

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S247380

THOMAS LIPPMAN,
Plaintiff and Appellant,

v.

CITY OF OAKLAND,
Defendant and Respondent.

After an Opinion by the Court of Appeal,
First Appellate District, Division Four
(Case No. A141865)

On Appeal from the Superior Court of Alameda County
(Case No. RG12657623, Honorable Evelio Grillo, Judge)

**PLAINTIFF AND APPELLANT THOMAS LIPPMAN'S
ANSWER TO PETITION FOR REVIEW**

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Plaintiff Thomas Lippman submits this Answer to the Petition for Review submitted by the City of Oakland.

THERE IS NO NEED FOR REVIEW

The City seeks review of the Court of Appeal's unanimous decision that the City's process for resolving building code enforcement appeals conflicts with the California Building Code and that the home rule doctrine does not excuse it. The Court of Appeal broke no new legal ground in reaching that result.

The Court of Appeal followed this Court's two-step process for applying the home rule doctrine. Pet. Att. A at 4-5; *see Associated Builders & Contractors, Inc. v. San Francisco Airports Comm'n* (1999) 21 Cal. 4th 352, 364. First, it determined that there is a genuine conflict between state law and the City's ordinance that cannot be avoided. Pet. Att. A at 4-5, 8-11. Second, the Court of Appeal determined that the Building Code's appeal provision implicates a matter of statewide concern because the state has an "interest in protecting the basic rights of property owners[.]" *See* Pet. Att. A at 4-5, 12-17.

As the first published decision applying this Court's home rule precedents to the Building Code's appeals provision, the Court of Appeal's decision is important. But the conclusion it reaches is

unremarkable considering the Building Code’s text and this Court’s precedents; the Court of Appeal merely applied settled law to a new set of facts. The City’s arguments to the contrary (most of which it failed to raise in the trial court or the Court of Appeal) strain credulity. Furthermore, the City fails to identify a single case that conflicts with the Court of Appeal’s decision or any important question of law that this Court must resolve. Consequently, this Court’s review is unnecessary to secure uniformity of decision or to settle any important question of law.

LEGAL BACKGROUND

California’s Housing Law provides statewide standards for residential buildings under the state’s Building Code and various uniform codes. *See* Health & Safety Code § 17910, *et seq.* Those provisions, as well as rules and regulations promulgated pursuant to them, “apply in all parts of the state.” *Id.* § 17950.

Section 1.8.8.1 of the 2010 Building Code—the version of the code at issue here—provides:

General. Every city, county or city and county shall establish a process to hear and decide appeals of orders, decisions and determinations made by the enforcing agency relative to the application and interpretation of this code and other regulations governing use, maintenance and change of occupancy. The government body of any city, county, or city and

county may establish a local appeals board and a housing appeals board to serve this purpose. Members of the appeals board(s) shall not be employees of the enforcing agency and shall be knowledgeable in the applicable building codes, regulations and ordinances as determined by the governing body of the city, county or city and county.

Where no such appeals boards or agencies have been established, the governing body of the city, county, or city and county shall serve as the local appeals board or housing appeals board as specified in California Health and Safety Code Sections 17920.5 and 17920.6.

Section 1.8.8.2 defines “Housing Appeals Board” and “Local Appeals Board” using terms nearly identical to Health and Safety Code sections 17920.5 and 17920.6. Finally, section 1.8.8.3 guarantees every person affected by a building code enforcement decision the right to appeal the decision to the local appeals board or housing appeals board or, if none have been established, the city’s governing body.

STATEMENT OF THE CASE

Factual background

Thomas Lippman owns an apartment building in Oakland, California. Pet. Att. A at 2. This case concerns two building code violation notices he received regarding that building, more than \$12,000 in fees imposed under those notices, and his efforts to appeal those decisions. *Id.*

In 2009, the City's code enforcement agency issued a notice alleging the presence of "trash, debris, overgrowth, recyclables, graffiti, and/or disabled vehicles or vehicle parts" or a "structure was not properly secured" without any further detail identifying the alleged violation. Tr. at 8. Six days later, he received a nearly identical notice, again without any further clarification about the alleged violation. *Id.* at 10. Lippman called the inspector who issued the first notice, learned the problem was an overgrown weed, promptly fixed it, and the inspector told him the problem was taken care of. *See id.* at 12. Unbeknownst to Lippman, the City continued to process the second notice and he was assessed almost \$2,500 in fees. *Id.* at 17.

