CITY OF OAKLAND

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Amended

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NOTICE OF DECISION – DENIED

May 27, 2021

Mr. Lyons
P.O. BOX 8223
Emeryville , Ca .
94662-0223

Subject Property: **465 63rd Street**
Complaint Number: 1901763
Parcel Number: 016-1392-29

Dear Mr. Lyons :

The Voliation Appeal hearing was conducted on 3/31/21. On May 3, 2021 the Hearing Officer issued a decision denying your appeal. You will receive a bill for the cost of the appeal.

The Hearing Officer decision is final unless, within 14 days of the issuance of the decision, you file an appeal to the Appeals Board by following the procedures set forth in Oakland Municipal Code 15.04.1.125G.

You must correct the violations within 30 days from the date of this notice. The City will continue abatement actions which include fee assessment, and administrative fees.

A re-inspection to determine if the violations have been corrected will occur on **July 8th.** You may contact Inspector Michae Legault at 510- 238-**3888** or by email MLeqault@oaklandca.gov if you have questions.

Sincerely,
Alicia Leighton on behalf of Denise Parker
DENISE PARKER
Office Manager

cc: Inspector Michae Legault
CAO-B. Shabrelle

Enclosed:Final Decision

CITY OF OAKLAND – OFFICE OF THE CITY ADMINISTRATOR

COUNTY OF ALAMEDA

DECISION OF INDEPENDENT HEARING OFFICER FOLLOWING APPEAL HEARING

In Re: **465 63rd Street** **Complaint No.: 1901763** **Parcel No.: 016-139-29** *Appellant:* Kobie Lyons 14923 Marlin Place Van Nuys, Ca 94105	*Independent Hearing Officer:* NATHANIEL L. DUNN (SBN 255661) ROPERS MAJESKI, P.C. 75 Broadway, Suite 202 San Francisco, CA 94111 Telephone: (415) 543-4800 *Hearing Dates:* March 31, 2021; April 26, 2021 *Time:* 10:00 a.m. *Location:* Via Videoconference

I.

INTRODUCTION

This appeal concerns whether the City of Oakland ("City") erred or committed an abuse of discretion by issuing a notice of violation (NOV) on May 8, 2019 regarding real property located at 459-465 63rd Street, Oakland, California ("Subject Property"). An appeal hearing was conducted over the course of two days before the undersigned independent hearing officer and conducted by videoconference. The first day of the hearing took place on March 31, 2021 and the second day of the hearing took place on April 26, 2021

City was represented by Deputy City Attorney Braz Shabrell. City called three witnesses during the hearing, Specialty Combination Inspector Michae Legault, as well as two tenants of the Subject Property - William Harr and Darril Tighe. Appellant Kobie Lyons ("Appellant") appeared on his own behalf as the current owner of the Subject Property. Also present on behalf of Appellant was Randall Whitney, who manages the property.

In advance of the first day of the hearing the parties submitted documentary evidence which was accepted into the record. Due to time constraints, the hearing was extended to a second day. Between the first and second day of the hearing, additional video evidence was submitted by Appellant which was accepted despite the timing of those submissions. During the second day of the hearing, new text messages were introduced as evidence by City without objection from Appellant.

After review and consideration of the forgoing, including the arguments of the parties during the hearing on this appeal, the undersigned independent hearing officer finds no error or abuse of discretion by the City in the issuance of the NOV. The City's issuance of the NOV is CONFIRMED.

II.

FACTUAL BACKGROUND

The Subject Property is a four-unit residential building. Specialty Combination Inspector Michae Legault testified that he is a licensed general and electrical contractor, and that he has conducted over 500 home inspections over the course of his career. Mr. Legault testified that on May 1, 2019 he conducted an inspection of the Subject Property, in which he observed multiple violations of the Oakland Municipal Code ("OMC") including:

1. Trash, debris in the exterior, as well as overgrown vegetation. (O.M.C. 8.24.020 D1, 8.24.020 D10)
2. Electrical system is in a state of dilapidation and cannot service the electrical needs of the building per PG&E. (O.M.C. 15.08.120, 15.08.140, 15.08.050)
3. No permitted heat source in any of the units. (O.M.C. 15.08.120, 15.08.140, 15.08.050)
4. Light fixtures around the exterior in need of repair. (O.M.C. 15.08.050)
5. Rear staircase in disrepair. (O.M.C. 15.08.120, 15.08.140, 15.08.050)
6. Water heaters / dishwasher installed without permits. (O.M.C. 15.08.120, 15.08.140)
7. Four windows and two doors replaced without permits. (O.M.C. 15.08.120, 15.08.140)

