

July 20, 2020

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**REFERENCE: RESPONSE TO PRIVATE EMINENT DOMAIN - RIGHT TO ACCESS  
Acquisition of a Private Company, Piedmont Walk HOA to Our Property at 58 Yosemite  
Ave., Oakland, CA**

Oakland City Council Members,

Due to the Piedmont Walk HOA (the "Association"); refusal to provide us with necessary documents, including a fully detailed construction plan, and agreement for access to our property, and our request to have our own contractors perform inspection and prepare estimates to perform the testing for the interior and exterior of their building, we are requesting that the City Council postpone the Hearing regarding this matter scheduled for July 21, 2020 until 90 days after the Association provides us with these documents and allows us to perform the above.

If the City Council is unwilling to postpone this matter, we ask that the City Council vote against the Association Resolution for the following reasons:

1. The Association states in their proposed Resolution that "For nearly five years, the Association has attempted to obtain permission from the Payumos for access to the Payumo Property at 58 Yosemite Avenue through a temporary right of entry".

This statement is flatly false. It is quite the contrary. The Payumos have been very cooperative and supportive from the beginning, starting in 2014. Payumo Exhibit A is an email from Bethoven "Jimmy" Payumo to Stacey Murray with Murray Services dated January 25, 2014 stating that the Payumos WILL PROVIDE 30-DAY NOTICE TO TENANTS TO ALLOW CONSTRUCTION WORK. Payumo Exhibit B contains an email from Bethoven to Stacey **THAT THE PAYUMOS WERE ALLOWING THE ASSOCIATION 60 DAYS USE OF THEIR PROPERTY AT NO COST.** Please note that William Beck, previous President of the Association had been in the email chain between Bethoven and Stacey Murray.

2. The Association states in their proposed Resolution that the “Payumos have persistently refused to execute the requested access agreement as evidenced in their attached Exhibit D”.

This statement confirms the Association’s **CONTINUOUS BULLYING** of the Payumos. The Association through Berding and Weil failed to include in their Exhibit D the initial Agreement that they had asked the Payumos to sign the Right of Entry dated June 7, 2017 which contains the following excerpts. See Payumo Exhibit C:

**“Release.** Licensor warrants and represents that Licensor does not have and shall not claim any right to damages resulting from the Work, including without limitation damages resulting from obstruction of access, noise, dust, vibrations, or fumes, and Licensor knowingly waives the right to make any claim against HOA, its officers, employees, agents, contractors, or consultants for such damages. Licensor further warrants and represents that **Licensor has no other right or claim to compensation arising out of or connected with the Work and agrees never to assert such a claim.** Licensor expressly waives all rights provided by Section 1542 of the California Civil Code, which provides as follows:

**No Liability.** Licensor understands and agrees that **HOA shall not be held responsible or liable for protecting in place, damage to, or removal of Licensor's personal property, appurtenances, improvements, or any part of the License Area, caused by or resulting from the performance of the Work** or operations connected therewith.”

Also, the last agreement received from the Association dated June 21, 2019 from Dennis Eagan, does not provide any description on the testing plan that will be performed from the Payumos property, nor any offer of indemnification for access and work that will occur in the Payumos property. See Payumo Exhibit D.

Over the past years, the Association has continuously bullied the Payumos, asking them to sign Right of Entry without any mention of indemnification nor compensation for the Payumos and the Residents living in the property. This proves that the Association would rather burden the Payumos and its Residents, instead of the Residents within the Association’s Building to be repaired at 70 Yosemite Avenue.

3. The Association claims that doing the testing and repair from the interior is cost prohibitive, yet they did not provide any evidence of this. They are claiming this without even performing the test and finding out the results. We asked them to provide contractors’ estimates to do the testing and repair from both the inside and outside of the building, but they have not responded. We have requested that the Association allow contractors of our choosing to have access to the interior and exterior of their building to prepare estimates for the testing and the repair. This will provide us an understanding so we can see the difference in cost for doing it in and out, because they're claiming it's too much, but they're not showing any proof of that.
4. The Association makes numerous claims in their proposed Resolution in which they provide no supporting evidence, which we are rebutting, see Payumo Exhibit E, with our rebuttals in **red**.

5. The Association is attempting to use “CALIFORNIA CIVIL CODE SECTION 1002 AND CODE OF CIVIL PROCEDURE SECTIONS 1245.326 ET SEQ.” to forcibly gain access to the Payumos’ property to perform the Repair Work of their building. CCP Section 1002(a)(3) states that “The hardship to the person seeking to exercise the power of eminent domain, if that power is not exercised clearly outweighs any hardship to the owner or occupant of the adjacent or nearby property.”

