Dang or his attorney for a further extension of time in which to provide such information.

On February 18, 2026, based on information and evidence from some of the displaced tenants, Owner/Mr. Dang, the property manager, security personnel and the Fire and Planning and Building Departments, Ms. Todd issued a Determination of Eligibility (CX 8), finding that the tenants displaced from the Property were eligible for relocation assistance from Owner. In making that determination, Ms. Todd found that none of the “exceptions” regarding the tenants’ eligibility applied, i.e., there was not clear and convincing evidence that the noncompliant conditions at the Property were created by lawful tenants or their guests/invitees (Section 15.60.040 B 2) and there was a preponderance of evidence that fire damage resulted from the acts or negligence of Owner or from pre-existing conditions in the building in violation of applicable health and safety codes (Section 15.60.040 B 7).

The Determination of Eligibility letter set forth the formulae to determine the amount of relocation assistance that Owner was to provide although apparently because of the uncertainty of the number of units occupied at the time of the fire, the types of units, e.g., studio units, one bedroom units, etc., and whether any of the tenant households were entitled to additional relocation payments because of income, age, disabilities or the presence of minor children, the Determination Letter did not set forth the amount of relocation assistance required. Later, however, CCRP staff informed Owner that the relocation assistance due the tenants totaled \$403,513. OX T (Declaration of Ted Dang, para. 24).

Owner filed a timely appeal on February 25, 2026. OX B. The appeal states the Owner contests that the tenants are eligible for relocation assistance because of the exceptions under Section 15.60.040 B 2 and B 7.

Paragraph 2 of subsection B provides a tenant household shall not be deemed to be displaced due to code compliance activity (and hence, not eligible for relocation assistance from a property owner) if the “property owner can demonstrate by clear and convincing evidence that the noncomplying condition was caused by the tenant household or the tenant’s household’s guests or invitees, and was not created by the property owner or the owner’s agent.”

Paragraph 7 of subsection B provides a tenant household shall not be deemed to be displaced due to code compliance activity (and hence, not eligible for relocation assistance from the property owner) when the tenant household is required to vacate the unit due solely to damage resulting from fire or accident outside the control of the property owner and if “the property owner can demonstrate such damage was not caused by the acts or the negligence of the property owner or by a preexisting condition in the building in violation of applicable building, housing, fire, or other health and safety codes.”

The appeal letter also stated Owner “cannot submit any deposit because the Determination of Eligibility failed to allege any ‘full unpaid amount in dispute with CCRP’, constituting a significant hardship and other extraordinary circumstances justifying a waiver of a deposit.” OX B. Subsequently, the City granted a waiver of the requirement that Owner deposit any of the amount of relocation assistance in order that the appeal hearing be scheduled and heard.

On March 19, 2026, two business days before the hearing, Mr. Dang, in support of Owner’s appeal, submitted his Declaration that set forth his reasons to support Owner’s contention that one or both of the exceptions under Section 15.60.040 B applied. OX T (hereafter, the “Dang Declaration”).

At the hearing, Mr. Dang testified consistent with what he had stated in his Declaration, as follows: Notwithstanding the front door had a security system, tenants would “buzz in” problem persons. In September 2025 Owner hired Jason Stewart, a licensed security guard to patrol the building at least twice a day and Mr. Stewart would use his best efforts to remove from the building unauthorized persons. Owner also had on site a full time resident manager and a maintenance person, thereby allowing for a quick response if there were security or maintenance issues in the building, The Oakland Police Department had been called repeatedly to the Property because of unwanted persons in the building but took no action to remove such persons because the presence of such persons was, according to the police, a civil, not a criminal, matter. Mr. Dang felt he was hamstrung to rid the building of problem tenants because of the time and money to evict a tenant. For example, Owner had started eviction proceedings against the tenant in Unit 411 in April 2025 but due to the difficulty of prosecuting unlawful detainers in Oakland and the delaying tactics of the tenant and the organization assisting that tenant challenging the unlawful detainer, Owner was not able to get a judgment to permit a lawful eviction until December 2025. Owner also felt that if security measures were escalated, such as forcibly removing unauthorized persons from a rental unit, it would lead not only lead to violence but also expose Owner to liability.

Concerning the notice that Owner provided to the tenants following the fire (CX 2), Mr. Dang in his Declaration explained that because the City had “red-tagged” the building, deeming the building unsafe to enter, he, without assistance from legal counsel, had sent a notice to tenants that their tenancies were terminated, they no longer had an obligation to pay rent and he would return their security deposits but he had not intended for the notice to be a notice of termination of tenancy or a notice from him that they must vacate the building. Dang Declaration, para. 13.

Owner's legal counsel had also sent a follow up letter to City explaining that the notice (CX 2) had not been intended to be a notice to vacate. OX E.

