

1 **JOHN A. RUSSO, City Attorney – State Bar #129729**
2 **RANDOLPH W. HALL, Chief Assistant City Attorney - State Bar #080142**
3 **JAMES F. HODGKINS, Supervising Trial Attorney – State Bar #142561**
4 **CAROLYN ORTLER, Attorney for the City of Oakland -State Bar #239631**
5 **One Frank H. Ogawa Plaza, 6th Floor**
6 **Oakland, California 94612**
7 **Telephone: (510) 238-3988 Fax: (510) 238-6500**
8 **X02910/386722**

9 **Attorneys for Plaintiff and Real**
10 **Party In Interest CITY OF OAKLAND**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF ALAMEDA**

13 **CITY OF OAKLAND, a municipal**
14 **corporation,**

15 **Plaintiff,**

16 **v.**

17 **MORTIMER HOWARD, THE HOWARD**
18 **MORTIMER TRUST and DOES 1 through 20,**
19 **inclusive,**

20 **Defendant,**

Case No.

COMPLAINT FOR INJUNCTION, CIVIL
PENALTIES AND OTHER EQUITABLE
RELIEF

21 The City of Oakland, a municipal corporation, as Plaintiff and Real Party in Interest, hereby
22 alleges:

23 **GENERAL ALLEGATIONS**

24 1. At all times mentioned herein, Plaintiff and Real Party in Interest City of Oakland
25 was and now is a municipal corporation and chartered city, organized and existing under the laws
26 of the State of California.

2. Defendants DOES 1 through 20 are sued as fictitious names, their true names and
capacities being unknown to Plaintiff at this time. When and if their true names and capacities
are ascertained, Plaintiff will promptly amend this complaint to list their true names and

1 capacities.

2 3. Defendant MORTIMER HOWARD (hereinafter "Defendant") is an adult
3 individual residing in Alameda County and is the owner of the real property, all buildings and
4 other improvements, located at 3761 Park Boulevard Way, in the City of Oakland, California
5 (hereinafter the "Property"), commonly known as the "Park Village Apartments."

6 4. Defendant obtained ownership of the Property on or before 1976.

7 5. Defendant transferred the property to The Howard Mortimer Trust in June of 2006.

8 6. Whenever, in this Complaint, reference is made to any act of Defendant, such
9 allegations shall be deemed to mean Defendant or his officers, agents, managers, representatives,
10 employees, heirs, assignees, customers, tenants or DOES 1 through 20, who did or authorized
11 such acts while actively engaged in the operation, management, direction or control of the affairs
12 of Defendant and while acting within the course and scope of his duties.

13 7. Defendant owns approximately sixteen (16) properties in the Bay Area, primarily
14 in Oakland and Alameda.

15 8. The Property has served as subsidized housing for low income seniors for
16 approximately thirty (30) years.

17 9. The Property is an eighty-four (84) unit residential apartment complex housing
18 approximately seventy-two (72) people at the time of this complaint.

19 10. Defendant operated the Property pursuant to a project-based Section 8 Housing
20 Assistance Payments contract (hereinafter "H.A.P. contract") with the federal Department of
21 Housing and Urban Development (hereinafter "H.U.D.").

22 11. To qualify for housing at Park Village Apartments, tenants must be sixty (60)
23 years of age or older and satisfy H.U.D.'s definition of low-income.

24 12. Each tenant's rent is approximately thirty (30) percent of their gross income as
25 calculated by H.U.D. Accordingly, rents range from below \$200 a month to over \$300.

26 13. The City issued a conditional use permit for the Property in approximately 1978.

1 14. The conditional use permit exempts Defendant from certain density restrictions
2 and parking allotments, and requires the property to continue as senior housing for 50 years. The
3 conditions of approval were recorded with the County of Alameda.

4 15. The City, in issuing the conditional use permit, granted Defendant's request to
5 change the Property's zoning from an R50 to an R70 zone, skipping the R60 level altogether.

6 16. Between approximately 2003 and 2004, Defendant negotiated his last H.A.P.
7 contract with H.U.D.

8 17. On September 9th, 2004 he sent a letter to his tenants (attached as Exhibit A)
9 stating that the H.A.P. contract had been renewed for the term of November 2004 to November
10 2005.