The following year, Lippman evicted a tenant from the property for nonpayment of rent. AR Tab 43. Attempting to stave off the eviction, the tenant staged a number of code violations, including removing the smoke detector, damaging the plumbing, and kicking in vents. Tr. at 26-27. An inspector investigated the property and issued a notice citing eight alleged violations. *Id.* Lippman promptly fixed six of the violations staged by the tenant. AR Tab 53 at 13-14. However, he contested the other two: alleged cracked paint on the ceiling, which he argued was just a wrinkle

in the sheet rock paper; and an unpermitted water heater that a tenant had installed without Lippman's knowledge or consent, which he argued he could not be punished for.¹ Lippman was charged nearly \$10,000 for the alleged violations contained in the 2010 notice.

When Lippman received the 2009 and 2010 notices, the only appeal available to him was to ask the inspector's supervisor to reconsider. Tr. at 95. In both instances, the appeal fell on deaf ears. *Id.* In 2011, the City changed its appeals process in response to a scathing grand jury report,² providing for a hearing in front of a single hearing officer appointed by the enforcement agency. Tr. at

¹ Contrary to the unsupported assertions in the City's petition, there is no evidence in the record that the water heater posed any health or safety concerns. The dispute was over whether the City could charge Lippman significant fees under a code provision directed to owners who "intend[]" to install a water heater or "cause" such installation. AR Tab 43. Since he did neither, due to the tenant acting without his knowledge or consent, he argued that the fees associated with that alleged violation must be returned. *Id.*

² The Court of Appeal took judicial notice of the Alameda County Grand Jury report criticizing the City's building code enforcement process, but did not rely upon it in reaching the decision. *See* Pet. Att. A at 12 n.4.

165. When Lippman learned of this development, he filed appeals from both notices under the new process.

The same hearing officer appointed by the enforcing agency heard both appeals. Tr. at 165; AR Tab 53. Regarding the 2010 notice, Lippman testified that he had promptly fixed all the violations except for the two contested ones. AR Tab 53 at 13-14. The inspector's recollection was fuzzier: he initially testified that none of the violations had been abated, then that most had not, and finally admitted that he could not remember because two years had passed. *Id.* at 14-16, 19, 21.

Regarding the two disputed alleged violations, Lippman attempted to present his argument that they were not violations, but the hearing officer promptly cut him off. AR Tab 53 at 21, 26, 31. Although she promised she would give him an opportunity to present his position later in the hearing, she instead adjourned the hearing after the City presented its argument. *See* Tr. at 184; AR Tab 53. Having heard from only one side, the hearing officer appointed by the enforcing agency sided with the enforcing agency, upholding the \$12,000 in fees. *See* Tr. at 184; AR Tab 53.

Procedural History

On November 27, 2012, Lippman filed this case challenging the hearing officer's decision and the City's failure to give him the appeal required by the Building Code. Pet. Att. A at 2-3. The trial court overturned the fees associated with the 2009 notice because the City could not provide a hearing transcript for that appeal. Tr. at 187. It rejected an administrative writ over the hearing officer's failure to allow Lippman to present his argument on the 2010 notice, presuming that the hearing officer knew what Lippman would have argued and adequately considered it. Tr. at 182, 184-85.

The trial court also denied Lippman's traditional writ against the City for failing to give him the appeal required by the Building Code. Reading the phrase "[w]here no such appeals boards *or agencies* have been established" in isolation, the trial court reasoned that this could refer to the enforcing agency, thus the requirements satisfied if an enforcement agency has been established and provided some appeals process. Tr. at 176-77.