### III

#### LEGAL STANDARD

The City of Oakland has adopted a comprehensive Code Compliance Relocation Program Ordinance, Chapter 15.60, Oakland Municipal Code ("CCRP Ordinance"). The purpose of the CCRP Ordinance is to provide from a property owner paid relocation payments and assistance to residential tenants who are displaced due to compliance with building, housing, and fire codes. Section 15.60.010. Under the CCRP Ordinance, a tenant is eligible for relocation payments from a property owner if the tenant household is displaced from its rental unit due to the city's code compliance activities. Section 15.60.040.

Code compliance activities are broadly defined to mean activities initiated by the city to determine the condition of a building and require a property owner to make necessary repairs, to vacate the building, or to take other action as necessary to bring the property into compliance with applicable state or local building or housing standards. Section 15.60.030. The City Administrator is responsible for determining whether a tenant/tenant household is eligible for relocation payments from a property owner. Section 15.60.120 A. A tenant or property owner who does not agree with the determination as to whether a tenant is eligible for relocation payments may appeal that determination. Section 15.60.120 E.

Under the CCRP Ordinance, a tenant household is deemed to be displaced from its rental unit due to code compliance activities if such household:

Receives a notice to vacate from the property owner who, after having obtained all necessary permits from the City on or before the notice to vacate is given, seeks in good faith to undertake substantial repairs that cannot be completed while the household is occupies the unit and that are necessary under an outstanding notice of code violation affecting the health and safety of the household. (Section 15.60.040 A 1); or

Vacates a rental unit after the city has issued a notice to vacate, notice to abate a life threatening condition, or declaration of substantial covering that unit and the abatement period has expired without correction of the noncomplying condition. (Section 15.60.040 A 2); or

Vacates the rental unit because the property owner seeks to cause the unit to be vacated due to the existence of conditions for which the city could issue a notice to vacate, notice to abate life threatening conditions, or declaration of substandard covering that unit, but the city has not yet done so. (Section 15.60.040 A 3).

Here, Ms. Todd made a determination that tenant households had vacated their rental units because the PPD had issued a notice to vacate (CX 1) and because Owner had issued to the tenants a notice to vacate (CX 2). Section 15.60.040 A 2 and A3; CX 8.

Notwithstanding paragraphs 2 and 3 of subsection A of Section 15.60.040, subsection B of Section 15.60.040 sets forth exceptions under which a tenant household shall not be deemed to be

displaced due to code compliance activities. If an exception applies, the tenant household will not be eligible for a relocation payment. Paragraphs 1 and paragraphs 3 through 6 of subsection B of Section 15.60.040 do not appear relevant (and Owner does not contend otherwise). Owner contends, however, that paragraphs 2 and 7 of subsection B of Section 15.60.040 provide an exception to Section 15.60.040 A and, relying on those exceptions, argues Owner is not responsible for relocation payments to the tenants.

Paragraph 2 of subsection B of Section 15.60.040 provides:

The property owner can demonstrate by clear and convincing evidence that the noncomplying condition was created by the tenant household or the tenant household's guests or invitees, and was not created by the property owner or the owner's agent.

Paragraph 7 of subsection B of Section 15.60.040 provides:

The tenant household is required to vacate the unit or room due solely to damage resulting from an earthquake, fire, flood, natural disaster, civil disturbance, or accident outside the control of the property owner, if (a) the vacation is required within six months of such event, and (b) the property owner can demonstrate that such damage was not caused by the acts or the negligence of the property owner or by a preexisting condition in the building in violation of applicable building, housing, fire, or other health or safety code.

Under the CCRP Ordinance, a property owner must demonstrate the owner comes within the ambit of one of the exceptions under subsection B of Section 15.60.040. That is, the property owner has the burden of proof that either the noncomplying condition was created by the tenant household or the tenant's household's guests or invitees, and was not created by the property owner or the owner's agent (B 2) or the tenant household was required to vacate the unit due solely to damage from an event, such as a fire, and the property owner can demonstrate that such damage was not caused by the acts or negligence of the owner or by a preexisting condition in the building in violation of applicable building, housing, fire or other health and safety codes (B 7).

Note, however, that under the exception in paragraph 2 under subsection B of Section 15.60.040, the property owner's burden of proof for the exception to apply is by clear and convincing evidence, a much higher standard than a preponderance of evidence. Clear and convincing evidence "requires a finding of high probability that is 'so clear as to leave no substantial doubt' and is 'sufficiently strong to command the unhesitating assent of every reasonable mind.'" *Conservatorship of Wendland* (2001) 26 Cal. 4<sup>th</sup> 519, 552. Preponderance of evidence, on the other hand, is evidence, "when weighed with the evidence opposed to it, has more convincing force, and from which it results that the greater probability is in favor of the party upon whom it rests." *Chamberlain v. Ventura County Civil Service Com.* (1977) 69 Cal. App. 3d 362, 368-369. To put it simply, a preponderance of evidence is evidence that is "more likely than not".

