Case No. A141865

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THOMAS LIPPMAN,

Plaintiff and Appellant,

v.

CITY OF OAKLAND,

Defendant and Respondent.

Appeal from the Alameda County Superior Court of the State of California
Case No. RG12657623
The Honorable Evelio Grillo

RESPONDENT'S BRIEF

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I. INTRODUCTION

Appellant Thomas Lippman ("Lippman") received multiple citations from Respondent City of Oakland ("City") for blight and substandard living conditions on his rental property in Oakland, California. Arguing that he was improperly cited, Lippman ultimately challenged the citations before an independent hearing officer and received two unfavorable decisions. Lippman filed the underlying verified petition for writ of mandate ("petition") in the trial court challenging the administrative decisions and seeking to compel the Oakland City Council ("City Council") to hear his appeals. The petition was granted in part – Lippman's blight citations were sent back to a hearing officer for re-hearing, the substandard living conditions citation was upheld, and the challenge to the City's administrative appeal process was denied. The instant appeal is solely focused on whether the City's administrative appeal process complies with the California Building Code ("CBC").

Lippman argues that the CBC *mandates* that the administrative appeal process utilize either a local appeals board, a housing appeals board or, if neither of those exist, the "governing body of the city." Lippman is mistaken. The CBC mandates that the City establish a "process to hear and decide appeals of orders, decisions and determinations" made by Building Services [1]. The CBC uses permissive language and gives the City the

[1] Previously, violations for blight and substandard living conditions violations were handled through the City's Community and Economic Development Agency ("CEDA"). CEDA is now the Building and Planning Department. This Department is divided into the Bureau of Planning and the Bureau of Building. The Bureau of Building encompasses Code Enforcement Services. Code Enforcement Services issues the citations that Lippman received regarding blight and substandard living conditions. Unless otherwise noted, the City will refer to the agency/division responsible for issuing Lippman's citations and selecting hearing officers as "Building Services."

option of establishing a "local appeals board and a housing appeals board" to serve the purpose of hearing and deciding appeals from Building Services. The City has established the process mandated by the CBC. However, the City did not decide to implement a *permissive* local appeals board or housing appeals board. The discussion should end here.

However, Lippman argues that, because the City did not implement the *permissive* local appeals board or housing appeals board, the CBC mandates that Building Services appeals be heard before the City Council. The Court need not reach whether Lippman's appeal should have been heard before the City Council because the City has, in the first instance, established a process that fully and completely complies with the initial mandate in the CBC. Only in the event that "no such appeals boards or agencies have been established" does the City Council serve in the capacity of an appeals board.

Although Lippman claims that the City's appeal process is not impartial because the hearing officer is selected by the City, the hearing officer *is not* a City employee or affiliated with Building Services. The hearing officer is an objective fact-finder who reviews the evidence presented by both the property owner and Building Services regarding the citations, analyzes testimony from witnesses, evaluates the arguments made by both parties, and issues a well-reasoned decision based on the evidence presented and applicable law. Although the hearing officer is selected by Building Services, the hearing officer serves as an independent "arm" of the City that was created to hear appeals. The hearing officer is not an employee of or otherwise affiliated with Building Services as Lippman suggests. The hearing officer is an independent adjudicator and the City must prove its case in the same manner that Lippman (or any other cited property owner) must prove his case.

The trial court correctly denied Lippman's petition on this issue.

The CBC is clear on its face and only subject to one reasonable interpretation. The CBC *does not* dictate the type of appeal process that must be established. Likewise, the CBC *does not* state that a hearing officer cannot be used to satisfy the appeal process. Further, the CBC *does not* define "agency." For purposes of and in order to comply with the CBC, Building Services – the enforcement agency – has created a separate, independent, "arm" to hear appeals from its decisions. This action obviates any mandate to use the City Council to hear appeals and Lippman's petition fails.

Moreover, even if the Court finds that the City's appeal process does not satisfy the mandate in the CBC, it is, nonetheless, a valid exercise of the City's legislative authority because the underlying issue is a "municipal affair." Because the City is governed by its Charter, its laws govern even in the face of a conflicting state law so long as the underlying issue is related to the internal business of the City. Lippman's citations for violations of blight and habitability codes and the appeal process to adjudicate challenges are all matters of internal City business. For this reason, Lippman's petition still fails even if the Court finds the City's appeal process conflicts with the CBC and the trial court's judgment must be affirmed.

II. STATEMENT OF THE CASE

A. Factual Background[2]

1. Lippman is issued two notices to abate nuisance and one notice to correct substandard living conditions on his property.

Lippman owns rental property located at 3577 Galindo Avenue in Oakland, California.[3] (Clerk's Transcript on Appeal ("CT") 2). Lippman was cited for blight and substandard living conditions on the property. (Administrative Record ("AR") Tabs 1, 2, 22, and 39.) The City issued the first notice to abate ("citation 1") on April 16, 2009. (AR Tab 1.) The City issued the second notice to abate ("citation 2") on April 22, 2009. (AR Tab 2.) Lippman filed a dispute with a Building Services supervisor on July 27, 2009 after receiving invoices which he believed assessed fees against him for citations 1 and 2. (AR Tab 5.) His dispute was denied.

Lippman filed a second dispute of citations 1 and 2 and requested another review in October 2009. (AR Tab 9.) A Building Services supervisor again concluded that the fees were properly imposed. (AR Tab 9.) Ultimately, a Code Enforcement Lien of $2680.44 was assessed against Lippman for citation 2. The lien was paid through Lippman's April 2011 property taxes. (AR Tab 16 and Tab 18 at 3.) More than a year later on November 8, 2011, Lippman filed another dispute related to citations 1 and

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[2] The factual background for this case is not largely relevant to the issue raised on appeal. The factual background simply serves to give a factual context to the legal issue that Lippman has raised on appeal. Accordingly, the City only recounts an abbreviated version of the factual background outlined in Lippman's petition, CT 2-4, and in the City's opposition to his petition, CT 100-125.

[3] Lippman's property consists of three separate units. Two units are located in the front of the property. (AR Tab 18 at 3.) One unit is located in the back of the property. (AR Tab 18 at 3.) The street numbers are 3577, 3579, and 3581. (AR Tab 5.)

