

From: ANITA MAHONEY
To: City Clerk
Cc: City Attorney
Subject: [EXTERNAL] Ordinance No. 3317: City Council Meeting: June 21, 2022 at 7pm: Item 7C
Date: Wednesday, June 22, 2022 8:21:55 AM

To whom it may concern,

My name is Anita Mahoney, I've been a boater at Marina Village Yacht Harbor for the last 30 years. My partner, Mark Byers, has been here for the last 17 years. We have been liveaboards here for the past 15 years. We are writing to request that the City of Alameda limit Ordinance 3317 to Floating Homes only. By including liveaboards in Ordinance 3317 you will do damage to our community, to our safety and security by limiting the marinas ability to respond quickly to problem boaters.

We do not need rent control or protection from evictions in our marina. What we need from the City is help in reducing the increased car break ins and thefts.

Thanks,

Anita and Mark

The phrase "other maritime residential tenancies" is undefined, was undiscussed and unsupported by the facts. It needs to be deleted from the ordinance or clarified that it only applies to floating homes and floating home marinas.

6/22/22, 12:05 AM

Gmail - Ordinance No. 3317 - request that the phrase "other maritime residential tenancies" be deleted



K.C. Taylor <kc.meck.taylor@gmail.com>

Ordinance No. 3317 - request that the phrase "other maritime residential tenancies" be deleted

1 message

K.C. Taylor <kc.meck.taylor@gmail.com>

Tue, Jun 21, 2022 at 11:51 PM

To: mezzayashcraft@alamedaca.gov, mvella@alamedaca.gov, tspencer@alamedaca.gov, tdaysog@alamedaca.gov, jknoxwhite@alamedaca.gov

Dear Mayor, Vice Mayor, and City Councilmembers:

I've been an Alameda resident since 2014, including living on a houseboat for a year and a half at Barnhill Marina; I have also worked at a recreational marina in Alameda.

I have been an involved supporter of Ordinance No. 3317, to protect floating home residents of Barnhill, and I sincerely thank council for jumping to action and passing it to that effect. And while my support of the Barnhill floating home community continues, unfortunately I can only continue my support of 3317 with the removal of "other maritime tenancies."

That's because the City is now claiming that vague, overly-broad and undefined phrase applies to liveaboards on operating vessels at recreational marinas—an interpretation that is contrary to the record which shows 3317, only extends rent control "to floating homes and houseboats" as the Mayor has said to tenants and supporters of Barnhill. It also violates maritime law and intrudes on federal jurisdiction over waterways and operating vessels, and as such, could jeopardize the validity of the floating home protection ordinance itself.

There were supporters of the passage of 3317, including myself, who have not only been part of Alameda's floating home community, but have been part of Alameda's recreational marina community for decades. We could have explained the differences between floating home marinas and recreational marinas, as well as operating vessels and floating homes and houseboats, had we known this ordinance would be fraught with such confusion by the City. We could have explained that applying the rent protections needed for floating homes would be harmful to our boating and liveaboard community, as well as all Alameda citizens, since there are unique threats and impacts to the environment and public safety that recreational marinas encounter with vessels mooring at their marinas, including sneak-a-boards, polluters, and folks who anchor their vessels out in the estuary. Needless to say, there are a multitude of reasons why federal maritime law applies to these arrangements rather than state and local law as floating homes and houseboats do.

The application of 3317 to vessels would also make it economically and administratively unfeasible for some local recreational marinas to maintain liveaboard privileges—for example, one Alameda Marina would need to terminate their liveaboard privileges in order to maintain their 501(c)(7) status. It is not an understatement to say that, without the removal of that phrase, the ordinance would immediately pose an actual threat of displacement to our liveaboard community.

Thus, I request that the phrase "other maritime residential tenancies" be deleted from the ordinance, as the term is undefined, was undiscussed, and is unsupported by the facts. Please do let me know if you want discuss this matter further or speak with members of the recreational marina community on this issue.

Sincerely,
K.C. Taylor

6/22/22, 12:05 AM

Gmail - Ordinance No. 3317 - request that the phrase "other maritime residential tenancies" be deleted

P.S. I will be forwarding this correspondence to the clerk to put in the July 5th city council meeting minutes, to the agenda item that will be carried over from tonight's item agenda item 7-C. Thank you!