Since B7, unlike B 2, is silent as to the applicable burden of proof, the property owner's burden of proof under B 7 is by a preponderance of evidence.

Accordingly, as will be discussed in more detail below, in order for Owner not to be responsible for relocation assistance, either Owner must prove by clear and convincing evidence that the noncomplying condition was created by a tenant or a tenant's guests/invitees or Owner

must prove to by a preponderance of evidence that there was an event that caused damage requiring a tenant household to vacate and the damage was not caused by the acts or negligence of Owner or by a preexisting condition in the building in violation of applicable health and safety codes.

#### IV

### OBJECTIONS TO EVIDENCE

#### Owner's Objections

Owner objects to certain evidence that the CCRP staff considered in making its determination of eligibility: (i) the names of tenants in emails provided to the CCRP were redacted and therefore deprived Owner of the opportunity to cross examine the persons making the statements in the email, in violation of Owner's rights under the Sixth Amendment to the US Constitution; (ii) attachments to the emails were not included and those attachments could have contained information showing Owner was not negligent; and (iii) the determination was made without providing Owner without a fair notice to be heard in violation of Owner's due process rights.

The City argues these objections lack merit in that the emails were available to Owner prior to the hearing and the process under the CCRP Ordinance does not require statements from witnesses to be under oath or through declarations in order for CCRP staff to rely on such statements in order to make an informed and reasonable determination. Moreover, CCRP staff provided Owner with ample time—almost four weeks--in which to provide evidence why tenants were not eligible for relocation assistance but Owner either provided no information in response to the particular requests of the CCRP staff or the information provided was insufficient to support Owner's position.

Owner's objections are overruled. The CCRP Ordinance does not require that the information that the CCRP staff gathers before making a determination be in any particular form and certainly not under oath or through declarations under penalty of perjury. The emails were provided to Owner weeks prior to the hearing and Owner, if it were concerned about the accuracy or veracity of the statements in the emails, could have requested the CCRP staff to request the individuals to be present at the hearing or could have requested that subpoenas be issued for their attendance. That the attachments could have contained information beneficial to the Owner is speculation. Finally, there is nothing in CCRP Ordinance that requires an Owner to have a formal hearing before the CCRP staff issues a Determination of Eligibility. Rather the Ordinance provides for notice and a hearing before an independent hearing officer only after the CCRP staff makes an informal determination of eligibility and a party is dissatisfied with the staff's determination.

In addition, as the record shows (CX 7) and as Ms. Todd testified, she made numerous attempts over the course of several weeks requesting Owner to provide whatever information or evidence it had to demonstrate that the tenants were not eligible for relocation assistance. Indeed, Owner was granted an extension of time to provide such information and CCRP staff waited for two weeks after the expiration of the last extension before issuing the Determination of Eligibility. Owner had ample time to provide information to the CCRP staff before the staff made its determination, yet Owner failed to provide such information.

Moreover, Owner did submit Declarations and exhibits as part of the appeal hearing which Declarations and exhibits the hearing officer has considered in rendering this Decision. For all those reasons, Owner was not, and has not been, deprived of due process.

### City's Objections

City makes a broad objection to “any and all of the evidence, filings and other documentation submitted by the property owner for this appeal” on grounds that such evidence had to be submitted by February 2, 2026 yet no such evidence was submitted until March 19, 2026, two business days prior to the hearing. City also objects that the evidence submitted is largely irrelevant to the question of eligibility.

City's objections are likewise overruled. There was no evidence that Owner had been informed that if information or documents were not submitted to the CCRP staff by a date certain before the staff made its Determination that any such information would not be considered in an appeal. Moreover, after Owner filed the appeal, Owner was not informed that evidence in support of the appeal had to be submitted by a date certain or it would not be considered. The evidence that Owner did submit on March 19, 2026—the Declarations and other exhibits—are relevant in determining whether the tenants are eligible for relocation assistance, notwithstanding that the CCRP staff did not have the benefit of such information when it made its Determination.

## V

### **DISCUSSION**

#### Eligibility Under the CCRP Ordinance; Exceptions

Under the CCRP Ordinance, a tenant household is entitled to relocation assistance from a property owner when the household is displaced from the tenant's rental unit due to the City's code compliant activity. Section 15.60.040 A. City code compliant activity includes a notice to vacate. Section 15.60.030. Here, on January 19, 2026, a few hours after the fire started, the City posted the building with a notice to vacate due to fire, smoke and water damage. CX 1. Pursuant to that notice, tenants at the Property vacated their units and were not allowed to re-enter the building to retrieve any of their belongings unless they received Owner's reluctant permission to do so and signed a form holding Owner not responsible if the retrieving tenant were injured. OX J and K.

