

PAYUMO EXHIBIT E

REVISION 1

PAYUMOS' REBUTTAL

TO THE PIEDMONT WALK'S PROPOSED RESOLUTION

(REVISION 1 7-27-2020)

PIEDMONT WALK HOMEOWNERS ASSOCIATION

U.S. Mail

Date: July 2, 2020

FROM: Piedmont Walk HOA Board of
Directors c/o: Christopher B. Lewis
Berding & Weil, LLP

TO: Dina F. Payumo
3021 Alemany Blvd.
San Francisco, CA 94112

**NOTICE OF OAKLAND CITY COUNCIL HEARING ON
PIEDMONT WALK HOMEOWNERS ASSOCIATION'S REQUEST FOR
RESOLUTION ON STATEMENT OF NECESSITY**

**Date: Tuesday, July 21, 2020 Time:
1:30 p.m.**

Place: Via Tele-Conference

PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1245.350 PLEASE TAKE

NOTICE: On July 21, 2020, during a regularly noticed meeting, the Oakland City Council will address the Piedmont Walk Homeowners Association's Request for Resolution on the Necessity of the temporary exercise of private eminent domain of the property located at 58 Yosemite Ave. Oakland, CA 94611 for the purpose of completing necessary repairs to the north facing exterior of the building located at 70 Yosemite Ave., Oakland, CA 94611. Enclosed with this notice is the draft city council resolution and accompanying exhibits.

You have the opportunity to attend and be heard on this resolution and may do so by contacting the Oakland City Clerk's office at: (510) 238-3226 or by email at: cityclerk@oaklandnet.com. You may also contact Councilman Dan Kalb's office at (510) 238-3557 or by email at: dmoos@oaklandca.gov.

Revised July 2, 2020 Approved as to Form and Legality

City Attorney's Office

OAKLAND CITY COUNCIL
RESOLUTION NO. _____ C.M.S.
INTRODUCED BY COUNCILMEMBER KALB

ADOPTION OF A RESOLUTION OF NECESSITY FOR THE ACQUISITION, BY EMINENT DOMAIN, OF A TEMPORARY RIGHT OF ENTRY TO THE PROPERTY LOCATED AT 58 YOSEMITE AVENUE, OAKLAND, CALIFORNIA, PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1002 AND CODE OF CIVIL PROCEDURE SECTIONS 1245.326 ET SEQ., BY THE PIEDMONT WALK HOMEOWNERS ASSOCIATION OF 70 YOSEMITE AVENUE, OAKLAND, TO COMPLETE NECESSARY REPAIR WORK

WHEREAS, Piedmont Walk Homeowners Association is located at 70 Yosemite Avenue, Oakland, California (the "Association"); and

WHEREAS, The Association is a 23 Unit condominium project ("Association Building") originally constructed in 1982; and

WHEREAS, The Association, pursuant to its recorded Declaration of Covenants, Conditions, and Restrictions ("CC&Rs"), is required to maintain, repair, and replace all elements of the common area of the Association Building, including the exterior siding and framing members; and

WHEREAS, The Association Building has sustained severe water intrusion to the structure which now requires the Association to perform necessary testing and repair work to the north exterior side; and

WHEREAS, Without repairs, the Association Building will continue to experience water intrusion, further damaging the structure and could potentially collapse and endanger the building's residents and those in neighboring properties (the "Repair Work"); and -Payumo Response: The Association has not offered a report signed and stamped by a licensed structural engineer in the State of California to show evidence of this. Also, there is no testing done yet to determine if this is the case.

WHEREAS, To the north of the Association Building is a neighboring building located at 58 Yosemite Avenue, Oakland, California, specifically defined in the Grant Deed attached as Exhibit A, a rental investment property owned by Bethoven and Dina Payumo (the "Payumos" and their property, the "Payumo Property"); and

WHEREAS, In order for the Association to perform the Repair Work to the north exterior of the Association Building, it needs to gain temporary access to the Payumo Property, primarily to the exterior side yard abutting the Association Building, limited access to the portion of the exterior rear parking lot nearest to the Association Building, and potentially limited roof access, in the area more specifically depicted on Exhibit B attached hereto and made a part hereof ("ROE Area") ; and Payumo Response: The Association needs to quantify what "limited access" and "limited roof access" mean. Also, the Association needs to provide detailed description and plan of the use of the roof, and acquire a licensed civil or structural engineer in the State of CA to determine the structural integrity of the roof structure.

WHEREAS, The Association Building hired Scott Swinton of Unlimited Property Services, Inc., who reported, (see Declaration of Scott Swinton attached hereto as Exhibit C and testimony of Scott Swinton), that based on the condition of the stucco, the Association Building likely has severe deterioration of the wall framing which negatively impacts the structural integrity of the wall and building as a whole; and Payumo Response: The Association is yet to provide test reports and prepare structural calculations to prove this.

WHEREAS, Mr. Swinton further reported that testing and repairs to the exterior siding cannot, in fact, be accomplished without placing ladders and scaffolding on the Payumo Property because completing the repair work from inside the Association Building cannot be completed safely or at all, or would be extremely cost prohibitive; and Payumo Response: Please provide detailed description, drawing and layouts why completing the repair work inside cannot be completed safely. Please provide a comparison of cost estimates from within the interior versus the exterior of the building from at least three independent contractors.