8. Inadequate maintenance of the exterior/interior light fixtures, walls, paint, and glass, as well as dry rot and mold.

Photographs of the alleged violations were submitted by the City prior to the hearing. Mr. Legault testified that those photographs depicted the condition of the Subject Property on the date of his inspection on May 1, 2019. Mr. Legault went on in his testimony to describe each condition and the basis for his determination that they constituted a violation of the OMC. City also called as witnesses two of the tenants of the Subject Property, William Harr and Darril Tighe. Mr. Harr and Ms. Tighe testified regarding their personal experience with several of the alleged defective conditions, namely electrical problems, lack of heat, and concerns over the safety of the rear staircase.

Randall Whitney testified on behalf of Appellant that he has been the property manager for the Subject Property since approximately September of 2018. At that time, the property was owned in trust by Appellant's mother, who passed away in 2020. Mr. Whitney testified that when he first began managing the property there was indeed items of deferred maintenance that needed to be resolved. Two of the units were also occupied by "squatters."

Mr. Whitney testified that Unit 463, currently occupied by Mr. Harr, does not have a permanent heat source. As a result, Mr. Harr uses space heaters to heat his unit. Mr. Whitney testified that the use of space heaters at the building in early 2019 was problematic due to the electrical system's limitations. Several power outages at the building were attributed to the use of space heaters and other appliances.

Ms. Tighe's unit, Unit 465, does have a baseboard heater, although she contends it does not adequately heat her unit. Ms. Tighe first complained about the lack of heat in her unit via text message in approximately February of 2019, shortly after she moved in. Text messages from Mr. Harr also reflect he complained to Mr. Whitney regarding issues with the hot water and lack of adequate heating in his unit in November of 2018, and that as of the following November in 2019 he was experiencing problems with the heat and electricity in his unit, as well as with the back stairs.

Mr. Lyons testified that he was not involved with the property prior to September of 2020. After Mr. Lyons became the owner he made several upgrades to the property, including replacing at least one water heater, as well as the electrical panel. Photographs of the exterior of the property also reflect that the property's landscaping was renovated since May 1, 2019 when Mr. Legault conducted his inspection.

IV.

DISCUSSION

A. Property Blight

Chapter 8.24.020 of the OMC defines a blighted property as one, *inter alia,* "...which is not kept clean and sanitary and free from all accumulations of offensive matter or odor including, but not limited to, overgrown or dead or decayed trees, weeds or other vegetation..." (OMC 8.24.020 D.1.) or "... on which recyclable materials are openly stored..." (OMC 8.24.020 D.1.) Upon the discovery of a condition constituting property blight, OMC 8.24.060 empowers the City to abate the condition in accordance with the procedures set forth in Chapter 15.08 the OMC. Such procedures include the issuance of a notice of violation under OMC 15.08.110 B.

The NOV describes the presence of trash and debris in the exterior of the property as well as overgrown vegetation during Mr. Legault's inspection on May 1, 2021, which Mr. Legault deemed a violation of these code sections. Mr. Legault testified regarding his observation of these conditions during the hearing and also produced photographs of the same.

As set forth above, since Appellant became the owner he has undertaken substantial efforts to renovate the subject property, as well as the exterior areas. To that end, Appellant produced several photographs and videos of the exterior areas showing those upgrades. However, the issue to be decided in this appeal is whether the City erred or committed an abuse of discretion at the time it issued the NOV on May 8, 2019, not whether the conditions cited therein still exist presently. Accordingly, the City presented sufficient evidence to demonstrate that the issuance of the NOV for violations of OMC 8.24.020 D.1. & D.10. was not in error, given that those conditions existed when the property was inspected on May 1, 2019.

