

## STATEMENT OF TOD HICKMAN

### Re: Closed Session Item 4E – Steeltown Winery / Building 43

I, Tod Hickman, submit this statement individually and as Managing Member of Steeltown Winery LLC, concerning Item 4E on the City Council's November 4, 2025 closed-session agenda.

This submission is for inclusion in the public record and closed-session file to ensure the full Council has actual notice of the facts, legal defects, and municipal exposure arising from City staff and counsel conduct in the Steeltown Winery (Building 43) matters:

1. *Hickman v. Davalos* (Red Tag – retaliation and deprivation of rights);
2. *City of Alameda v. Steeltown Winery LLC* (Rent-Doubling);
3. *City of Alameda v. Steeltown Winery LLC* (Unlawful Detainer).

The facts stated herein are based on my personal knowledge and verified public filings.

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Councilmembers-

Tonight's closed-session item presents you with the opportunity to end the City's illegal use of the judicial system for self-serving, retaliatory litigation intended to punish me for publicly criticizing the City's policies, and minimize damages from the destruction of my business and the silencing of protected speech in violation of Cal. Const. art. I § 2(a) and 42 U.S.C. § 1983, giving rise to my "Red Tag Petition"

The City lawsuits seeking judicial relief are barred under Gov. Code § 1090 due to the inherent conflict between the City's proprietary interests and its governmental duties under Gov. Code § 835. This prohibition is specifically meant to prevent abuse of power and protect the public from retaliatory lawsuits such as these. The actions are similarly barred by the City's own duty to act in the public interest under Gov. Code §§ 37100 and as required per the Brown Act.

Further It appears that City Council actually never authorized this illegal litigation, but instead was initiated by the City Attorney "at his own discretion," and contracted to costly outside counsel--in excess of his limited authority as an administrative employee to act only upon explicit direction of the Council.

These actions served no legitimate public purpose and were undertaken in violation of Cal. Const. art. XVI § 6, Gov. Code §§ 41801 and 53060, and City Charter §§ 8-2 and 8-5, constituting misappropriation of public funds under Pen. Code § 424 and rendering any resulting judgment void as an ultra vires act.

City Council's lack of oversight enabled City staff to carry out this ongoing campaign of retaliatory enforcement, bad-faith negotiations, and fraudulent filings under color of municipal authority, , leaving the City liable for resulting damages under Gov. Code §§ 815.2, 820(a), and 820.4 and others.

Any further action by City Council that ratify or defend these unlawful acts would constitute willful participation in misconduct and will only compound the City's legal and financial liability, potentially resulting in personal liability for those involved.

Tonight is the Council's opportunity to restore lawful control over the City's litigation and public expenditure and begin to repair public trust after the destruction of my business and the suppression of protected speech in violation of Cal. Const. art. I § 2(a) and 42 U.S.C. § 1983.

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## **CASES IN INTEREST**

The following findings summarize the broader implications of the City's conduct across these cases. The pattern of unauthorized litigation and retaliatory enforcement raises serious questions about the City's adherence to statutory limits, fiscal responsibility, and ethical governance.

### **1. City of Alameda v. Steeltown Winery LLC (Rent-Doubling) – Case No. 24CV103410**

The premature filing sought improper and unlawful relief, bypassing the lease's mandatory Alternative Dispute Resolution procedure in violation of CCP § 1281 et seq. and Civ. Code §§ 1636–1641, among others.

The City sought to double our rent while withholding maintenance and ignoring lease obligations that City Manager Jennifer Ott had promised as consideration for the City's duty to maintain the Spirits Alley property. Despite widespread vacancies and depressed market conditions, the City pursued an inflated "market-rate" valuation to justify a rent increase advanced soon after my CEQA action against Natel.

The lawsuit was neither agendized nor authorized by the City Council and was filed without notice, in violation of the lease's Alternative Dispute Resolution requirement (Section 3), seeking improper judicial relief to enforce the City's defective valuation. The action was tainted by a clear conflict of interest—the same City negotiators who advanced the inflated valuation also participated in preparing and filing the lawsuit.