2, arguing that the fees continued to accrue while his appeal(s) was pending. (AR Tab 16.)

In a separate notice to abate regarding the same rental property, Lippman was cited for substandard living conditions related to the interior of the property. (AR Tab 22.) Building Services assessed fees against Lippman for citation 3 and he appealed to a Building Services supervisor. (AR Tabs 23-25.) Building Services denied his appeal on August 5, 2010. (AR Tab 28.) A priority lien and special assessment was placed on the property. (AR Tab 32-38.) Lippman received a second notice to abate on September 16, 2010 for failing to abate the violations. (AR Tab 39.) A second priority lien and special assessment was placed on the property. (AR Tab 40.) Lippman filed another dispute challenging these fees on November 8, 2011. (AR Tab 43.) Lippman received a notice on December 8, 2011 that the City would recall the special assessments issued against the Property pending resolution of the appeal. (AR Tab 44.)

2. Lippman appealed the notices to abate and requested an administrative hearing before an independent hearing officer.

Lippman appealed the denials of his administrative disputes and requested a hearing before an independent hearing officer. Margaret Fujioka, Esq. ("hearing officer") presided over the hearings. The hearing officer conducted a hearing on April 18, 2012 (citation 3) and a hearing on June 21, 2012 (citations 1 and 2). (AR Tab 18 and 50.) Lippman appeared in person, along with Thomas Espinosa (City Inspector), Diana Rex (City Accounting), and Denise Parker (City Hearing Coordinator) for citations 1 and 2, and David Miles and Gregory Clarke (City Inspectors), Diana Rex (City Accounting), and Denise Parker (City Hearing Coordinator) for citation 3. (AR Tab 18 at 2 and Tab 50 at 3.) The hearing officer received testimony from Lippman and all City representatives except Ms. Parker

during both hearing.

After receiving oral testimony and reviewing the relevant notices and invoices, the hearing officer found that Lippman was (or had been) in violation of various City ordinances for each of the citations. (AR Tab 18 at 4 and AR Tab 50 at 4-5.) The hearing officer further found that the testimony of the witnesses as well as Lippman supported a finding that, as to citations 1 and 2, the property was blighted in 2009 and abatement did not occur until *after* fees were assessed. (AR Tab 18 at 4.) As to citation 3, the hearing officer found that the testimony of the witnesses, as well as Lippman, supported a finding that the property remained in violation. (AR Tab 50 at 4-5.) Accordingly, the appeals were denied. (AR Tab 18 at 4 and Tab 50 at 5.)

B. Procedural Background

After receiving the appeal decisions from the hearing officer, Lippman filed the underlying petition. (CT 1-7.) In the petition he alleged that (1) his appeals should have been heard before the City Council or a hearing appeals board instead of a single hearing examiner, (2) the hearing officer was not neutral and unbiased, and (3) the hearing officer refused to consider relevant evidence and abused her discretion in deciding the appeals. (CT 1-7.)

The parties briefed the merits of the petition. (CT 92-99, 100-25, 126-33.) The trial court held a hearing on December 9, 2014 and, after hearing the arguments of the parties, requested supplemental briefing on one issue – whether there is a conflict between Oakland Municipal Code ("OMC") section 15.08.410 *et seq.* and 2010 CBC section 1.8.8.1. If a conflict existed, the trial court asked whether the matter at issue in the petition was a "municipal affair" subject to regulation by the City or one of

"statewide concern" subject to regulation by the state. (CT 134; Reporter's Transcript ("RT") 12/9/13 at 6-15.)

The City submitted a supplemental brief on this limited issue on December 30, 2013. (CT 141-47.) The trial court held another hearing on January 28, 2014 and took the matter under submission. (CT 151.) After further consideration, the trial court granted the petition in part. As to the administrative writ seeking review of citations 1 and 2, the writ was granted, the appeal decision was set aside, and the City was directed to either refund the fees Lippman paid on these citations or hold a new administrative hearing on citations 1 and 2 only. (CT 162-88.) The City elected to notice a new administrative hearing on these citations. (CT 189-91.) As to the administrative writ seeking review of citation 3, the writ was denied. (CT 162-88, 189-91.)

Finally, as to the traditional writ seeking to compel the City to hear administrative appeals before the City Council or an appeals board pursuant to the CBC, the writ was denied. (CT 162-88, 189-91.) The trial court issued a decision stating that, *inter alia*, "the relevant provisions of the State Housing Law and State Building Code, although not free of ambiguity, do not bar a city from authorizing its enforcement agency to resolve such appeals by appointing a hearing examiner to decide them." (CT 177.) The trial court did not have to reach the "difficult constitutional question" of whether the underlying issue was a matter of "statewide concern" where state law would regulate the City's activity because it found no conflict existed in the first instance. (CT 169-70, 177.)

Lippman filed a notice of appeal on May 19, 2014. (CT 197.) Previously proceeding *in propria persona*, Lippman is now represented by counsel and filed his opening brief on August 18, 2014. In addition, Lippman filed a request for judicial notice that this Court granted on September 5, 2014 as unopposed but with no determination about the

documents' relevance.[4] As argued in his opening brief, Lippman is only appealing the issue of whether the City's current administrative appeal process for deciding appeals from Building Services citations conflicts with the CBC and, if a conflict exists, whether the matter at issue is a "municipal affair" governed by the City's OMC or one of "statewide concern" governed by the CBC. (Appellant's Opening Brief ("AOB") at 1-2.)

III. STANDARD OF REVIEW

On appeal, this Court reviews de novo all legal issues stemming from a trial court's decision on a petition for traditional writ of mandate. *White v. Cnty. of Los Angeles*, 225 Cal. App. 4th 690, 701 (2014) (citing *Aurora S.A. v. Poizner*, 198 Cal. App. 4th 1437 (2011)); *Gilbert v. City of Sunnyvale*, 130 Cal. App. 4th 1264, 1275 (2005) ("In resolving questions of law on appeal from a denial of a writ of mandate, an appellate court

[4] The City recognizes that the Court granted Lippman's Motion to take Judicial Notice ("RJN") but did not determine whether the attached documents were relevant. The City asserts that the RJN (seeking judicial notice of the Alameda County Grand Jury Report for 2010-11 ("Grand Jury Report") and the City's Response may be granted to take notice of the "existence" of the Report and Response, but the RJN cannot be granted to take notice of the "truth of the matters asserted within" the Report and Response. *See, e.g., Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort*, 91 Cal. App. 4th 875, 882 (2001) (citing *Williams v. Wraxall*, 33 Cal. App. 4th 120, 130 (1995); *Magnolia Square Homeowners Ass'n. v. Safeco Ins. Co.*, 221 Cal. App. 3d 1049, 1056-57 (1990)).