Lippman appealed the denial of his traditional writ, but not the administrative writ, arguing that the City's interpretation conflicts with the Building Code's text and that the home rule

doctrine does not apply because protecting the appeal rights of property owners is a matter of statewide concern. Pet. Att. A at 3. The Court of Appeal agreed, reversing the trial court's decision. *Id.* at 17.

Following this Court's two-step process under the home rule doctrine, the Court of Appeal first considered whether there is a genuine conflict between state law and the City's ordinance. Pet. Att. A at 4-5, 8-11. It read "the plain language of Building Code section 1.8.8.1 as mandating that local governments establish an appellate process, which may be satisfied in one of three ways": (1) by establishing an appeals board; (2) by establishing an independent agency to hear appeals; or (3) by allowing appeals to the governing body. *Id.* at 8-9. "Notably, however, the Building Code does not contemplate an appeal before a single hearing officer." *Id.* at 8. Thus, the conflict between state law and the city's ordinance cannot be avoided by interpreting the Building Code's reference to an "agency" to refer to the enforcing agency. *Id.* at 10. This "strained interpretation of the statutory scheme as a whole . . . would violate 'the cardinal rule of statutory construction that courts must not add provisions to statutes.'" *Id.* (citing *People v. Guzman* (2005) 35 Cal. 4th 577, 587). Consequently, the Court

“decline[d] the invitation to construe the reference to an ‘agency’ in section 1.8.8.1 to include a single hearing examiner selected by the very enforcement agency whose decision is being appealed.” *Id.*³

Moving to the second step of applying this Court’s home rule doctrine, the Court of Appeal considered whether the Building Code addresses a matter of statewide concern. Pet. Att. A at 4-5, 12-17. Applying this Court’s presumption against application of the doctrine except in clear cases,⁴ the Court concluded that “[w]hile the conditions leading to Lippman’s citations are indeed a local issue, the fairness of the procedure used to resolve citations generally is a matter of statewide concern.” *Id.* at 16. “[J]ust as a

³ The Court of Appeal also noted that this reading is confirmed by legislative history. Pet. Att. A at 11. The City’s claim that the decision’s reference to legislative history presents an issue that it did not have an opportunity to brief is without merit. The interpretation of the Building Code was the principal issue raised in the briefs before the Court of Appeal and nothing precluded the City from making any legislative history arguments it wished to. In any event, that question does not present an important issue of law that this Court must settle. The Court of Appeal made clear that it would have reached the same result without the legislative history because the Building Code’s plain text compelled its interpretation.

⁴ See *Baggett v. Gates* (1982) 32 Cal. 3d 128, 140.

state has an interest in securing ‘basic rights and protections’ to public employees, it also has an interest in protecting the basic rights of property owners.” *Id.* (quoting *Baggett*, 32 Cal. 3d at 140). Because this is a matter of statewide concern, the Court of Appeal held, the home rule doctrine is no obstacle to enforcing the Building Code’s appeals provisions on charter cities like Oakland.

REASONS FOR DENYING REVIEW

As the petitioner, the City “must explain how the case presents a ground for review.” Cal. R. Ct. 8.504(b)(2). It fails to do so. It identifies no conflict between the Court of Appeal’s decision and the decisions of any other court. Nor does it identify anything in the Court of Appeal’s straightforward application of the Building Code and this Court’s home-rule cases presenting an important question of law that must be settled by this Court.

Instead, the City argues that the Court of Appeal erred, relying principally on arguments the City failed to raise in either the trial court or the Court of Appeal. The City’s last-minute regret for its decision to raise some arguments but not others does not necessitate this Court’s attention. In any event, the Court of Appeal’s decision is correct and the City’s new arguments raise no important question of law that this Court must settle.