11 18. Defendant failed to renew the H.A.P. contract that expired in November 2005, and
12 H.U.D. ceased giving Defendant the subsidies for which the contract had provided.

13 19. In the months that followed the November 2005 H.A.P. contract expiration,
14 tenants continued to pay the same amount of rent that they had paid up to November 2005.

15 20. The City has information and belief that H.U.D. is not only willing to renew the
16 H.A.P. contract with Defendant as of the filing of this complaint, but also to provide retroactive
17 subsidy payments, for the period from approximately November 2005 to approximately
18 December 2006.

19 21. On March 6th, 2006, Defendant delivered a letter (attached as Exhibit B) to each
20 tenant stating that the H.A.P. contract had expired the previous November, and, as a result, each
21 tenant must either give notice to quit or pay \$1,192 in rent.

22 22. Approximately one week later, on March 14th, 2006, Defendant delivered a letter
23 (attached as Exhibit C) to each tenant demanding tenants henceforth increase their rental
24 payments by \$12.00 per month, to compensate Defendant for a utility allowance that Defendant
25 would have received from H.U.D. had he renewed the H.A.P. contract.

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2 23. Defendant delivered another letter to each tenant, dated March 27, 2006, (attached
3 as Exhibit D) deeming the September 9, 2004 letter, described in paragraph 12 above, a notice
4 which satisfies his statutory notice requirements or "in the event that notice failed to meet the
5 legal sufficiency required by law... a 12-months notice will be deemed to have commenced on
6 November 20, 2005, the expiration date of the HAP contract."

7 24. During the night of October 23rd, 2006 Defendant delivered to each tenant a letter
8 entitled "90 Day Notice of the Termination of Your Existing Lease Agreement." (attached as
9 Exhibit E). which stated that, "you have the option of entering into a new lease agreement with
10 the owner by January 23rd, 2007 which will increase your rent to \$1192.00 per month, the rent
11 previously paid under the H.A.P. contract, or give written notice that you will vacate your unit on
12 or before January 23rd, 2007.

13 25. At least one tenant at the Property has a disability.

14 26. At least one tenant at the Property paid the increase rent demanded as a "utility
15 allowance."

16 27. Between March 1, 2006 and October 31, 2006, at least three tenants moved out of
17 Park Village Apartments.

18 28. Of the three (3) tenants referenced in paragraph 27, none found government
19 subsidized housing.

20 **FIRST CAUSE OF ACTION**

21 **(Failure to Provide Notice, Violation of Cal. Gov. Code § 65863.10)**

22 29. Plaintiff realleges and incorporates by reference each and every allegation
23 contained in paragraphs 1 through 28 as if fully set forth herein.

24 30. Defendant failed to provide a notice to the City, twelve (12) months prior to the
25 date of termination of a subsidy contract as required by Cal. Gov. Code Section 65863.10(b)(1).

26 31. Defendant failed to provide a notice to the City, six (6) months prior to the date of

1 termination of a subsidy contract as required by Cal. Gov. Code Section 65863.10(c).

2 32. The City is an affected public entity in which the assisted housing development is
3 located, as defined by Cal. Gov. Code Section 65863.10(a)(1).

4 33. Defendant is not an owner exempted by Cal. Gov. Code Section 65863.13 from
5 the provisions of Cal. Gov. Code Section 65863.10.

6 34. Plaintiff has no speedy or adequate remedy at law for these injuries. Defendant
7 has directly disadvantaged the City by denying it the necessary time to preserve the subsidized
8 housing or ameliorate the harm caused by its loss. Defendant has denied the City time to attempt
9 to relocate the tenants and mitigate the effects of dislocation for the tenants. Defendant has
10 denied the City its statutorily protected rights under state law. The City, as a party aggrieved by
11 Defendant's violations of Cal. Gov. Code. Section 65863.10, is entitled to injunctive relief for
12 these violations pursuant to subsection (j) of Cal. Gov. Code. Section 65863.10.

13 **SECOND CAUSE OF ACTION**

14 **(Failure to Provide Notice of the Opportunity to Offer to Purchase,**

15 **Violation of Cal. Gov. Code § 65863.11)**

16 35. Plaintiff realleges and incorporates by reference each and every allegation
17 contained in paragraphs 1 through 34 as if fully set forth herein.