As discussed more fully *infra*, the contents of the Grand Jury Report (and City's Response) contain hearsay, opinions, legal conclusions, and have no relevance to the sole issue raised by Lippman on appeal. *Id.* Lippman does not appeal the merits of the underlying citations. Instead, he only appeals the trial court's determination that a single hearing officer presiding over administrative appeals complies with the CBC. (AOB 1-2.) Neither the Grand Jury Report nor the City's Response directly addresses this issue. In addition, as Lippman notes in the RJN, he did not seek judicial notice of the Grand Jury Report or City's Response in the trial court and, so, this Court had discretion to deny the RJN.

exercises its independent judgment."). The issues that Lippman raises on appeal – whether the OMC conflicts with the CBC and, if so, is a matter of statewide concern implicated – are legal issues. *State Bldg. & Const. Trades Council of Cal., AFL-CIO v. City of Vista*, 54 Cal. 4th 547, 558 (2012).

A court may issue a traditional writ of mandate to compel an act "which the law specially enjoins …." Cal. Civ. Proc. Code § 1085. In order to obtain a traditional writ, a petitioner must prove: (1) a clear, present, and usually ministerial duty owed by respondent and (2) a clear, present, and beneficial right belonging to a petitioner in the performance of that duty. Cal. Civ. Proc. Code §§ 1085, 1086; *Unnamed Physician v. Bd. of Trustees of Saint Agnes Med. Ctr.*, 93 Cal. App. 4th 607, 618 (2001). Traditional mandate is an extraordinary remedy; there is no absolute right to a writ. *Clough v. Baber*, 38 Cal. App. 2d 50, 53 (1940). "The necessity of issuing the writ must be clearly established. It will not issue in doubtful cases." *Id.* Further, a mandate will not issue if the duty is "not plain or is mixed with discretionary power or the exercise of judgment." *H.N. & Frances C. Berger Found. v. Perez*, 218 Cal. App. 4th 37, 46 (2013).

IV. LEGAL ARGUMENT

A. Both the California Building Code and the Oakland Municipal Code contain provisions regarding an administrative appeal process to challenge Building Maintenance Code violations.

1. The California Building Code. [5]

The CBC sets forth provisions for all cities to follow regarding a process to hear appeals from enforcing agencies. Section 1.8.8.1 states:

> 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 governing 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 Cal. Health & Safety Code §§ 17920.5, 17920.6.

2010 Cal. Bldg. Code § 1.8.8.1 (emphasis added). Notably, section 1.8.8.1

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[5] Lippman cites to a provision from the 2007 CBC. This section has since been updated in the 2010 CBC publication. Although citations 1 and 2 were issued prior to 2010, both hearings were held in 2012. Since Lippman's complaint specifically relates to the nature of the hearing process, the City will cite to the more recent provision from the 2010 CBC. In addition, the hearing officer cites to the 2010 CBC in her June 21, 2012 administrative decision.

The state has recently amended the 2010 publication. The 2013 publication was effective on January 1, 2014 – after the merits of Lippman's writ were pending. Section 1.8.8.1 in the 2010 publication does not appear to differ in substance from the provision in the 2013 publication.

requires the City to establish a process to hear and decide challenges to the orders/decisions issued by the Building Services Division.[6] However, the specific process that is required is not set forth. The statute is silent on how a city, county, or city and county should undertake establishing a process to hear appeals and what procedures the process should encompass.

Section 1.8.8.1 gives cities the *option* of establishing a local appeals board and a housing appeals board to hear appeals. 2010 Cal. Bldg. Code § 1.8.8.1. It is *mandatory* that the City have an appeals process – the CBC states the City "shall establish a process." 2010 Cal. Bldg. Code § 1.8.8.1. However, it is *permissive* whether the City establishes a local appeals board and a housing appeals board to serve the purpose of hearing appeals – the CBC states the City "may establish" these boards to "serve this purpose." 2010 Cal. Bldg. Code § 1.8.8.1.

If the City fails to establish a process – ie. an appeals board or agency to handle the appeals – then, and only then, does the "governing body of the city" – the City Council – serve as the local appeals board or housing appeal board. 2010 Cal. Bldg. Code § 1.8.8.1. As described *infra*, the City complies with the CBC and has established a process that obviates the need for the City Council to hear appeals. Building Services is an enforcing agency that issues orders, decisions, and determinations. If a property owner is dissatisfied with the citation or the outcome of any internal review process, s/he can request an appeal before an independent hearing officer who satisfies the "appeals board or agency" that must exist before it is mandatory to utilize the "governing body of the city." 2010 Cal. Bldg. Code § 1.8.8.1.

[6] The City has adopted the California Building Code except where specifically amended. *See* OMC §§ 15.04.005 and 15.04.010. The OMC does not specifically amend CBC section 1.8.8.1.

2. The Oakland Municipal Code.

Preliminarily, the OMC outlines a general process for requesting an administrative hearing to "adjudicate the issuance of administrative citations." OMC § 1.12.080. This provision is not specific to any particular City agency issuing citations. The OMC authorizes the City Administrator to establish general standards and procedures for conducting administrative hearings and "evaluating evidentiary testimony and either affirming the issuance of administrative citations or remanding for further consideration . . . ." OMC § 1.12.080(B).

Such general standards and procedures include, for example, the manner in which appeals are heard, the hearing officer(s) who will hear the appeals, the manner in which evidentiary testimony is taken, and whether written decisions are issued. As discussed *supra*, the OMC does not require the City to use an "appeals board or panel" or a specific hearing officer. Further, the OMC states that "in all instances, the determination regarding administrative citations resulting from the administrative hearing shall be final and conclusive." OMC § 1.12.080(C).