The Association is making an assumption that there would be little or no hardship to the Payumos and the residents of their building to do the repair work on their property. However, the Association has not performed due diligence in coming to this conclusion. On the contrary, if the repair work were to occur on the Payumos’ property, it would certainly incur tremendous hardships, will create an unreasonable burden both financially, physically and emotionally to the Payumos and the residents. These include, but are not limited to:

- a. Unit A – Dary Ly & Jacob Sattinger Response to Questionnaire (Payumo Exhibit F)  
One of the Residents in this Unit has severe obstructive sleep apnea, for which the dust of construction will be a health issue. The Residents state that they will be forced to be put out, especially during this pandemic, they will seek compensation and accommodation, and will take legal action against the Payumos. Their response will create a huge liability and tremendous financial difficulty for the Payumos.
- b. Unit 1 – Patricia McCormack Response to Questionnaire  
One of the Residents is an elderly disabled woman with mobility limitations and other health issues. She has adaptive equipment installed in her apartment, including hospital bed, and a certified emotional support dog. She is suffering from asthma and apnea for which the dust that will occur during the Repair Work will be an issue. She is assigned a disabled parking spot nearest to the rear building entrance, and this CANNOT BE LEGALLY TAKEN AWAY FROM HER. See Payumo Exhibit G that contains response to Questionnaire, Letter from Ms. McCormack, and Disabled Parking Sign photo.
- c. Unit C – Laura Bagnato Response to Questionnaire (Payumo Exhibit H)  
Ms. Bagnato stated that she is working from home indefinitely due to Covid-19. Much of her work takes place VIA CONFERENCE CALLS, and her ability to work would be **impossible** due to the construction noise. Her unit is directly adjacent to the access that the Association is asking for. She also stated that she and her roommate will consider moving if the sound and debris became too invasive. She is estimating for \$2700 per monthly and \$500 moving expenses that the Payumos will be paying, in addition to not receiving monthly rental of \$1200 per month.
- d. One of the Payumos’ units is vacant and now ready in which the Payumos expect to rent for \$2700. The Payumos need to inform to any potential applicants that the construction will occur just directly outside their windows, rendering the unit **impossible to rent** for the duration of the repairs. The Payumos will therefore lose this rental income for the duration of the Repair work.

- e. Unit Residents in two of the units have expressed their desire to vacate the Payumos' property for the duration of the Repair Work, and be provided with accommodations elsewhere and moving expenses paid for by the Payumos. These residents also indicated that they are not willing to pay rent to the Payumos during the Repair Work. The costs of this could be more than \$12,000 per month to the Payumos plus a loss of \$2900 per month in rent. **MORE IMPORTANTLY, STAYING IN A HOTEL DURING THE UNCERTAIN TIMES WE ARE IN DUE TO THE COVID-19 PANDEMIC, WILL CERTAINLY PUT THE RESIDENTS AT GREATLY INCREASED DANGER.** See Payumo Exhibits F and H.
- f. The residents are each given one parking space as part of rental agreement. Without a plan for the replacement of parking, this will create great difficulty for finding parking on Yosemite Avenue, since the parking is scarce. Payumo Exhibit I includes copies of the rental agreements.
- g. We have been informed by the State of California Department of Fair Employment and Housing that the removal of the parking for a disabled resident is illegal, and that the Payumos will incur possible fines in excess of \$25,000. See Payumo Exhibit J.

As stated in our previous communications with the Association, in the San Francisco Bay Area, there are many single family homes and multi-unit residential buildings that are very close to each other. Many, especially in San Francisco, have exterior walls that actually touch the house next door. If the type of remediation is performed on these buildings, like that your client is proposing to do, this would need to be done from the interior of the building. There are certainly many contractors locally who have experience doing this. See Payumo Exhibit K.

Please note that we have requested that the Association have their contractor meet with us at the job site so that he can explain to us what parts of the our property he would like access to, including where tools, equipment, building materials, stockpile of debris and vehicles will be laid out on our property. **The Associate refused to pay for the contractor** just to meet with us to give us this information. We have also been in contact with the attorney representing the Association, and he is also at this point not cooperating in giving us this information. So, we are completely unclear as to what extent the Association would like access to the Payumos property and how this will impact the people who live in the four units, including a disabled elderly woman.

**The Payumos' homeowner's insurance company** vehemently warns the Payumos against allowing construction access to the Payumos' property because of the tremendous dangers involved which would result ultimately in Payumos' liability. If the Payumos allow the Repair Work to happen, and the Association does not have the desire to take the liability associated with Repair Work, the Payumos will bear all the costs since the Insurance did not approve this to occur.

The Payumos like to be good neighbors, and they sympathize with the Associations' situation, but doing the construction totally on the Payumos property will create an unreasonable and severe burden to the Payumos' residents. The Association seems to only want to put the burden on the people living at the

Payumos' property, and not put any burden on the people who live on the Association property. We believe that anybody would consider this as **grossly unfair**.

We want to thank you for this opportunity to hear our side. We know that this is a fair hearing, and that a decision has not been made by the City Council in favor of the Association due to their false claims and inadequate submittal of documents necessary to have a fair hearing.

We request that the proposed Resolution be dismissed, or be voted for in our favor.

Thank you for your consideration and understanding.

Bethoven "Jimmy" and Dina Payumo

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