18 36. No agent, agency or department within the City of Oakland has received a notice
19 of the opportunity to offer to purchase the property from Defendant anytime in the twelve months
20 prior to the expiration of the contract. Cal. Gov. Code Section 65863.11(g).

21 37. Defendant has terminated a subsidy contract without first providing the City of
22 Oakland an opportunity to submit an offer to purchase the development, as required by Cal. Gov.
23 Code Section 65863.11 (b).

24 38. The City is an entity to whom an opportunity to submit an offer to purchase shall
25 be provided. Cal. Gov. Code Section 65863.11 (d).

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2 39. Defendant is prohibited by Cal. Gov. Code Section 65863.11 (b) from terminating
3 a subsidy contract unless he has first provided the City an opportunity to submit an offer to
4 purchase.

5 40. Plaintiff has no speedy or adequate remedy at law for these injuries. Because of
6 the nature of the injuries and the types of violations which are occurring, it will be impossible for
7 Plaintiff to determine the precise amount of damages Plaintiff will suffer. Plaintiff has denied the
8 City opportunity to prevent or ameliorate the loss of senior housing in Oakland. Because
9 Defendant is prohibited by law from terminating a subsidy contract without first providing the
10 City of Oakland an opportunity to submit an offer to purchase the development, this Court should
11 order Defendant to renew the unlawfully terminated contract, pursuant to Cal. Gov. Code Section
12 65863.11 (b).

13 **THIRD CAUSE OF ACTION**

14 **(Unlawful Rent Adjustment, Violation of O.M.C. Chapter 8.22 et. seq.)**

15 41. Plaintiff realleges and incorporates by reference each and every allegation
16 contained in paragraphs 1 through 40 as if fully set forth herein.

17 42. The base rent from which all rent increases are calculated is the initial rent the
18 tenants were paying after the subsidy ceased. O.M.C. 8.2200 et. seq., Residential Rent
19 Arbitration (sic) Board Rules and Regulations § 2.1. Most tenants paid well below \$500 a month
20 after the subsidy ceased.

21 43. Defendant did not provide tenants a notice regarding the existence and scope of the
22 Rent Adjustment Ordinance and tenants' rights to petition against certain rent increases. O.M.C.
23 8.22.060-8.22.070.

24 44. Defendant did not give the notice described in paragraph 44 together with every
25 notice of rent increase. O.M.C. 8.22 070(H).

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2 45. Defendant's known letters notifying tenants of rent adjustments, (Exhibits A-E), do
3 not conform to the provisions of the Rent Adjustment Ordinance. O.M.C. Chapters 8.22.050-
4 8.22.070.

5 46. Defendant's demand for a "utility allowance" constitutes a rent adjustment.
6 O.M.C. 8.22.070(H).

7 47. Defendant's failure to timely give tenants proper notice of a rent adjustment
8 invalidates the rent adjustment. O.M.C. 8.22.070(H)(3).

9 48. Plaintiff has no speedy or adequate remedy at law for these injuries. The unlawful
10 rent adjustments, constituting rent increases of up to 200%, caused stress and anxiety to affected
11 tenants. Because these seniors are low-income they may not find alternative equivalent housing.
12 Because of the nature of the injuries and the types of violations which are occurring, it will be
13 impossible for Plaintiff to determine the precise amount of damages Plaintiff will suffer.
14 Pursuant to O.M.C. Chapter 8.22.150(C), the City requests the Court permanently enjoin
15 Defendant from the unlawful rent adjustments described above.

16 **FOURTH CAUSE OF ACTION**

17 **(Eviction Without Just Cause, Violation of O.M.C. Chapter 8.22.300 et. seq.)**

18 49. Plaintiff realleges and incorporates by reference each and every allegation
19 contained in paragraphs 1 through 48 as if fully set forth herein.

20 50. Defendant has endeavored to recover possession and issue a notice terminating
21 tenancy, without lawful grounds, pursuant to O.M.C. Chapter 8.22.360(A).

22 51. The "90 Day Notice of Termination of Your Existing Lease Agreements" letter
23 effectively constitutes a "notice terminating tenancy" and therefore subjects the Defendant to the
24 Just Cause Ordinance. O.M.C. 8.22.360(A).

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2 52. The proposed new lease agreements are not extensions or renewals of prior
3 agreements with the landlord for a further term of like duration and under such terms which are
4 materially the same as in the previous agreement. O.M.C. Chapter 8.22.360(A)(3).