In compliance with the general administrative hearing procedures prescribed in OMC section 1.12.080 and the mandate in the CBC, the City has established, for example, an appeals process in both OMC sections 15.04.025 and 15.08.410 *et seq*. The former section applies more generally to decisions made by the City's Building Official (ie. the Deputy Director of the Department of Planning and Building). OMC section 15.04.025 actually tracks the language of CBC section 1.8.8.1 *supra* and states that a property owner may request an administrative hearing with a "Hearing Examiner" in order to "*hear and decide appeals of orders, decisions, or determinations made by the Building Official* relative to the application and interpretation of the non-administrative (technical) requirements of this Code . . . ." OMC § 15.04.025(A) (emphasis added).

The latter section, OMC section 15.08.410 *et seq*., outlines the specific administrative hearing procedures used for Building Maintenance Code violations (as in Lippman's case). Section 15.08.410 *et seq*. states the process for requesting a hearing, scheduling a hearing before the "Hearing Examiner," and determining what matters or issues will be considered. OMC §§ 15.08.410, 15.08.420 and 15.08.430. "Decisions made and determinations rendered by the Hearing Examiner shall be in all cases final and conclusive." OMC § 15.08.450. Finally, OMC section 15.08.460 explains the time period during which judicial review is available by stating that "[t]he limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petition filers seeking judicial review of administrative determination made by the Hearing Examiner." OMC § 15.08.460.

Although the procedures in OMC section 1.12.080 and OMC section 15.08.410 *et seq.* allow the City to select a hearing officer through Building Services, this person is appointed to serve as an *independent adjudicator* of appeals where a property owner is dissatisfied with the actions of Building Services. Pursuant to the OMC, the hearing officer hears evidence, weighs testimony, and determines credibility of *both parties* before making a decision. Although the hearing officer is not sitting on a "panel" or under a separate agency title, s/he is, in fact, separate and independent from Building Services and fulfills the purpose and spirit of the CBC's mandate to establish an independent process to hear administrative appeals.

B. Oakland is governed by its Charter and, unless there is a genuine conflict with state law pertaining to a matter of statewide concern, the provisions of the Oakland Municipal Code govern the administrative appeal process of Building Maintenance Code violations.

Cal. Const. art. XI, § 7 authorizes a city to make and enforce all "local, police, sanitary, and other ordinances and regulations not in conflict with general laws." *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893, 897 (1993). However, a charter city gains "exemption" from the "conflict with general laws" restrictions of Cal. Const. art. XI, § 7, with respect to its "municipal affairs." *Id.* at 897 n.1. Oakland is a charter city that is governed by its Charter. City of Oakland Charter, art. I, § 106. Thus, even if the provisions of the OMC conflict with the CBC, the OMC governs if the underlying issue is categorized as a "municipal affair."

1. There is no conflict between Oakland Municipal Code section 15.08.410 *et seq.* and California Building Code section 1.8.8.1.

The CBC does not articulate a mandatory duty to establish or utilize an "appeals board or housing board" to hear appeals as Lippman argues. As described above, section 1.8.8.1 requires the City to establish a process to hear and decide challenges to the orders/decisions issued by Building Services. However, the specific process required is not set forth in the CBC. The statute is silent as to how a city should undertake establishing a process to hear appeals and what procedures the process should encompass.

"The fundamental task of statutory construction is to ascertain legislative intent so as to effectuate the ***purpose*** of the law." *People v. Mejia*, 211 Cal. App. 4th 586, 611 (2012) (emphasis added). In doing so, courts should look to the plain meaning of the statutory language. *Id.* Where the intent is clear from the language itself, the court will not look beyond the plain meaning. *Stephens v. Cnty. of Tulare*, 38 Cal. 4th 793, 802 (2006). Where there are conflicting interpretations, courts should

avoid interpreting statutes in a way that "has the effect of making statutory language null and void." *State Office of Inspector Gen. v. Superior Court*, 189 Cal. App. 4th 695, 708 (2010). Section 1.8.8.1 is clear on its face regarding the mandatory action that the City *must* take and the permissive manner in which the City *may* accomplish the mandatory action.

Use of the word "may" in section 1.8.8.1 signals a discretionary – not mandatory – duty. *See, e.g., Mughrabi v. Suzuki*, 197 Cal. App. 3d 1212, 1215 (1988) (stating that "[w]hen the Legislature has . . . used both 'shall' and 'may' in close proximity in a particular context, we may fairly infer the Legislature intended mandatory and discretionary meanings, respectively"). Stating that the City *shall* have an appeals process is mandatory; however, stating that the City *may* establish a local appeals board for that purpose is discretionary or permissive. 2010 Cal. Bldg. Code § 1.8.8.1. Accordingly, the plain meaning of section 1.8.8.1 demonstrates that there is no mandatory duty to establish or utilize an appeals board to hear appeals as Lippman argues. *See, e.g., H.N. & Frances C. Berger Found.*, 218 Cal. App. 4th at 46 (stating that a mandate will not issue if the duty is "not plain or is mixed with discretionary power or the exercise of judgment").

2. The second paragraph of California Building Code section 1.8.8.1 does not strengthen Lippman's argument because the City has established an appeal process for challenging Building Maintenance Code violations.

The City has elected to develop a scheme where a hearing examiner handles appeals. As a result, the Court need not reach the mandate in the second paragraph of section 1.8.8.1 which Lippman argues requires his appeal be heard before the City Council. Section 1.8.8.1 is only useful where a city has neglected, in the first instance, to appoint an appeals board or an agency to hear appeals. The City has, however, created an *agency* –

the Planning & Building Department– with a Building Services/Code Enforcement division that enforces the City's building and habitability codes and appoints independent hearing officers to adjudicate appeals. OMC § 2.29.070.

Lippman argues that the City's interpretation of the phrase "enforcing agency" (first paragraph of section 1.8.8.1) and "appeals boards or agencies" (second paragraph of section 1.8.8.1) frustrates or nullifies parts of section 1.8.8.1. (AOB 13-15.) However, the Court can use the City's interpretation of section 1.8.8.1 without nullifying any part of the provision. The City agrees that Building Services is the "enforcing agency" that appears in the first paragraph of section 1.8.8.1. In this instance, it is *also* the "agency" in the second paragraph of section 1.8.8.1 because it has created an independent "arm" to handle appeals. Lippman does not identify any provision in the CBC that prevents an enforcing agency from also being the "agency" that establishes an appeal process. (CT 176-77 ("nothing in [California Health & Safety Code [s]ection 17920.6 indicates that the agency "authorized" to hear such appeals – or to arrange for them to be heard – cannot be the enforcement agency itself.")).