For any or all of three reasons, Owner contends that the tenants are not eligible for relocation assistance from Owner and it was an abuse of the CCRP staff to determine otherwise. Those reasons were: tenants vacated the building due to the fire, not the notice to vacate; the fire was created by a tenant household or a tenant's guests/invitees; and the damage from the fire was outside the control of Owner and was neither caused by the acts or negligence of Owner or by pre-existing conditions in the building that were in violation of applicable health and safety codes.

For certain the tenants immediately vacated the building due to the fire, as would any reasonable person. Once the fire was extinguished, however, assuming some or all of the rental units were safe to occupy, tenants could reenter the building and occupy their rental units. Given the scope and extent of the fire damage, however, the City Code Enforcement Division/PBD determined tenants could not safely reenter the building or occupy any of the rental units and

issued a notice to vacate due to fire, smoke and water damage—clearly a code compliant activity. CX 1. Therefore, as an initial matter, it was not an abuse of Ms. Todd's discretion to have determined that the tenant households were displaced due to the notice to vacate and therefore eligible for relocation assistance from Owner. Owner's contention that it was simply the fire that caused the ongoing displacement of the tenants is without merit.

Ms. Todd's initial determination, however, does not end the inquiry, Notwithstanding that code compliant activity caused tenant households to vacate the building, a property owner is not responsible for relocation assistance if one of the exceptions under the CCRP Ordinance applies. Owner contends that either (or both) of the exceptions—15.60.040 B 2 (“the B 2 exception”) or 15.60.040 B 7 (“the B 7 exception”) applies. As noted above, as to the B 2 exception, that exception must be proven by clear and convincing evidence. As to the B 7 exception, that exception must be proven by the preponderance of evidence.

#### The Section 15.60.040 B 2 Exception

Owner testified that at the time of the fire [REDACTED] was a tenant in Unit 211 where the fire according to the OFD started, CX 3. Owner contends that at least two individuals, known to Mr. Dang and Owner's agents only as Juan and Moses, were guests or invitees of [REDACTED] and it was their activities in Unit 211 involving illegally removing lithium batteries from electric scooters that started the fire. There is, however, no clear and convincing evidence that these two individuals were in fact guests or invitees of [REDACTED] rather the evidence strongly suggests that they were trespassers or at least unauthorized occupants of Unit 211.

In September 2025, Owner hired one of the tenants, Derek Miller, who is a licensed security guard, to patrol the building twice a day and remove persons not authorized to be in the building. Dang Declaration, para. 11. At the time Ms. Todd made the Determination, she had received from Mr. Miller a photograph of the damaged door of Unit 211 taken on November 8, 2025 and the email to Ms. Todd from Mr. Miller states the photograph shows “the damaged door of 211 that was never repaired to stop transits [sic] from entering. It was always left open and wouldn't lock from the inside.” CX 6.

Moreover, Ms. Todd had information that Mr. Dang was apparently aware of the mental health challenges of the tenant in Unit 211 and that transients were occupying that unit as evidenced by an email sent by Mr. Miller to Mr. Dang on November 12 that said, “With the understanding of Unit 211' mental health I will be sure to keep an eye out that no transits [sic] are entering the unit unauthorized.” CX 6. A few days later—November 18, 2025—Mr. Miller informed Mr. Dang that a “new individual has been visiting Unit 211...which may evolve into issues on the 2<sup>nd</sup> floor.” *Id.*

At the time Ms. Todd made her Determination, she also had received an email dated December 9 in which Mr. Miller informed Mr. Dang that upon Mr. Dang's request, he was doing frequent visits to Unit 211 and “there is a new person answering the door every time.” CX 6. Later that month, Mr. Miller (who had been off for a few days during the holidays) informed Mr. Dang that “There has been a major increase in unwanted visitors the past few days”, that he had to remove such persons five to six times each day, and that transients were back in Unit 211. *Id.*

Accordingly, at the time Ms. Todd issued the Determination of Eligibility, there was scant—and certainly not clear and convincing—evidence that persons occupying Unit 211 where the fire originated were guests or invitees of [REDACTED]. It was, therefore, not an abuse of Ms. Todd’s discretion to have made the determination that the B 2 exception did not apply.

Moreover, the evidence that Owner submitted after Ms. Todd made her decision likewise supports Ms. Todd’s decision that the persons in Unit 211 were not guests of invitees of the tenant. For example, in support of Owner’s appeal, the onsite property manager Jason Stewart submitted a Declaration. In that Declaration, Mr. Stewart states that he “encountered transients and trespassers daily while performing [his] duties on [the] property,...in and around [Unit] 211 specifically.” Stewart Declaration, para. 3. He expressed doubt that these persons were guests of tenants: “Many of these people claimed to be guests of tenants at the property.” *Id.*