It was apparently undertaken by City Attorney Yibin Shen, who used costly outside counsel to prosecute a meritless claim far beyond the scope of his delegated authority. The City then obtained a default-based advantage through misrepresentation and concealment, excluding me and Estela Villagrana from the case to prevent us from defending ourselves.

These actions constitute fraud upon the court and misuse of public funds, undertaken for a proprietary and retaliatory purpose in violation of Gov. Code § 53060, Cal. Const. art. XVI § 6, and Pen. Code § 424.

### **Inspection Warrants and Retaliatory Criminal Charges (Nov 2024 – Mar 2025)**

In the months following the rent-doubling filing—and amid a City-sponsored smear campaign beginning in September 2024—the City’s Code Enforcement Division launched a series of arbitrary and excessive inspections, inventing new “violations” each time previous ones were cured.

In November 2024, City Attorney Yibin Shen personally filed two inspection-warrant applications despite lacking prosecutorial authority to do so—an act constituting a felony under Pen. Code §§ 115 and 118 (false filing of an instrument). Inspectors entered the property on or about December 1, 2024, with my permission; the warrant was never returned and became void within two weeks.

Despite the expiration, inspections continued through February 2025 and culminated in an April 2025 “violation” citation fabricated to disregard the California Historic Building Code and existing Fire Marshal approvals.

In February 2025, the County District Attorney filed a misdemeanor charge alleging “failure to follow a court order,” based entirely on that same expired warrant—which is not a court order.

This filing occurred coincidentally after Assistant Alameda County DA Greg Boller was elected to the City Council, creating a clear conflict of duty and demonstrating City influence over the DA’s Office in continued retaliation for my protected speech and petitioning activity.

## **2. Hickman v. Davalos (“Red Tag”) – Case No. 25CV129268**

This petition challenges Building Official Oscar Davalos’s unlawful issuance of a 24-hour “Red Tag” that immediately closed our business and forced us to vacate the premises. It seeks to enforce our rights under Civ. Code §§ 1927, 1932(1), 1511(1) and Gov. Code § 41801, which protect tenants from eviction or loss of use where the landlord’s own acts or neglect cause the alleged violations.

After an April 2025 “violation” notice, I filed a timely appeal to the Planning Commission, which under CCP § 1094.5 automatically stayed enforcement until a hearing and decision. Despite that stay, on May 15, 2025, Davalos fabricated a post-hoc violation to justify an “emergency” Red Tag and issued a 24-hour Notice to Vacate, deliberately timed for our opening weekend to ensure the business could not reopen. He also revoked our Certificate

of Occupancy for an unlawful and incoherent reason, contradicting existing Fire Marshal approvals and passed inspections, and the California Historic Building Code.

Responsibility for any alleged Red Tag violation lies entirely with the landlord—the City of Alameda—which owns and controls the building. The Red Tag remains in effect, suspending tenant performance and rendering the City liable for all resulting business losses until cured, under Civ. Code §§ 1511(1) and 1927. The City’s use of its own code enforcement authority to penalize its tenant for conditions it created is both retaliatory and beyond the scope of lawful municipal power.

### **3. City of Alameda v. Steeltown Winery LLC (Unlawful Detainer) – Case No. 25CV130312**

On July 11, 2025, the City filed an unlawful-detainer complaint seeking one month’s rent (under \$4,000) for a period when rent was not legally due because the premises were uninhabitable under the City’s own Red Tag (Civ. Code §§ 1511(1), 1932(1)). The City’s failure to maintain the property created a dangerous condition of public property (Gov. Code § 835) and, instead of correcting it, officials misrepresented the Red Tag as a tenant default to justify eviction and litigation—an abuse of authority compounding liability under 42 U.S.C. § 1983.

City Manager Jennifer Ott personally signed the Notices to Quit for nonpayment of rent while the building was Red Tagged by her subordinates, converting a neutral enforcement process into a self-interested proprietary eviction and voiding every dependent act or judgment as a matter of law. She later appeared as a witness at trial.