I. The City has failed to establish a need for review to secure uniformity of decision

The Court of Appeal’s decision does not conflict with any decision from any other court, and the City provides no evidence to the contrary. The decision faithfully followed this Court’s home-rule precedents and adopted the only tenable interpretation of the Building Code. As its thorough summary of relevant state law and precedent clearly demonstrates, the Court of Appeal was committed to following established precedents. *See* Pet. Att. A. The decision builds upon this Court’s precedents; it does not depart from them. *See id.* at 16 (acknowledging that “there are no cases specifically addressing this issue” but that the holding follows from the reasoning of *Baggett*, *Riverside*, and *Seal Beach*). The City fails to show otherwise. Therefore, there is no need for review to secure uniformity of decision.

II. The City has failed to establish a need for review to settle an important question of law

The Court of Appeal’s straightforward interpretation of the Building Code’s clear text and faithful application of this Court’s home rule precedents does not create a need for this Court to settle an important question of law. Although the decision is important as the first to apply this Court’s home rule precedents to the

Building Code's appeals provisions, it breaks no new legal ground. The Court of Appeal applied settled law to a new set of facts. Nothing in that application presents an important question of law that this Court must settle.

For example, this Court has long held that charter cities enjoy independence from state mandates on "municipal affairs" but state law remains supreme on "matters of statewide concern." *See Bishop v. City of San Jose* (1969) 1 Cal. 3d 56, 61-62. As the Court of Appeal acknowledged, the steps for applying that doctrine are clear: First, determine whether there is a genuine conflict between a state statute and a municipal ordinance. Second, if there is such a conflict, determine whether the issue is a municipal affair or matter of statewide concern. *See* Pet. Att. A at 4-5 (citing *San Francisco Airports Comm'n* 21 Cal. 4th at 364).

The Court of Appeal followed these steps. First, it looked to the text of the Building Code to determine whether it can bear a reading that would uphold the City's appeals process. Pet. Att. A at 8-11. It cannot. The "plain language" of the Building Code permits only one reading: "[T]here is a mandatory duty to establish a local appeals board or an agency authorized to hear appeals. And,

if no such board or agency exists, the governing body shall act as the local appeals board.” *Id.* at 8-9.

That interpretation is correct. The Building Code requires every city to “establish a process to hear and decide appeals of orders, decisions and determinations made by the enforcing agency[.]” Bldg. Code § 1.8.8.1. Cities “may establish a local appeals board . . . to serve this purpose.” *Id.* “Where no *such* appeals boards or agencies”—“such” refers back to the appeals board in the earlier sentence—“the governing body of the city . . . shall serve as the local appeals board[.]” *Id.* (emphasis added)

The Court of Appeal explained that the City’s “strained interpretation of the statutory scheme as a whole . . . violated ‘the cardinal rule of statutory construction that courts must not add provisions to statutes.’” Pet. Att. A at 10 (quoting *Guzman*, 35 Cal. 4th at 587). The Court of Appeal’s conclusion is well founded. The City interprets the Building Code to be satisfied so long as cities have *some* appeals process, including any appeal within the enforcement agency. Under the City’s interpretation, for instance,

property owners could be limited to asking an inspector or his supervisor to reconsider a notice of violation.⁵

This Court has never required courts to adopt a tortured interpretation of state law to avoid a genuine conflict between that state law and a charter city's ordinance, as the City's argument would require. Thus, the Court of Appeal correctly rejected the City's interpretation and, following this Court's precedents, found a genuine conflict between the Building Code and the City's ordinance. *See* Pet. Att. A at 8-11.

Having found a genuine conflict between the Building Code and the City's appeals process, the Court of Appeal proceeded to determine whether this is a municipal affair or a matter of statewide concern. *See* Pet. Att. A at 12-17. In answering that question, the Court of Appeal properly acknowledged this Court's

⁵ Although the City goes to great lengths to explain that its current appeals process is fairer than this, the Court of Appeal correctly held that this is irrelevant to the question. Pet. Att. A at 16. Following prior home rule cases, the Court of Appeal explained that "a municipality [is] not exempt from state law 'based on the asserted fairness'" of its procedures. *Id.* (quoting *Morgado v. City and County of San Francisco* (2017) 13 Cal. App. 5th 1, 15). Nor does the City grapple with the issue that its interpretation would not require any of these protections to ensure fairness to property owners.

precedents requiring that any doubts “must be resolved in favor of the legislative authority of the state.” *Baggett*, 32 Cal. 3d at 140 (quoting *Abbott v. City of Los Angeles* (1960) 53 Cal. 2d 674, 681).