Mr. Stewart’s Declaration explained that when he found unwelcome persons in the building, he would ask them to leave but that he could not do much more than that. He stated that two unwelcome persons who gave him the most problems were persons in Unit 211. Stewart Declaration, para. 5. Moreover, Owner submitted a video taken on December 5, 2025 in which Mr. Stewart is in Unit 211 and informs Moses that he is not authorized to be in the Unit and must remove all of this belongings. OX A. Mr. Stewart’s testimony at the hearing was in accord with his Declaration as he testified that he had spoken to the tenant in Unit 211 who confirmed that [Moses] was not supposed to be in her unit. Also, an investigator on behalf of Owner’s fire insurance company conducted an investigation of the fire and issued a report. OX S. In that report, the investigator reports that Mr. Stewart told him that he (Mr. Stewart) would see [REDACTED] sleeping in the hallway because the “men had kicked her out of the apartment”, certainly behavior at serious odds with a guest or invitee of [REDACTED].

Finally, even assuming that the persons in Unit 211 were guests of the tenant, the B 2 exception would not apply to the other displaced tenants in the building: A tenant household shall not be deemed displaced and hence, not eligible for relocation assistance, only if the condition that created the displacement was created by the tenant household’s guests or invitees. Nothing in Section 15.60.040 B2 suggests that other tenant households who did not create the noncompliant condition would not be eligible for relocation assistance.

Accordingly, even taking into account documentary evidence and testimony that was not available at the time Ms. Todd issued the Determination of Eligibility, Owner has not produced clear and convincing evidence that persons occupying Unit 211 where the fire originated were guests or invitees of [REDACTED] and therefore the B 2 exception does not apply.

The Section 15.60.040 B 7 Exception.

Owner also contends that Owner is not responsible for relocation assistance because the B 7 exception applies. For this exception to apply, Owner’s contention must be supported by the preponderance of evidence.

For the B 7 exception to apply, two elements are required: (1) the tenant household was required to vacate the unit or room due solely to damage resulting from an earthquake, fire, flood, natural disaster, civil disturbance, or accident outside the control of the property owner, and, as relevant here (2) the property owner can demonstrate that such damage was not caused by the

acts or negligence of the property owner or by a preexisting condition in the building in violation of applicable building, housing, fire, or other health or safety codes.

Owner contends the exception should apply because the fire was outside the control of the property owner. Owner misreads that portion of B7.

To read that portion of B7 that way would violate the long standing rule of statutory construction—the last antecedent rule—that provides “qualifying words, phrases, and clauses are to be applied to the words or phrases immediately preceding and are not to be construed or extending to or including others more remote. (Citation)” *White v. County of Sacramento* (1982) 31 Cal 3d 676, 679-680. Accordingly, the phrase “outside the control of the property owner” applies only to “accident”, not “fire”.

Further support for such a reading is provided by the punctuation. “Evidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma. (Citation). “ *White v. County of Sacramento, supra*, 31 Cal 3d at 680. In B7, “or accident outside the control of the property owner” is set off with a comma from the other antecedents clearly indicating that “outside of the property owner’s control” applies only to “accident”.

Despite Owner’s misreading of that portion of the B 7 exception, it is clear that the tenants did vacate the building due solely to damage caused by the fire. Accordingly, for the B7 exception to apply, Owner must prove that such damage was not caused by the owner’s acts or negligence or by preexisting conditions in the building in violation of applicable health and safety codes. Owner argues that the B 7 exception applies because first, Owner had no duty to the tenants to have prevented persons in the building from starting the fire, second, even if it had such a duty, Owner did not breach that duty, and third, there were no pre-existing conditions in the building in violation of applicable health and safety codes.

In support of that argument, Owner submits that it acted reasonably and in a non-negligent fashion to keep the Property secure from unauthorized persons. For example: For a person to enter the building a person must have a code or be “buzzed” in by a tenant; Owner had an on site manager who would respond to issues reported to him by tenants; Owner hired a licensed security guard to patrol the building and remove persons who were not authorized to be in the building; doors or locks that were broken or inoperable were immediately fixed; and Owner initiated eviction proceedings against tenants who did not pay rent or created problems in the building. Dang Declaration, paras, 5, 7, 8, and 11. (Mr. Dang’s testimony at the hearing was consistent with his Declaration.)

City and some of the displaced tenants (who are now represented by counsel who submitted an amicus brief on their behalf) argue that Owner did have a duty to protect the tenants and that Owner breached that duty because the Owner’s acts—or more accurately the failure to act—or the Owner’s negligence resulted in the damage. They point out that Owner was notified on many occasions and over a period of months prior to the fire that there were unauthorized persons in the building who were engaged in unlawful activity, such as stripping electric scooters of lithium batteries which could lead to a fire. They point out that other than Mr. Stewart ordering the unauthorized person in Unit 211 to be out of the unit (which order Mr. Stewart conceded was a bluff), Owner took no affirmative steps, such as serving the tenant in Unit 211 with a notice of

violation of the lease or making a citizen's arrest of trespassers, either or both of which could have led to the removal of the unauthorized occupants in Unit 211.