While Lippman reads the phrase "appeals boards or agencies" in the second paragraph of section 1.8.8.1 as specifically and explicitly requiring an "appeals boards" or an "agency," the City reads the phrase more globally as requiring *some* independent mechanism for appeals. If the Court views the phrase "appeals boards or agencies" as equivalent to the phrase "independent mechanism for appeals," it is clear that the CBC simply seeks to ensure that property owners have a clear avenue for appeals. If no "independent mechanism for appeals" exists, the governing body of the city will hear appeals.

Lippman reads section 1.8.8.1 far too narrowly. The City's interpretation affords harmony to each of the companion provisions to

section 1.8.8.1 and ensures that the spirit and purpose of section 1.8.8.1 is satisfied. For example, if the Court replaces "board or agency" with "independent mechanism for appeals" in the companion provisions, they read:

> The [independent mechanism [for appeals]] of a city . . . which is authorized by the governing body of the city . . . to hear appeals . . . . In any area in which there is no such [independent mechanism for appeals], "Housing appeals board" means the local appeals board . . . .

CBC § 1.8.8.2 (Housing Appeals Board); Cal. Health & Safety Code § 17920.6.

> The [independent mechanism [for appeals]] of a city . . . which is authorized by the governing body of the city . . . to hear appeals . . . . In any area in which there is no such [independent mechanism for appeals], "Local appeals board" means the governing body of the city . . . .

CBC § 1.8.8.2 (Local Appeals Board); Cal. Health & Safety Code § 17920.5.

Essentially, the phrase "board or agency" means that a city *must have some formal process* for handling appeals. The nature of the process is determined by the city; a local or housing appeals board can, but does not have to, be used. Further, the enforcing agency is not prevented from creating this "independent mechanism for appeals." The Court would have to determine on a case-by-case, city-by-city, challenge whether the process used by an enforcing agency was proper. However, unlike Lippman implies, the fact that an "independent mechanism for appeals" is generated from an enforcing agency is not a *per se* conflict. (AOB 16.) Contrary to Lippman's argument, if the Court were to read the statute as he suggests – "[s]ection 1.8.8.1 requires a local government to establish an "appeals board" or to allow direct appeals to its governing body – anything else, including Oakland's hearing officer process, fails to satisfy [s]ection

1.8.8.1" – the permissive language contained in the first paragraph of section 1.8.8.1 is nullified. (AOB 17.)

As Lippman argues, Building Services is an "enforcing agency" that cites homeowners for violations of the OMC which include the conditions found on Lippman's property. If a homeowner disputes a citation issued by Building Services, s/he can challenge it internally in writing to a Building Services supervisor. However, the homeowner can also request a formal hearing pursuant to OMC section 15.08.410 *et seq*. from an *independent* "hearing examiner" through Building Services (who, as discussed *supra*, has no affiliation to Building Services or the City).

Although Lippman repeatedly argues that viewing Building Services as both the "enforcing agency" and the "agency" created to adjudicate appeals in section 1.8.8.1 violates rules of statutory construction, the City disagrees. If Building Services officials were actually hearing appeals of the citations they issued, Lippman's argument would carry more weight. The City agrees that the CBC appears to mandate an impartial, independent, appeal process where citations are not adjudicated by enforcing agency officials. However, the City stresses that Building Services simply contracts with hearing officers to hold the independent appeal process. Consequently, Lippman's argument that the hearing officer is biased because of his relationship to Building Services is without merit.

The City has an appeal process of which Lippman availed himself. Lippman's dissatisfaction with the outcome of the process is not a basis to compel the City to hear his appeal before a hearing appeals board or the City Council where *no such mandatory duty exists*. Cal. Civ. Proc. Code § 1085; *Clough*, 38 Cal. App. 2d at 52. Section 1.8.8.1 only mandates that the City establish an appeal process. It has done so. Because a process has

been established, the Court need not reach whether the City Council must hear appeals.[7]

3. The City's administrative appeal process satisfies the requirements of procedural due process.

Although Lippman does not specifically advance a due process argument, the City has developed a process that fully complies with procedural due process requirements. Procedural due process does not require a "trial" before a court. Instead, a proceeding before an administrative officer or board is sufficient if there is notice and an opportunity to be heard. *Blinder, Robinson & Co. v. Tom*, 181 Cal. App. 3d 283, 289-90 (1986).

"The precise procedural formalities required by due process are undefinable and vary according to the factual context." *Id.* Section 1.8.8.1, for example, seeks to provide property owners with procedural due process when appealing decisions from an enforcing agency. To that end, it requires cities to establish a process to hear appeals. However, it stops short of dictating the nature of the process that a city must utilize to hear the appeals. Section 1.8.8.1 simply identifies two options (and requirements for those options) but the list is by no means exhaustive. Although the City has not appointed the *permissive* appeals board to hear appeals, it has, nonetheless, incorporated the "spirit" and "purpose" of

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[7] To the extent Lippman relied on Cal. Health & Safety Code § 17920.6 in his petition as authority mandating the City to use a local/housing appeals board to hear his appeals, this section simply provides a definition for the phrase "housing appeals board." The City does not dispute how the housing appeals board is defined, simply that there is no mandate *requiring* the City to create and utilize one. *See, e.g.*, Cal. Civ. Proc. Code § 1085; *US Ecology, Inc. v. State of Cal.*, 92 Cal. App. 4th 113, 138 (2001) (stating that a petitioner must demonstrate the public official or entity had a ministerial duty to perform – an act that a public officer is required to perform in a prescribed manner); *Clough*, 38 Cal. App. 2d at 52.

section 1.8.8.1 into the OMC by establishing an independent appeal process. It has also simultaneously satisfied the requirements of procedural due process.