The filing violated several lease provisions, including §§ 11.2 (Code Compliance), 14.Q (Indemnification), 16.6 (Rent Abatement), and 17 (Condemnation). Outside counsel, acting without authority, secured a void judgment by naming only the LLC and excluding me and Estela Villagrana—a jurisdictional defect rendering the judgment void ab initio (CCP §§ 367, 389). Using that judgment to create a lease default constitutes fraud on the court and misuse of judicial process (Pen. Code § 118.1; Civ. Code § 52.1).

This litigation was never authorized by the City Council. The closed-session item merely stated that Council would “give staff direction,” not authorize litigation as required by Gov. Code §§ 37100, 41801, 53060 and City Charter §§ 8-2, 8-5.

The continued prosecution of the case exposes the City and its officials to further liability and damages for retaliation, abuse of process, and deprivation of rights under Cal. Const. art. I § 2(a) and 42 U.S.C. § 1983.

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### **Impropriety and Misuse of Public Authority**

This record raises serious concerns about impropriety and the misuse of public authority. The City has already spent at least \$500,000 in public funds pursuing litigation against Steeltown Winery—yet no legitimate public purpose has ever been identified. The sheer scale of this spending, directed toward retaliatory and unauthorized lawsuits, demands immediate oversight and accountability from this Elected Council.

### **No Immunity for Retaliatory Acts**

Officials who act from self-interest or retaliation operate outside the scope of duty and lose immunity under Gov. Code §§ 820(a), 820.2, 820.4. (See *Caldwell v. Montoya* (1995) 10 Cal.4th 972; *Lopez v. S.C.R.T.D.* (1985) 40 Cal.3d 780; *Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490.)

Fraud, concealment, and retaliation are not discretionary functions; individual liability attaches to any official who authorizes or directs illegal acts, including violations of Penal Code §§ 115 (false filing), 118 (perjury), 424 (misuse of public funds), and 182 (conspiracy). (*Kemmerer v. County of Fresno* (1988) 200 Cal.App.3d 1426, 1436.)

### **Public and Institutional Harm**

The unlawful Red Tag and ensuing litigation eliminated a business that kept Spirits Alley active and profitable, leaving a City-owned property vacant and the community without its economic benefit. These actions violated Cal. Const. art. I § 2(a) and 42 U.S.C. § 1983, exposing the City to liability for retaliation and suppression of protected speech.

This conduct undermines public trust, deprives the City of revenue, and erodes its reputation as a lawful landlord. It harms every resident and business that relies on fair administration.

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### **Request for Action**

The record now before this Council demonstrates a sustained pattern of unauthorized litigation, retaliation, and misuse of public funds carried out under color of municipal authority. These acts have caused severe personal, financial, and reputational harm, eliminated a lawful business, and exposed the City to substantial legal liability for retaliation, abuse of power, and violations of constitutional rights under Cal. Const. art. I § 2(a) and 42 U.S.C. § 1983.

Under Cal. Const. art. XI § 3(a), Gov. Code §§ 37100, 41801, 53060, and City Charter §§ 8-2 and 8-5, only the City Council may lawfully authorize litigation or the expenditure of public funds. The City Attorney's initiation of these cases without such authorization, and the Council's failure to oversee them, have already placed the City and its officials in violation of Gov. Code §§ 1090, 815.6, 820(a), 820.4, and Pen. Code § 424.

You now have actual notice. Once on notice, **inaction becomes knowing participation**. Any further attempt to ratify or defend these unlawful acts is **prohibited under Civ. Code § 3517** (“no one may take advantage of his own wrong”) and will only compound the City’s legal and financial exposure while making individual officials personally accountable for continued misconduct.

The Council must therefore act immediately to

1. **Rescind all unauthorized delegations** of litigation authority.
2. **Terminate unlawful retainers** and outside counsel contracts.
3. **Cease all retaliatory enforcement or pending litigation** related to Steeltown Winery llc.
4. **Initiate an independent review** of staff conduct and expenditure.

Additionally, **Councilmember Greg Boller**, as a **County Deputy District Attorney**, has an independent ethical duty to evaluate these matters and cannot disregard the record now before him.

Taking these corrective steps will minimize further damages, fulfill your obligations under the Charter and State law, and begin to restore public trust in lawful, accountable government.