The general rule in California is that everyone has a duty to use ordinary care in the management of that person's property and the failure to do so renders such person liable for injuries to other persons. Civil Code, section 1714 subd. (a); *Parsons v. Crown Disposal Co.* (1997) 15 Cal. 4<sup>th</sup> 456, 472. Whether a particular situation falls within the exception to the general rule, i.e., whether a duty of care exists in the particular situation 'is a question of law to be determined on a case by case basis. *Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal 3d 112, 124. As expressed by the courts, "'Duty is not an immutable fact of nature' but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection. (Citation)." *Ballard v. Uribe* (1986) 41 Cal. 3d 564, 572.

Courts have identified several factors in determining the existence and scope of duty: the foreseeability of harm to the party injured; the degree of certainty that the party was in fact injured; the closeness of the connection between the defendant's conduct and the injury suffered; the moral blame attached to the defendant's conduct; the policy of preventing future harm; the extent of the burden on defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach of that duty; and the availability, cost and prevalence of insurance for the risk involved. *Parsons v. Crown Disposal Co.*, *supra*, 15 Cal. 4<sup>th</sup> at 473.

Applying those factors here, as a matter of law Owner had a duty to manage the Property so as not to allow a situation to exist that led to the fire that damaged the building such that the City's Code Enforcement Division/PBD found the building unsafe due to smoke, fire and water damage and ordered that no one occupy the building. Broadly speaking, it is foreseeable that if a rental property owner fails to provide adequate security for a multi-family rental property, and fails to take adequate steps to remove unauthorized persons who may be engaged in dangerous and illegal activity, tenants in the building are likely to be at risk of harm, thereby establishing not only considerable certainty that someone will be injured (or here displaced) but also a close connection between a property owner's conduct and the injury tenants will suffer. Moreover, imposing a duty will likely encourage similarly situated property owners to pay attention to the complaints of their tenants and the reports of their agents that unauthorized persons are posing a significant risk of danger and harm to the tenants who are paying good money to live in a safe and peaceful environment. And while no one downplays the financial burden that a property owner would incur in making a multi-family rental property more secure and spending money on attorneys to evict tenants whose defensive tactics frustrate property owners, the consequences to the tenant community who end up displaced because of a property owner's failure to act are (as here) severe. Finally, property owners by setting rents when tenants move in should contemplate that there will be expenses to provide security and evict tenants who are causing nuisances or not paying rent and set those rents accordingly. For all those policy reasons, there should be no exception to the general rule that Owner had a duty to the tenants at the Property to render that Property reasonably safe and not create a situation where the tenants would be faced with displacement due to the Owner's acts or failure to act..

Having established that Owner had a duty to the tenants in Owner's building, did the facts demonstrate that the Owner breached that duty? Owner argues no but the evidence strongly supports the City's and the tenants' arguments that Owner did. For example, one of the tenants as early as June 2025, months before the fire, sent an email to Mr. Dang bringing to his attention

“issues in the building for months now and it has not gotten better.” CX 4. The email stated a homeless person sleeps in the building, leaves trash and debris in the hall, and defecates on the floor. The tenant expressed fear for the tenant’s safety and pleaded with Mr. Dang that he do something to address the problem. *Id.*

In September 2025, Owner retained the services of Derek Miller, a licensed security guard, to patrol the building. Mr. Miller was also a tenant in the building. Nevertheless, a tenant reported to Mr. Dang in December 2025 that the problem with unauthorized persons in the building “is getting worse”, Mr. Miller was aware of the problem, and the tenant was “worried about my safety”. CX 4.

Significantly, just three days before the fire on January 19, 2026, a tenant sent an email to Mr. Dang pointing out the continued presence of trespassers in the building was “a direct threat to the safety of those who live here.” In particular, the email states that the tenant “saw another trespasser out of Apt 211 who is stripping an electric scooter...with a large battery which could cause another fire in our building.” CX 5.

In addition, security guard Miller routinely brought to Mr. Dang’s attention problems in the building including issues with Unit 211. For example, Mr. Miller sent to Ms. Todd an email with a photograph taken on November 8, 2025. The email states the photograph shows “the damaged door of 211 that was never repaired to stop transits [*sic*] from entering. It was always left open and wouldn’t lock from the inside.” CX 6. Moreover, Mr. Dang was aware of the mental health challenges of the tenant in Unit 211 and that transients were occupying that unit as evidenced by an email sent by Mr. Miller to Mr. Dang on November 12 that said, “With the understanding of Unit 211’ mental health I will be sure to keep an eye out that no transits [*sic*] are entering the unit unauthorized.” CX 6. A few days later—November 18, 2025—Mr. Miller informed Mr. Dang that a “new individual has been visiting Unit 211...which may evolve into issues on the 2<sup>nd</sup> floor.” *Id.*