The Court of Appeal concluded that the Building Code’s appeals board provisions are a matter of statewide concern for two reasons. First, the Legislature has clearly expressed its intention to preempt the field of local building codes to secure general uniformity, with a circumscribed process for cities to depart from the uniform code on certain issues. Pet. Att. A at 13. Second, the state “has an interest in protecting the basic rights of property owners.” *Id.* at 16.

That conclusion follows from this Court’s decisions in *Baggett* and *Seal Beach*, holding that the process for resolving disputes between local governments and their employees is a matter of statewide concern. Pet. Att. A at 12-17; see *Baggett*, 32 Cal. 3d at 140-41; *People ex rel. Seal Beach Police Officers Ass’n v. City of Seal Beach* (1984) 36 Cal. 3d 591, 597. This Court has long distinguished “between the *substance* of a[n] . . . issue and the *procedure* by which it is resolved.” *County of Riverside v. Superior Court* (2003) 30 Cal. 4th 278, 289 (quoting *Sonoma County Org. of Pub. Emps. v. County of Sonoma* (1979) 23 Cal. 3d 296, 317).

Acknowledging that this Court has not yet applied this rule in the Building Code context, the Court of Appeal concluded that the public employee cases compel the conclusion that “[w]hile the conditions leading to Lippman’s citations are indeed a local issue, the fairness of the procedure used to resolve citations generally is a matter of statewide concern.” Pet. Att. A at 16.

The City’s arguments that the Court of Appeal’s decision presents an important question of law that this Court should settle lack merit. For instance, the City appears to assert that the Court of Appeal’s analysis is in the wrong order—that it should have determined whether the home rule applied, then adopted the City’s strained interpretation of the Building Code to avoid the conflict. Contrary to the City’s argument, the Court of Appeal acknowledged and faithfully applied this Court’s precedent. *See* Pet. Att. A at 4-5, 16 (acknowledging that “to the extent ‘difficult choices’ . . . can be ‘forestalled,’ they ‘*ought to be*’” but that option is not available here because there is a genuine conflict between the Building Code and the City’s procedures). The Court of Appeal did not err as the City claims. But, even if it had erred, this issue would not present an important question of law that must be settled by this Court. If the opinion were reordered so that Part C

was switched with Parts D and E, the outcome would not change: this case would still concern a matter of statewide concern on which there is a genuine conflict between the Building Code and the City's ordinance. Pet. Att. A at 8-17.

Finally, the City argues that the Court of Appeal's decision will wreak "chaos and uncertainty" among cities across California. However, it provides no support for that outlandish assertion. At most, it has shown that as many as three other California cities (out of 482) may not currently comply with the Building Code. Pet. at 30. Although the City may incur some costs to establish the appeals process required by the Building Code, the mere fact that a party must change its behavior to comply with the law is not grounds for review. If it were, this Court would be inundated with cases. Ultimately, the City offers nothing more than a policy argument against the Building Code's appeals requirement: it believes that the Building Code's appeals process is too costly. The City should direct that argument to the Legislature, not this Court.

III. The City's new merits arguments also fail to establish any need for this Court's review

In urging this Court's review, the City principally asserts that the Court of Appeal erred, based largely on arguments the

City failed to raise in either the trial court or the Court of Appeal.⁶ However, alleged error in a Court of Appeal's decision is *not* grounds for review. *People v. Davis* (1905) 147 Cal. 346, 348, *cited with approval in Snukal v. Flightways Mfg., Inc.* (2000) 23 Cal. 4th 754, 768. Nor is a party's regret of an earlier decision to raise some arguments but not others. In any event, the Court of Appeal's decision is correct and the City's new arguments lack merit.