It is mandatory that a hearing examiner for general Building Code violations be "qualified by experience and training to pass on building construction and other matters pertaining to this Code." OMC § 15.04.025(D). Similarly, it is mandatory that a hearing examiner for Building Maintenance Code violations be "qualified by training and experience to conduct administrative hearings of appeals . . . ." OMC § 15.08.170. Both OMC provisions regarding a hearing examiner's qualifications are similar in substance to the mandate in section 1.8.8.1 requiring members of appeals boards to be "knowledgeable in the applicable building codes, regulations and ordinances as determined by the governing body of the city . . . ." CBC § 1.8.8.1.

Due process also requires impartial adjudicators. To that end, the independent hearing officer is selected by the City, but is not an employee of the City – similar to the proscription in section 1.8.8.1 for members of appeals boards. OMC § 15.04.025(D). Further, recognizing the concerns raised in *Haas v. Cnty. of San Bernardino*, 27 Cal. 4th 1017 (2002), the City has also limited the manner in which hearing officers are selected to serve as adjudicators in the appeals process. In *Haas*, 27 Cal. 4th 1017, the court held that a "direct, personal, substantial, pecuniary interest" in a particular case requires disqualification. *Haas*, 27 Cal. 4th at 1025, 1026-27. An administrative adjudicator should be disqualified if s/he is unilaterally selected and paid by a public entity and his income from future adjudicative work depends entirely on the government's goodwill. *Id.* at 1024.

To address the concerns raised in *Haas*, 27 Cal. 4th 1017, the City has ensured the impartiality of its hearing officers by limiting the length of

time they may serve as hearing officers, selecting them to hear all cases during a particular time period (on a pre-established rotation system between all hearing officers selected to serve for the same time period), and limiting their re-selection for a period of time to diminish any perceived incentive to favor the City. *See, e.g., Haas*, 27 Cal. 4th at 1037. The City has gone to great lengths to ensure that the appeal process is neutral and not weighted in favor of either party. Lippman appears to be searching for a reason to justify an unfavorable outcome and, while the City's appeal process may not be perfect, it is not subject to attack by arguing that it conflicts with the CBC.

4. Neither The Grand Jury Report nor the City's Response is relevant to resolving the issue of whether Oakland Municipal Code section 15.08.410 *et seq.* conflicts with California Building Code section 1.8.8.1.

Lippman moved for and the Court granted judicial notice of the Alameda County Grand Jury Final Report for 2010-2011 ("Grand Jury Report") and the City's Response. As a preliminary matter, the Grand Jury Report and the City's Response are only judicially noticeable for their "existence." *See, e.g., Lockley*, 91 Cal. App. 4th at 882 (citing *Williams*, 33 Cal. App. 4th at 130; *Magnolia Square Homeowners Ass'n.*, 221 Cal. App. 3d at 1056-57). The City agrees with Lippman that "a reviewing court 'can properly take judicial notice of any matter of which the court of original jurisdiction may properly take notice.'" *S. Shore Land Co. v. Petersen*, 226 Cal. App. 2d 725, 742 (1964) (quoting *Varcoe v. Lee*, 180 Cal. 338, 343 (1919)). However, the City's agreement essentially ends there.

A trial court's ability to take judicial notice is limited by statute. Cal. Evid. Code § 450. Neither the Grand Jury Report nor the City's Response fit into any of the traditionally recognized categories for which judicial notice is allowed. Cal. Evid. Code §§ 451, 452. Neither the Grand

Jury Report nor the City's Response is a "decisional, constitutional, [or] public statutory law of the state [or] of the United States," rule of professional conduct or pleading and practice, regulation or legislative enactment of the United States or a public entity, court record, or rule of court. Cal. Evid. Code §§ 451, 452. Additionally, neither the Grand Jury Report nor the City's Response appear to fit into one of the "catch all" provisions in the California Evidence Code for those matters that do not fit neatly into one of the other enumerated categories.

The documents do not contain "facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute," "facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute," or "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Cal. Evid. Code §§ 451, 452. To the contrary, the "facts" in the Grand Jury Report are heavily disputed. Consequently, even if Lippman had requested that the trial court take judicial notice of the Grand Jury Report and the City's Response, it could not have properly done so of the content.

It is undisputed that the Grand Jury Report and the City's Response are not any of the identified laws, rules, regulations, legislation, or official acts listed in the California Evidence Code. Further, the content of the Grand Jury Report and City's Response is certainly reasonably subject to dispute and, therefore, fails to fit into a "catch all" category. Cal. Evid. Code §§ 451(f), 452(g), (h). Thus, the Court might take notice of the fact that the Grand Jury issued a report in June 2011 and the City filed a written response in September 2011 – these documents do exist.

The Court cannot take judicial notice, however, of the substance of the matters contained within the Grand Jury Report or the City's written

response. Cal. Evid. Code §§ 451, 452. Both the substance of the Grand Jury Report and the City's Response contain hearsay, unsubstantiated opinions, legal conclusions, and recommendations that the City is under no obligation to implement. *See, e.g., Lockley*, 91 Cal. App. 4th at 882 (citing *Williams*, 33 Cal. App. 4th at 130 (stating that courts are free to take judicial notice of the existence of each document in a court file, but they may not take judicial notice of the truth of hearsay statements in decisions and court files); *Magnolia Square Homeowners Ass'n.*, 221 Cal. App. 3d at 1056-57 (cautioning that courts may not take judicial notice of allegations in affidavits, declarations and probation reports, for example, because such matters are reasonably subject to dispute and require formal proof)); (RJN, Ex. A. at 63-81).

Moreover, other property owners' complaints and concerns that are anonymously noted in the Grand Jury Report have no bearing on whether Lippman was properly cited by Building Services. Lippman has only appealed whether the OMC complies with the CBC. Neither the Grand Jury Report nor the City's Response speak to this issue. Further, even if the Court were to review the Grand Jury Report regarding the general issue of the appeal process, it would find that the Grand Jury recommended that the City "establish a clear, simple, effective appeals process that is easily understood by property owners . . . ." (RJN, Ex. A at 81, Recommendation 11-23.) In response, the City agreed to "evaluat[e] the creation of a neutral appeals process for all appeals" and "develop a clear, written description of the appeals process." (RJN, Ex. B at 9.) As a result of this agreement, Lippman was able to avail himself of the new appeal process before a neutral hearing officer in 2012. *See, e.g.*, OMC § 15.08.410 *et seq.*; (AR Tabs 18 and 50.) Further, he does not argue that he did not understand the process – simply that he disagreed with the outcome.