On December 9, Mr. Miller informed Mr. Dang that upon Mr. Dang’s request, he was doing frequent visits to Unit 211 and “there is a new person answering the door every time.” CX 6. On that same date, Mr. Miller prepared an Incident Report concerning a lady sleeping on the floor of the 4<sup>th</sup> floor and when she would not leave voluntarily, it was only when he threatened to call the police that she left the building. *Id.* Later that month, Mr. Miller (who had been off for a few days during the holidays) informed Mr. Dang that “There has been a major increase in unwanted visitors the past few days”, that he had to remove such persons five to six times each day, and that transients were back in Unit 211. CX 6

In support of Owner’s appeal, the Declaration of the onsite property manager Jason Stewart states that he “encountered transients and trespassers daily while performing [his] duties on [the] property,...in and around [Unit] 211 specifically.” Stewart Declaration, para. 3. He expressed doubt that these persons were guests of tenants: “Many of these people claimed to be guests of tenants at the property.” *Id.* Moreover, Mr. Stewart reported to the investigator for Owner’s fire insurance company that the tenant in Unit 211 where the fire started had kicked the tenant out of the apartment and forced her to sleep in the hallway. OX S.

Mr. Stewart’s Declaration explained that when he found unwelcome persons in the building, he would ask them to leave but that he could not do much more than that. He stated that two unwelcome persons who gave him the most problems were (Moses and Juan) whom he found in

Unit 211. Stewart Declaration, para. 5. Moreover, Owner submitted a video taken on December 5, 2025 in which Mr. Stewart is in Unit 211 and informs Moses that he is not authorized to be in the Unit and must remove all of this belongings. OX A. Mr. Stewart at the hearing testified however that he did not take steps to have Moses' belongings removed from Unit 211 and that he was only bluffing.

Moreover, Mr. Dang's own declaration demonstrates his failure to act reasonably. Mr. Dang was aware that persons other than Ms. Nwuke were in Unit 211 and these same individuals had caused a fire in a different unit, a fire that was caused by lithium batteries, and the same activity involving lithium batteries was occurring in Unit 211. Dang Declaration, at paras. 9 and 10. Yet the only action that Mr. Dang took was to have the resident manager confront Moses and order him and his belongings out of the Unit and the building (OX A) but then Mr. Dang (nor Mr. Miller) took any action to follow up on that order, although he admits he could have done more but did not because of the costs. Dang Declaration, para. 12.

The chronology of events as described above amply demonstrates that Owner breached its duty to the tenants in the building: Owner was acutely aware of problems in the building caused by unauthorized persons in the building, including a fire in another unit likely from the same activity that gave rise to the fire in Unit 211 and therefore it was foreseeable that without better security and without a more concerted effort to rid the building of trespassers, harm would come to, and in fact did come to, the tenants. Owner failed to act promptly to evict the tenant in Unit 211 for violating the terms of her lease or removing the persons not authorized to be in that Unit by way of a forcible detainer or citizen's arrest. And although it may have taken time and money to remove a tenant and others in the tenant's unit (whether guests or trespassers), it is speculation whether such efforts would have led to violence or exposed Owner to some undefined liability. Nor would it have been futile as Owner previously had successfully obtained a judgment to evict another problem tenant.

The preponderance of evidence is that Owner failed to take adequate measures to keep transients out of the building and in particular to keep transients out of Unit 211, the source of the fire. Owner's acts, or more accurately his failure to act, or his negligence materially contributed or caused the damage to the property resulting from the fire. The damage to the building from the fire caused the City to issue a notice to vacate, thereby displacing the tenants in the building. Accordingly, Owner has not carried its burden of proof to come within the exception of Section 15.60.040 B 7.

Finally as to this exception, tenants also contend that Owner cannot prove the B 7 exception applies because there were preexisting conditions in the building in violation of applicable health and safety codes that led to the fire, citing to various subsections of Health and Safety Code, section 17920.3. The argument is not convincing. Health and Safety Code section 17920.3 generally refers to physical conditions of property that endanger occupants of the building or that constitute a nuisance. There was no evidence that there were physical conditions, as such, in the building that led to the fire and the City prior to the fire had not issued, for example, a Notice of Violation or other indicia that there were violations of the Health and Safety Code or of the City's adopted building, housing, or fire code standards. Indeed, to the contrary, a few months before the fire, OFD had issued a Certification of Compliance (OX L) and there was no evidence before the fire that physical conditions in violation of applicable health and safety codes had developed since that time to warrant a Notice of Violation.

## Remaining Arguments

Owner makes several additional arguments why it should not be responsible for making relocation payments to the displaced tenants: requiring such payments constitute an illegal taking of property; only the City Administrator may make an eligibility determination; the City has a conflict of interest because it funds an organization that provides legal assistance to tenants; and Owner was denied due process. None of the arguments have merit.