B. Building Maintenance Code Violations

The Oakland Building Maintenance Code, set forth at OMC 15.08, *et seq.* establishes, "...minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the use occupancy, locations, and maintenance of all residential and non-residential buildings, structures, portions thereof and real property within the City of Oakland." (OMC 15.08.020.) The failure on the part of a property owner, "... to repair, demolish, remove, or rehabilitate unsafe materials, appliances, fixtures, or equipment..." or "...failure to prevent, restrain, correct, or abate conditions unsafe or hazardous for occupancy or egress or fire protection or health due to inadequate maintenance, excess loading, dilapidation, or abandonment..." constitutes "... prima facie evidence of an existing and continuing hazard to life and limb, property, and/ or public welfare." (OMC 15.08.050)

Under OMC 15.08.120, "[n]o building or structure ... shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless separate permits for each building or structure have first been obtained from the Building Official in the manner and according to the applicable conditions prescribed in the Oakland Building Construction Code and the Oakland Planning Code. OMC 15.08.140 further provides that buildings, structures, real property, and all construction or work for which a permit is required shall be subject to inspection by the City.

Pursuant to the forgoing sections of the OMC, and in response to complaints by the tenants of the subject property, Mr. Legault conducted an inspection on May 1, 2019 in which he observed several conditions which he deemed violations of the Building Maintenance Code. Those conditions included a dilapidated electrical system which was unable to service the electrical needs of the building, the lack of permanent heat sources, damaged exterior light fixtures, damage to the exterior staircase, appliances installed without permits, and several doors and windows installed without permits.

During the hearing on this appeal City presented evidence that on April 29, 2019 PG&E personnel observed that the electrical equipment at the subject property was in an unsafe and

hazardous condition. Mr. Legault, who is a licensed electrical contractor, also testified that in his opinion the electrical equipment was in a state of dilapidation. Both tenants of the subject property also testified that during the relevant time frame they experienced frequent power outages, and they were forced to use space heaters to keep warm. Those space heaters then consumed so much electricity that electrical service at the building would often be interrupted.

Mr. Harr, who has young children who reside with him at the subject property, also testified that he believed the back stairs of the building were unsafe. That lay opinion was supported by Mr. Legault's professional determination that the stairs were damaged and needed repairs. Appellant presented evidence that the stairs had been damaged intentionally. When that damage occurred or by whom is unclear.

Appellant recently replaced at least one water heater and also replaced the electrical panel at the building with a new unit which would better meet the needs of the tenants. Videos and photographs of the exterior of the building also reflect that considerable work has been done to renovate the outside areas which were previously deemed in a dilapidated condition when the building was inspected on May 1, 2019.

The recent upgrades to the subject property are to be commended, and if the building were to re-inspected at the present time they may be received favorably by City's inspectors. The renovations performed since Appellant became the owner of the subject property do not disprove, however, City's contention that as of May 1, 2019 there were no permits for the water heaters and the electrical panel was unable to service the needs of the tenants. Furthermore, while the new electrical panel may be able to provide sufficient amperage to supply power to the tenants of the building, both Mr. Harr and Ms. Tighe remain dependent on space heaters as their primary heat source, as the wall/floor heaters in their units do not provide adequate heat during cold weather. Taken as a whole, the undersigned hearing officer finds City's evidence to be compelling that the conditions set forth in the NOV existed on May 1, 2019.

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V.

CONCLUSION

Based on the forgoing, the undersigned independent hearing officer finds no error or abuse of discretion by the City in issuing the NOV against the subject property on May 8, 2019. The City's issuance of the NOV is hereby CONFIRMED.

Dated: May 3, 2021

By: _____
NATHANIEL L. DUNN
INDEPENDENT HEARING OFFICER

County Assessor Display

Home | Use Codes

Assessor Parcel details for APN: 016 139202900

Print

Assessor Parcel Record

Format Parcel 16-1392-29	**Property Address** 465 63RD ST, OAKLAND, 94609	**Owner Name** LYONS LAURA B TR
Mailing Address PO BOX 8223, EMERYVILLE CA, 94662- 0223	**Attention**	**Care Of**
Use Code Four living units; e.g. fourplex or triplex w/SFR	**Recorder Number** 2014 - 198954	**Recorder Date** 08/12/2014
Mailing Address Effective Date 08/12/2014	**Last Document Input Date** 09/25/2014	**Deactivation Date**
Exemption Code		

Assessments

Property Details

Property List with the Street Name : 63RD ST

7019 2970 0000 5000 8699

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Mr. Lyons
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