C. Even if the Court finds a conflict between Oakland Municipal Code section 15.08.410 *et seq.* and California Building Code section 1.8.8.1, the Oakland Municipal Code governs because the issue in this case is a "municipal affair."

As stated *supra*, a charter city gains "exemption" from the "conflict with general laws" restrictions of Cal. Const. art. XI, § 7, with respect to its "municipal affairs." *Sherwin-Williams Co.*, 4 Cal. 4th at 897. As a result, even in the face of a conflict with the CBC, the Charter or provisions of the OMC govern if the underlying issue is properly categorized as a "municipal affair." The trial court recognized and the court in *Cal. Fed. Savings & Loan Ass'n* cautions, however, that "[t]o the extent difficult choices between competing claims of municipal and state governments can be forestalled in this sensitive area of constitutional law, they ought to be; courts can avoid making such unnecessary choices by carefully insuring that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other." *Cal. Fed. Sav. & Loan Ass'n. v. City of Los Angeles*, 54 Cal. 3d 1, 16-17 (1991).

The OMC does not conflict with the CBC. The CBC requires the City to establish a process to hear and decide appeals of Building Services' orders, decisions, and determinations. The City has established a process. It has an enforcing agency that issues orders, decisions, and determinations. The same agency has created a separate, neutral, and independent "arm" to hear appeals. This process satisfies procedural due process. The City need not look to the City Council to hear and decide appeals. Importantly, the "purported conflict" that Lippman argues is, if fact, *resolvable* without choosing one statute over the other. *Id.* Nonetheless, to the extent the Court finds that a conflict exists between the OMC and the CBC, the underlying matters at issue – blight on private residential property, habitability conditions inside a private residential home, and an appeal

process to challenge both – are properly regulated by the OMC because they are municipal affairs.

1. Although not easily defined, "municipal affairs" are generally the "internal business affairs" of a City.

As Lippman argues, the California Constitution recognizes four established categories of "municipal affairs" including: (1) regulating the police force; (2) subgovernment of the city; (3) conduct of city elections; and (4) officer/employee compensation. Cal. Const. art. XI, § 5(b). Consistent with the categories enumerated in the California Constitution, the term "municipal affairs" generally refers to the internal business affairs of a city. 45 Cal. Jur. 3d Municipalities § 187 (2013). However, because of the difficulty of defining the phrase, there is no precise definition of "municipal affair." *Id.* (citing *Sunset Tel. & Tel. Co. v. City of Pasadena*, 161 Cal. 265, 281-82 (1911)).

Instead, the phrase is given meaning under the facts and circumstances of each particular case. *Id.* (citing *Bishop v. City of San Jose*, 1 Cal. 3d 56, 62-63 (1969)). In deciding whether a matter is a "municipal affair" or a matter of statewide concern, courts will generally give great weight to the purpose of the Legislature in enacting general laws which disclose the intent to preempt the field to the exclusion of local regulation. *Id.* (citing *Bishop*, 1 Cal. 3d at 63); *see, e.g., Harrahill v. City of Monrovia*, 104 Cal. App. 4th 761 (2002) (holding that ordinance regulating unsupervised off-campus juvenile activity during school hours did not conflict with or seek to regulate compulsory school attendance or truancy governed by the state).

A municipal action that affects persons outside of the municipality may become, to that extent, a matter that the state is empowered to regulate. *Id.* (citing *Comm. of Seven Thousand v. Superior Court*, 45 Cal. 3d 491, 495, 505-06 (1988) (holding that highway construction and the

development of a regional transportation system was a matter of statewide importance and, therefore, a local ordinance attempting to regulate similar matters was invalid)); *Cnty. of Santa Barbara v. City of Santa Barbara*, 59 Cal. App. 3d 364, 370, 371 (1976) (recognizing the creation of a parking district is a municipal affair, but assessment of the county property publicly used is a matter of statewide concern). However, the fact that the Legislature has attempted to deal with a particular subject on a statewide basis is not determinative of the issue "as between state and municipal affairs." *Id.*

The court in *Cal. Fed. Sav. & Loan Ass'n* has also articulated guidelines for the Court's task at hand:

> The phrase 'statewide concern' is thus nothing more than a conceptual formula . . . that facially discloses a **focus on extramunicipal concerns as the starting point for analysis**. By requiring, as a condition of state legislative supremacy, a dimension **demonstrably transcending identifiable municipal interests**, the phrase resists the invasion of areas which are of intramural concern only, preserving core values of charter city government. . . . Their inherent ambiguity masks the difficult but inescapable duty of the court to . . . "allocate the governmental powers under consideration in the **most sensible and appropriate fashion** as between local and state legislative bodies.

Cal. Fed. Sav. & Loan Ass'n., 54 Cal. 3d at 17 (citing Van Alstyne, Background Study Relating to Article XI, Local Government, Cal. Const. Revision Com., Proposed Revision, p. 239 (1966)).

Lippman, for example, cites to a number of cases that very clearly illustrate matters of statewide concern that have effects that are external to a local municipality. *See, e.g., Johnson v. Bradley*, 4 Cal. 4th 389, 409 (1992) (agreeing that state can impose disclosure requirements and contribution limits on candidates for local office); *Cal. Fed. Sav. & Loan Ass'n.*, 54 Cal. 3d at 24-25 (taxing banks is a matter of statewide concern);

Pac. Tel. & Tel. Co. v. City & Cty. of San Francisco, 51 Cal. 2d 766, 776 (1959) (erecting telephone lines is a matter of statewide concern because of the state's interest in a complete telephone network). These matters appear to implicate matters beyond the "internal business" of a local jurisdiction. *See also, e.g., S. Cal. Roads Co. v. McGuire,* 2 Cal. 2d 115 (1934) (recognizing that a statute claiming a city street to be a secondary state highway prevails over the right of a municipality to improve that street).