WHEREAS, Mr. Swinton further confirmed, that because of the sloped roof on the Association Building and the extension of the soffit from the Payumo Property, the use of swing stage scaffolding suspended from above the Association Building is not an option; and Payumo Response: Also, the Association needs to provide detailed description and plan of the use of the roof and acquire a licensed Civil Engineer in the State of CA to determine the structural integrity of the roof structure.

WHEREAS, For nearly five years, the Association has attempted to obtain permission from the Payumos for access to the Payumo Property through a temporary right of entry; and Payumo Response: This is **not true**. Quite the contrary. The Payumos have been very cooperative and supportive from the beginning starting in January 2014.

WHEREAS, The Payumos have persistently refused to execute the requested access agreement as evidenced in the attached Exhibit D; and Payumo Response: This Exhibit demonstrates that the Association the continuous bullying of the Payumos. This Exhibit failed to include the initial June 7, 2017 Agreement from Berding and Weil asking the Payumos to sign, which states that the Payumos does not have and shall not claim any right to damages resulting from the Work. 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.

WHEREAS, Without the Repair Work, the occupants of the Association Building will be negatively impacted through permanent loss of property and adverse health conditions related to severe and persistent water intrusion, which outweigh any hardship to the occupants of the Payumo Property which may include noise disturbances from the Repair Work and **limited restrictions** to the parking lot located on the Payumo Property; and Payumo Response: Please quantify what limited restrictions would be. Please provide test reports, analysis, and calculations that indicates the negative impact from the Association Building over the hardship to the residents in the Payumo property.

If the Payumo property is used for the repair work, there will be tremendous hardships financially, physically and emotionally, and they are but not limited to:



- Loss of parking for the residents, especially for the elderly lady that is handicapped. Parking in the area is very difficult.
- Without plan for replacement of parking will hinder the residents to find parking for more than at least 3 to 4 blocks.
- The Resident that resides adjacent to where the Work will occur works from home.

WHEREAS, The entry to the Payumo Property and Repair Work will be conducted in a manner that will provide the least damage to the Payumo Property and the least inconvenience or annoyance to the owners and occupants by limiting entry onto the Payumo Property to only the exterior side yard abutting the Association Building, staging the repair work from the street, and limiting the use of the Payumo Property parking lot to allow for the continued use of the parking lot by the occupants of the Payumo Property; now therefore be it Payumo Response: A detailed construction plan is necessary to determine the extent of use of the property. Just by saying “least damage, least inconvenience, limiting entry, and limiting use” is not sufficient to know exactly how much of the property is used.

RESOLVED: That the City Council has determined that there is a great necessity to complete the Repair Work at the Association Building, because without the Repair Work, the **surrounding community** is adversely affected through the potential hazard caused by the unrepaired building and the continued degradation of the building **contributes to neighborhood blight**; and be it Payumo Response: Please provide a detailed analysis on how the surrounding community will be adversely affected, and how it will contribute to neighborhood blight. The area in question is adjacent to the Payumos parking lot.

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RESOLVED, That City Council has determined that there is a great necessity to enter upon the Payumo Property to complete the testing and Repair Work, because the testing Repair Work cannot be completed safely or at all without entry onto the ROE Area; and be it Payumo Response: Please provide an analysis including layout plans on why the work cannot be performed safely inside the building.

RESOLVED, That City Council finds that the hardship to the Association Building clearly outweighs any hardship to the owners and occupants of the Payumo Property if the Association is unable to temporarily obtain the right of entry on the ROE Area to conduct the necessary Repair Work; and be it Payumo Response: Please provide an analysis why you believe that the Association Building outweighs any hardship by the Payumos.

RESOLVED, That City Council has determined that the Association has exhausted all other possible remedies to obtain entry to the Payumo property in order to complete the Repair Work; and be it

RESOLVED, That City Council finds that the right of entry on the ROE Area will be exercised by the Association and its contractors in a manner which provides the least damage to the property and the least inconvenience or annoyance to the occupants or owners thereof consistent with satisfactory completion of the repair or reconstruction work; and be it

FURTHER RESOLVED, That City Council finds that the requirements set forth in California Civil Code Section 1002(a) and Code of Civil Procedure Sections 1245.326 et seq. have been met and hereby adopts this Resolution of Necessity for the property interest and purposes set forth herein; and be it Payumo Response: The Payumos do not agree that the Association has met these codes. The Association has failed to provide necessary evidence to prove this.