5 53. Defendant is not legally entitled to the demanded rent of \$1192.00 pursuant to the
6 proposed new rent agreement. O.M.C. 8.22.300(A)(1).

7 54. Plaintiff has no speedy or adequate remedy at law for these injuries. Defendant's
8 attempt to evict tenants without lawful grounds will create displacement and cause extreme
9 hardship to the tenants. Fear of displacement and eviction reasonably based on threats of
10 unlawful detainer actions cause stress and anxiety to affected tenants. Because these seniors are
11 low-income they may not find alternative equivalent housing. Some tenants are disabled and
12 moving occurs only at great cost and inconvenience to them. Because of the nature of the injuries
13 and the types of violations which are occurring, it will be impossible for Plaintiff to determine the
14 precise amount of damages Plaintiff will suffer. Pursuant to O.M.C. Chapter 8.22.370(C), the
15 City requests the Court permanently enjoin Defendant from immanent unlawful evictions
16 described above.

17 **FIFTH CAUSE OF ACTION**

18 **(Failure to Comply with Costa-Hawkins, Violation of Cal. Civ. Code § 1954.53 et. seq.)**

19 55. Plaintiff realleges and incorporates by reference each and every allegation
20 contained in paragraphs 1 through 54 as if fully set forth herein.

21 56. Defendant's non-renewal of his H.A.P. contract at the Property constitutes a
22 change in the terms of the tenancy pursuant to Cal. Civil Code Section 1954.53(a)(1).

23 57. Defendant has set rent increases following the date of the termination or non-
24 renewal of the H.A.P. contract and attempts to establish new tenancies at the Property in less than
25 three years, in violation of Cal. Civil Code Section 1954.53(a)(1)(A).

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2 58. Defendant attempts to establish new tenancies after the expiration of the H.U. D.
3 contract where the previous tenancies had been improperly terminated by the owner in violation
4 of Cal. Civil Code Section 1954.53(a)(1).

5 59. Defendant's change in the terms of the tenancies existing prior to the expiration of
6 the H.A.P. contract are prohibited by Cal. Civil Code Section 1954.53(a)(1).

7 60. Plaintiff has no speedy or adequate remedy at law for these injuries. The injury to
8 the quality of life resulting from the uncertainty of the housing arrangement for these low-income
9 seniors is immeasurable. Defendant has denied them time to locate new housing. Further, they
10 are unlikely to find comparable housing. Because of the nature of the injuries and the types of
11 violations which are occurring, it will be impossible for Plaintiff to determine the precise amount
12 of damages Plaintiff will suffer.

13 61. Unless Defendant is restrained by an order of this Court, he will continue with the
14 hasty elimination of low income housing at this location, to the irreparable harm of the People of
15 the State of California, and in violation of the laws of the State of California and the City of
16 Oakland.

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18 Plaintiffs have no adequate remedy at law.

19 **WHEREFORE, PLAINTIFFS PRAY THAT THIS COURT ORDER, ADJUDGE AND**
20 **DECREE:**

21 1. That Defendant be permanently enjoined from adjusting the rent above the
22 rent paid by tenants pursuant to the H.A.P. contract until he cures his notice and other violations,
23 pursuant to O.M.C. Chapters 8.22.370(c) and 8.22.150, Cal. Gov. Code Sections 65863.10(j),
24 65863.10(b)(1), and 65863.11(p)(1) and Cal. Civil Code Section 1954.53(a)(1)(A).

25 2. The Defendant be ordered to renew the unlawfully expired Section 8
26 H.A.P. contract pursuant to Cal. Gov. Code Section 65863.11(b) and (p)(1).

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2. That recordation of an abstract of the judgment in this case constitutes a prior lien over any lien that may be held on the property by any defendant to this action.

3. That Plaintiff recover the costs of this suit, including attorney's fees, from Defendant;

4. That plaintiffs are entitled to such other relief as the Court deems proper.

Dated: October 31, 2006

JOHN A. RUSSO, City Attorney
RANDOLPH W. HALL, Chief Assistant City Attorney
JAMES F. HODGKINS, Supervising Trial Attorney
CAROLYN ORTLER, Attorney for the City of Oakland

By: _____
Attorneys for Defendant and Plaintiff
CITY OF OAKLAND