On the other hand, matters that appear to more clearly fall within the "municipal affair" purview are those that involve "the maintenance of . . . charter provisions in municipal matters" and "the government and management of the municipality." *Cal. Fed. Sav. & Loan Ass'n.*, 54 Cal. 3d at 11-12 (citing *Ex parte Braun*, 141 Cal. 204, 209 (1903)). As Lippman highlights, public financing of campaigns and public employee personnel matters have been identified as matters involving the government and management of a city. *See, e.g., Johnson*, 4 Cal. 4th at 409 (finding public financing of campaigns using local revenue is a municipal affair); *Ex parte Braun*, 141 Cal. at 209 (municipalities have the power to impose and enforce licensing taxes for revenue purposes).

2. The substance of Lippman's citations and the appeal process used to challenge the citations are "municipal affairs."

Considering the specific facts and circumstances of the instant matter, it is reasonable to conclude that the matters at issue are "municipal affairs." The underlying blight and habitability issues all affect either Lippman (as owner and potential resident on the property), the tenants (living on the property), or the neighbors (to the extent the conditions on the outside of the property "spill-over" or create hazards). *See, e.g., Cal. Fed. Sav. & Loan Ass'n.*, 54 Cal. 3d at 17 ("municipal affairs" involve "the government and management of the municipality;" matters of statewide concern are focused on issues that "transcend" the municipality and are

"extramunicipal"). Neither Lippman nor the City makes any argument that anyone else is affected by the problems on Lippman's property. *Cf. City of Santa Clara v. Von Raesfeld*, 3 Cal. 3d 239, 246 (1970) (recognizing the treatment and disposal of city sewage and sewage bonds are municipal affairs, but when sewage system transcends the boundaries of the city, affects navigable waters or tidelands, or otherwise touches public health generally, the system is a matter of statewide concern).

Moreover, unlike the election or labor dispute resolution cases to which Lippman attempts to analogize his case, the local impact here is far less widespread. *See, e.g., Johnson*, 4 Cal. 4th at 409-11; *Cnty. of Riverside v. Superior Court*, 30 Cal. 4th 278, 289 (2003). Local elections impact all citizens in a local jurisdiction; a labor dispute resolution process applies to public employees whose employment allows the municipality to operate. The state has an interest in the "independence and integrity of all elected officials" as well as in stable municipality operations and public employee relations. *See, e.g., Baggett v. Gates*, 32 Cal. 3d 128, 139-40 (1982) (stating that the "maintenance of stable employment relations between police officers and their employers is a matter of statewide concern"); *Johnson*, 4 Cal. 4th at 409-11(finding "elected officials of the various municipalities . . . throughout . . . California exercise a substantial amount of executive and legislative power over the people of . . . California). Viewing the City's appeal process in the same manner as a local election or public employee labor dispute resolution process does not result in a "sensible" or "appropriate" allocation of power to the state. *Cal. Fed. Sav. & Loan Ass'n.*, 54 Cal. 3d at 17.

The California Legislature gave the City the ability to determine its own process for Building Services appeals. The express language of CBC section 1.8.8.1 indicates the state legislature's intent to give municipalities the discretion to determine the manner or "process" in which they will hear

and decide appeals of orders and decisions of the agency enforcing building code regulations. If the state intended to fully preempt this area from local regulation, it follows that section 1.8.8.1 *would not* authorize *every* city and/or county to establish its *own* process to hear and decide appeals.

Finally, property owners have judicial safeguards in place that protect them from local abuse. Once Lippman was dissatisfied with the outcome of his administrative appeals, he filed a writ in the trial court. The trial court is authorized to analyze the entire underlying administrative record and can determine if Building Services proceeded without (or in excess of) its jurisdiction, if there was a fair "trial," and whether there was a "prejudicial abuse of discretion." Cal. Civ. Proc. Code § 1094.5(b). With judicial review possible in all cases, it is difficult to envision statewide preemption of this area for the purpose of preventing local abuse.

The City is unaware of any case law that is specifically on point regarding whether the issues in this appeal are municipal affairs or matters of statewide concern. However, drawing analogies to the matters in the cases cited *supra*, regulation of the nuisance issues in the citations and the process that the City established to hear challenges to the Building Services decisions, are all properly viewed as "municipal affairs." While it may be true that doubt regarding whether a regulation relates to a municipal or state matter is resolved in favor of the state, courts strongly caution that, to the extent "difficult choices" between claims of municipal and state governments can be "forestalled," they "***ought to be.***" Courts must ensure that "the purported conflict is in fact a genuine one . . . ." *Cal. Fed. Sav. & Loan Ass'n.*, 54 Cal. 3d at 16-17. The City maintains that there is no conflict between CBC section 1.8.8.1 and OMC section 15.08.410 *et seq*., however, even if the Court holds differently, the City's OMC governs because the underlying issues are matters of statewide concern.

V. CONCLUSION

The CBC requires the City to establish a process to hear and decide appeals from the orders, decisions, and determinations of Building Services. The City has established this process in OMC section 15.08.410 *et seq*. Building Services is both the agency that enforces code violations and the agency that has established an appeal process utilizing a neutral, independent, and separate hearing officer. Because there is a process – developed through an agency – there is no mandate to have appeals heard by the City Council.

The City's process complies with the CBC. However, to the extent the OMC conflicts with the CBC, the OMC governs because property blight, habitability concerns, and the appeal process to address both issues are all "municipal affairs" that are properly governed by the City.

Accordingly, the Court should affirm the trial court's judgment denying Lippman's petition for traditional writ of mandate.

Dated: October 20, 2014

By: /s/ JAMILAH A. JEFFERSON
Attorney for Defendant/Respondent
CITY OF OAKLAND

CERTIFICATE OF WORD COUNT
(Cal. Rules of Ct., rule 8.204 (c)(1))

The text of this brief, including any footnotes, consists of 9,236 words as counted by the Microsoft Word 2010 word-processing program used to generate the brief.

Dated: October 20, 2014

Respectfully submitted,
BARBARA PARKER, City Attorney
OTIS MCGEE, JR., Chief Assistant City Attorney
JAMILAH A. JEFFERSON, Deputy City Attorney

BY: /s/ JAMILAH A. JEFFERSON
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APP-008

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APPELLANT/PETITIONER: THOMAS LIPPMAN RESPONDENT/REAL PARTY IN INTEREST: CITY OF OAKLAND	
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Full name of interested entity or person	Nature of interest *(Explain):*
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Date: October 17, 2014

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