Owner contends that requiring property owners to make relocation payments is an illegal taking of property, an impermissible penalty for owning rental property, or is otherwise unconstitutional. Not so. As City points out, both state and federal courts have held that requiring rental property owners to make relocation payments to tenants under circumstances similar to here is not an illegal taking of property, a penalty or otherwise unconstitutional and, indeed, local agencies have the authority, such as reflected in Chapter 15.60, to do so. *Ballinger v. City of Oakland* (9<sup>th</sup> Cir., 2022) 24 F. 4<sup>th</sup> 1287; *2710 Sutter Ventures LLC v. Mills* (2022) 82 Cal. App. 5<sup>th</sup> 842. State law is to the same effect: Health and Safety Code, section 17975.2 (requiring a rental property owner to make relocation payments to a displaced tenant when a governmental agency orders a building vacated and the tenant has not caused the condition leading to the order).

Owner argues that only the City Administrator may make a determination that a tenant household is eligible for relocation assistance and therefore Ms. Todd's determination was without legal force. True, Section 15.60.120 provides that the "City Administrator" is responsible for making the determination whether a tenant household is eligible for relocation payments from a rental property owner and other determinations. Owner contends that CCRP staff, not the City Administrator, made the determination and therefore the determination must be set aside. "City Administrator" however is defined as the City Administrator or his or her designee. Section 15.60.030. Moreover, the City Administrator is authorized to develop rules and regulations to implement the CCRP Ordinance. Section 15.60. 120 G.

Pursuant to that authority, the City Administrator has promulgated Administrative Instruction 5001 concerning the Code Compliance Relocation Program. In part that Instruction provides that the City Administrator has tasked the Housing and Community Development staff with making the informal determination of tenant eligibility under the CCRP. Pursuant to that Instruction, CCRP staff here made the determination that Owner must provide relocation assistance to the displaced tenants. CCRP staff had the authority under Chapter 15.60 to do so.

Owner next argues that the City's Housing and Community Development Department whose staff, under the CCRP Ordinance, made the determination here had an impermissible conflict of interest because that Department funds an organization called the Eviction Defense Collaborative whose purpose is to provide legal assistance to tenants and such assistance thwarts efforts of property owners to evict tenants who do not pay rent or who violate their lease.

As the City points out, HCD oversees many City programs and its role in providing grant funding for diverse programs, including programs designed to assist housing developers and property owner organizations, is distinct from its role in making determinations as to tenant eligibility which it is required to do under Chapter 15.60. There is no evidence that the funding arm of HCD pressured or even discussed with CCRP staff whether tenants here were eligible for relocation assistance. Owner's argument fails.

Finally, Owner repeats its argument made earlier objecting to the City's evidence that it was not provided due process before the CCRP staff made its determination that the tenants were eligible for relocation assistance. For the reasons stated earlier (see pages 9 and 10), that argument fails because Owner was given almost a month to submit to the CCRP staff its evidence why it should not be responsible for relocation assistance. In addition, in this appeal, Owner has been given the opportunity to present all of its evidence and reasons why the tenants are not eligible for relocation assistance and the Hearing Officer has considered all such evidence, reasons, and arguments. Owner has not been deprived of due process.

#### Amount of Relocation Assistance

Based on information available to the CCRP staff shortly after the time it made its Determination, Owner was informed the relocation payments that needed to be provided to the displaced tenants were \$404,513. This was based on the number (48) and make up (i.e., studios, one-bedroom units) of rental units that apparently were on a Registration Rent Roll that was maintained by the City. Mr. Dang testified that not all of the 48 units were rented at the time of the fire.

Within 10 days of the date of this Decision, Owner is to submit to the CCRP staff a list of the units (and their types) that were occupied at the time of the fire, the names of the tenants that occupied those units, whether (to Owner's knowledge) any of those tenant households were low income households, seniors, disabled, or had minor children, and any information Owner has as to the whereabouts of those tenants. CCRP shall evaluate this information and determine the amount of relocation assistance that Owner must provide. Owner shall then within five business days deposit such amount with the CCRP.

## VI

### DECISION

For the reasons set forth above, Owner's appeal is DENIED. Within 10 days of the date of this Decision, Owner is to submit to the CCRP staff a list of the units (and their types) that were occupied at the time of the fire, the names of the tenants that occupied those units, whether any of those tenant households were low income households, seniors, disabled, or had minor children, and any information Owner has as to the whereabouts of those tenants. CCRP shall evaluate this information and determine the amount of relocation assistance that Owner must provide. Owner shall then within five business days deposit such amount with the CCRP.

### NOTICE CONCERNING JUDICIAL REVIEW

**Any aggrieved party to this Decision may seek judicial review. Such review must be filed within 90 days from the date of this Decision (April 13, 2026). See Code of Civil Procedure, Section 1094.6.**



Dated: April 13, 2026

Michael H. Roush, Hearing Officer