A. The Court of Appeal's decision does not conflict with the Government Code

The City claims that the Court of Appeal's interpretation of the Building Code conflicts with Section 53069.4 of the Government Code. There is no such conflict for two reasons. First, as the City acknowledges, the Building Code's appeals board

⁶ The City asserts that the Court of Appeal's citation of legislative history raises an issue that it did not have an opportunity to brief. However, that claim fails for two reasons. First, the legislative history was extraneous to the Court of Appeal's decision, which explained that the same result would have been reached under a plain reading of the Building Code's text. Pet. Att. A at 8-9. And, second, the legislative history doesn't present any new issue. The meaning of the Building Code's appeals provision has been at issue throughout this case. If the City thought the legislative history of that provision supported its interpretation, it could have raised those arguments at any time. Nothing precluded the City from raising the legislative history below, other than its strategic decision not to do so.

provision is specific to this context whereas the Government Code provision governs appeals generally, in the absence of a more specific provision. Pet. at 23. Second, any conflict is illusory: The Government Code provides that a local agency can, subject to certain constraints, adopt its own procedures; the Building Code says which agency gets to exercise this power. *Compare* Gov't Code § 53069.4 *with* Bldg. Code § 1.8.8.1. Nothing in the Government Code conflicts with the Building Code's requirements that cities establish an appeals board or agency to decide appeals or allow an appeal to the governing body.

B. The Court of Appeal's decision does not conflict with the Health and Safety Code

The City argues that a reading of the Building Code *in pari materia* with the Health and Safety Code would avoid the conflict between state law and the City's ordinance. Not so. The Court of Appeal considered the provisions of the Health and Safety Code in reaching its decision. *See* Pet. Att. A at 8-9. The Building Code defines local appeals board and housing appeals board using nearly identical language to sections 17920.5 and 17920.6 of the Health and Safety Code. *See* Pet. Att. A at 6 n.2. Consequently, nothing in the latter provisions conflicts with the Court of Appeal's

interpretation. They don't, for instance, *require* the enforcement agency to decide appeals from itself. Nor do they expressly *permit* the enforcement agency to serve this function. Thus, on this question, reading the Building Code *in pari materia* with the Health and Safety Code provides no insight whatsoever.

C. The Building Code's explicit provision for cities to depart from building standards reinforces the Court of Appeal's decision

The City asserts that the Court of Appeal erred by not addressing the difference between "building standards" and "procedural ordinances." However, the opinion did acknowledge the Building Code's procedure for cities to adopt their own building standards.

That process, as the Court of Appeal explained, reinforces its decision. *See* Pet. Att. A at 13. "Because the state has delineated specifically where and in what manner local authorities may 'adopt ordinances which vary from the uniform codes,' we conclude the Legislature intended to preempt local government's power to legislate in the field of housing building standards, except as specifically permitted by state statutes." *Id.* There is no analogous provision allowing cities to depart from the Building Code's appeals provisions, thus they have no authority to do so. "[I]t

makes little sense to prescribe a narrow set of circumstances in which local entities can override state law if those entities are already free to [do so] with impunity.” Pet. App. at 13 (quoting *Briseno v. City of Santa Ana* (1992) 6 Cal. App. 4th 1378, 1383).

As the Court of Appeal explained, the Building Code respects local government’s ability to set the procedures for appeals implemented by the appeals board, agency, or governing body discussed in section 1.8.8.1. Pet. App. at 14-17. The Building Code merely provides what body may hear building code enforcement appeals, not the procedures that local body uses to decide those appeals.⁷ *Cf. Baum Elec. Co. v. City of Huntington Beach* (1973) 33

⁷ The City claims that the Court of Appeal’s holding conflicts with a provision of the 2016 Building Code. *See* RJN Ex. E at 0097. However, that provision is not relevant to this case, which solely concerns the 2010 Building Code. Nor is it clear that the provision would contradict the Court of Appeal’s decision, even if it applied to this case. The 2016 Building Code provides that no provision of that code is binding if it would be excluded from the term “building standards” in Section 18909 of the Health and Safety Code. *See id.* That provision, in turn, excludes from the definition of building standards “civil, administrative, or criminal procedures and remedies available for enforcing code violations.” Health & Safety Code § 18909. As explained above, the Building Code respects local government’s ability to define the procedures that the local appeals board or agency uses to decide appeals. The Building Code merely establishes who decides those appeals, not the procedures it uses to do so.