FURTHER RESOLVED, That City Council directs the Association Building to diligently take all steps necessary to procure the requisite temporary right of entry on the ROE Area and to perform the Repair Work in a manner that provides the least damage to the Payumo Property and creates the least inconvenience or annoyance to the owners and occupants of such property. Payumo Response: The Association still does not provide the necessary information and analysis to this claim.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES -

NOES – ABSENT

–

ABSTENTION –

ATTEST:

ASHA REED

City Clerk and Clerk of the Council of

the City of Oakland, California

PAYUMO EXHIBIT L

PRESENTATION BY THE PAYUMOS DURING THE JULY 28,2020 OAKLAND
CITY COUNCIL HEARING

ITEM 3.1

Subject: The Piedmont Homeowners Association Of 70 Yosemite Avenue
From: President Pro Tempore Kalb Recommendation: Conduct A Public
Hearing And Upon Conclusion A Resolution Of Necessity For The
Acquisition, By Eminent Domain, Of A Temporary Right Of Entry To The
Property Located At 58 Yosemite Avenue, Oakland, California, Pursuant To
California Civil Code Section 1002 And Code Of Civil Procedure Sections
1245.326 Et Seq., By The Piedmont Walk Homeowners Association Of 70
Yosemite Avenue, Oakland, To Complete Necessary Repair Work

California Code, Code of Civil Procedure - CCP Section 1245.326

- (b) In lieu of the requirements of subdivision(c) of Section 1245.340 the resolution required by this article shall contain a declaration that the legislative body has found and determined that **each of the conditions required by Section 1002 of the Civil Code appears to exist. (NOT MET)**

California Code, Code of Civil Procedure - CCP § 1245.340

The resolution required by this article shall contain **all** of the following:

- (b) A description of the general location and extent of the property to be taken, with **sufficient detail for reasonable identification. (NOT MET)**
- (c) A declaration that the legislative body has found and determined each of the following:
 - ❖ (1) The **public interest and necessity** require the proposed project. **(NOT PROVEN – ONLY five condominiums are affected)**
 - ❖ (2) The proposed project is planned or located in the manner that **will be most compatible with the greatest good and least private injury. (NOT PROVEN – there is insufficient construction details, missing proposed alternate parking, and plan on how to minimize noise has not been provided, etc)**
 - ❖ (4) The hardship to the quasi-public entity if the **acquisition of the property by eminent domain is not permitted outweighs any hardship to the owners** of such property. **(NOT MET – ABSOLUTELY NO EVIDENCE has been offered)**

CIVIL CODE SECTION 1002

The power of eminent domain may be exercised, if all of the following conditions **are established or met:**

1. The repair or reconstruction work cannot be done safely without entry, or the cost of performing the repair or **reconstruction work without entry would be substantially higher**; and **(NOT PROVEN)**
2. the property without repair or reconstruction **adversely affects the surrounding community**. **(NOT PROVEN)**
3. the right to enter upon the adjacent or nearby land will be exercised in a manner which **provides the least damage to the property and the least inconvenience or annoyance to the occupants** or owners thereof consistent with satisfactory completion of the repair work. **(NOT MET)**
3. 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. **(NOT PROVEN)**

PAYUMOS' MONTHLY LOSSES/EXPENSES FOR 58 YOSEMITE AVE

GUARANTEED MONTHLY TOTAL LOSS OF RENT & EXPENSES FOR ACCOMMODATIONS **\$19,150**

POTENTIAL MONTHLY COSTS THAT PAYUMOS MAY INCUR **\$14,800**

TOTAL MONTHLY COSTS THAT PAYUMOS MAY INCUR **\$33,950**

WILL COST THE PAYUMOS BETWEEN **\$19,000 AND \$34,000 PER MONTH**

WHO IS RESPONSIBLE FOR PAYING THESE EXPENSES?

PAYUMOS' ONE TIME COSTS/EXPENSES FOR 58 YOSEMITE AVE.

ONE TIME COSTS FOR THE PAYUMOS IS AT LEAST **\$9,000** **AND COULD RUN MUCH HIGHER**

- MOVING EXPENSES
- ATTORNEY'S COSTS FOR REVIEW/PREPARATION OF CONTRACT

POTENTIAL FINES & PENALTIES OF **\$25,000 OR MORE** FOR VIOLATION OF RENTAL AGREEMENT LOSS OF PARKING FOR DISABLED RESIDENT

WILL COST THE PAYUMOS BETWEEN \$34,000 OR MORE ONE TIME COSTS

UNKNOWN COSTS THAT THE PAYUMOS MAY INCUR:

- POSSIBLE FINES FROM RENT BOARD UNWILLING EVICTION
- POTENTIAL DAMAGE ON PAYUMOS' PROPERTY FROM CONSTRUCTION
- ATTORNEY'S FEES IF RESIDENTS TAKE LEGAL ACTION AGAINST PAYUMOS (ONE TENANT HAS INDICATED THAT THEY WILL DO THIS)

TOTAL LOSSES/COSTS THAT PAYUMOS MAY INCUR

- NOBODY KNOWS HOW LONG THIS CONSTRUCTION WILL GO ON FOR UNTIL THE WALLS ARE OPENED UP AND THE AMOUNT OF DAMAGE IS REVEALED. THE CONSTRUCTION COULD **LAST A YEAR OR MORE,** WHICH WOULD COST THE PAYUMOS **IN EXCESS OF \$400,000.**

**THIS TYPE OF CONSTRUCTION CAN BE DONE
FROM THE INTERIOR**