Cal. App. 3d 573, 584 (explaining that the Building Code respects “legislative sensitivity to, and deference for, local conditions” by allowing “*local appeals boards . . . to determine*” whether state rules and regulations are reasonable in light of those local conditions (emphasis added)).

D. The Building Code’s appeals provision applies to this case

The City suggests that the Building Code does not apply to this case because the hearing officer “did not interpret or apply the provisions of the Building Code or the City’s building ordinances” because this appeal arose from an enforcement decision rather than a permitting decision. The premise of the City’s argument is false as the City concedes the 2010 citation concerned the building code’s water heater provision. *See* Pet. at 24. The hearing officer denied Lippman any chance to present his argument that he did not “intend” to install a water heater, as that provision requires, because a tenant did it without his knowledge or consent. *See* Bldg. Code § 105.1 (2010). But the hearing officer’s decision necessarily resolved that interpretative question against him.

Regardless of whether the hearing officer interpreted the building code or not, the City’s argument is beside the point. The

Building Code’s appeals provision applies to appeals from any “orders, decisions and determinations made by the enforcing agency relative to the application and interpretation of this code and other regulations governing use, maintenance and change of occupancy.” Bldg. Code § 1.8.8.1. The City’s notices of violations and imposition of fees were clearly decisions “made by the enforcing agency” relating to “the application and interpretation” of the Building Code or “other regulations governing use, maintenance and change of occupancy.” *See id.* The City presents no argument to the contrary.

E. The City is mistaken to fault the Court of Appeal for not deciding a question not presented in this case

Finally, the City criticizes the Court of Appeal’s decision as “unclear . . . whether a single hearing officer selected by a department other than the enforcing department” satisfies the Building Code’s requirements. Pet. at 36 (emphasis omitted). However, the Court of Appeal’s failure to reach that issue is unsurprising because it is not presented by this case. Lippman’s appeal was heard by a single hearing examiner selected by the very enforcement agency whose decision was being appealed. Pet. Att. A at 2-3. This case asks whether that practice conforms to the

Building Code and the Court of Appeal correctly answered “no.” *Id.* at 8-17. The case presents no opportunity for the court to address the City’s hypothetical and the record lacks any evidence to aid in considering any other question.

CONCLUSION

This Court’s review is not necessary to secure uniformity of decision or to settle an important question of law. The Court of Appeal faithfully interpreted the Building Code’s text according to well established principles of statutory construction and followed this Court’s home rule precedents. Therefore, the Petition for Review should be denied.

DATED: March 23, 2018.

Respectfully submitted,

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Thomas Lippman*

Certificate of Compliance

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing PLAINTIFF AND APPELLANT THOMAS LIPPMAN'S ANSWER TO PETITION FOR REVIEW is proportionately spaced, has a typeface of 13 points or more, and contains 5,177 words.

DATED: March 23, 2018.

s/ Jonathan Wood

JONATHAN WOOD

Declaration of Service

I, Tawnda Elling, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On March 23rd, 2018, a true copy of PLAINTIFF AND APPELLANT THOMAS LIPPMAN'S ANSWER TO PETITION FOR REVIEW was electronically filed with the Court through Truefiling.com. Notice of this filing will be sent to those below who are registered with the Court's e filing system. Those who are not registered will receive a hard copy via first-class U.S. Mail, postage thereon fully prepaid, and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

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First Appellate District, Div. 4
350 McAllister St.
San Francisco, CA 94102-7421

Court Clerk
Alameda County Superior Court
1221 Oak Street, Floors 3 & 4
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 23rd day of March, 2018, at Sacramento, California.


TAWNDA ELLING