From: Erika Janke
To: City Clerk
Cc: Malia Vella; Marilyn Ezzy Ashcraft; John Knox White; Trish Spencer; Tony Daysog; City Attorney; Manager
Subject: [EXTERNAL] 6/21/2022 City Council Meeting: Public Comment for Agenda Item 7-C
Date: Tuesday, June 21, 2022 8:39:34 PM

Dear Clerk please add the following to item 7-C.

To Mayor, Vice Mayor, and Councilmembers:

I am a resident of Alameda (tenant at an apartment on Buena Vista) and a former liveaboard at the Marina Village Yacht Harbor from 2014 to 2016. I am writing to express my concerns that the City of Alameda is harming the boating and liveaboard community by applying Alameda Ordinance No. 3317 to recreational marinas. As a former liveaboard at an Alameda recreational marina, **I urge the City to refrain from imposing a rent control ordinance on recreational marinas with respect to liveaboards. To that end, I request that the phrase "other maritime residential tenancies" be deleted from the ordinance or clarified that it only applies to floating homes and floating home marinas, as the term is undefined, was undiscussed, and is unsupported by the facts.**

First, rental protections are not needed as I never once had my liveaboard fee increased.

Second, as a young single woman in my 20's, I would have gladly paid \$40 a month to increase security if the break-ins increased in Alameda then as they have now; security cameras and the monitoring of the docks and parking spaces are what the community now needs rather than a cap on the liveaboard fees. The fact that that might not be feasible because of the City's attempt to apply rent control to liveaboard status is against the interest of the people the City is ostensibly trying to protect. Third, I saw a huge need for the managers to act swiftly and respond to threats to our community and the waters, including sneak-a-boards and folks that anchor out in the estuary, which underscored to me the reason why maritime/federal law applies to these arrangements rather than state/local law. Fourth, the rental ordinance is compromising a very friendly boating community and environment I loved dearly -- we all took care of each other, including the marina managers, who often waived fees when needed by boaters. Fifth, the option to live on one's boat is a very desirable one for many reasons, and I am aware that some marinas no longer offer liveaboard status because of the unique issues marina managers have to deal with; I would fear many recreational marinas would similarly stop offering liveaboard status because of the additional (and unnecessary) burden that the rent control ordinance creates for them.

In sum, while I am a huge supporter of the ordinance insofar as it advances rent protection for floating homes/at floating home marinas, the decision to apply these rent controls to recreational marinas is not only unhelpful but harmful (and potentially unlawful). **Please clarify Alameda Ordinance No. 3317 DOES NOT apply to liveaboard status at recreational marinas.**

Sincerely,
Erika Janke



Mr. Ryan Halpern
Rent Program Specialist
City of Alameda Rent Program
701 Atlantic Avenue
Alameda, California 94501

18 June, 2022

Concern with Ordinance No. 3317

Mr. Halpern,

On 14 June, the Board of Directors for the Aeolian Yacht Club received from your office a letter requiring the Aeolian Yacht Club to register with the City of Alameda Rent Program no later than 22 June, 2022. In consultation with several other harbor operators around Alameda, we share serious concerns both in regard to how Ordinance N. 3317 was crafted, and how your office has determined that our club should be subject to said order. Before we proceed, please explain the following:

1. The State of California and U.S. Supreme Court have determined that floating homes are not vessels so they may be expressly treated differently as homes. On what lawful basis does the city ordinance conversely assimilate registered and/or documented vessels capable of independent navigation upon contiguous waterways of the United States to the same effect as floating homes, superseding federal Maritime Law (Admiralty) which governs and adjudicates berthing agreements under Marine Contract provisions?
2. What specifically defines "other maritime residential tenancies" with regard to the City of Alameda's Ordinance No. 3317?
3. As the Aeolian Yacht Club does not own vessels in our harbor, aboard which the master/owner may utilize as their accommodation per the terms of their berth agreement, on what basis does the City of Alameda ascribe a dock berth to be a housing "Rental Unit" under U.S. or California law?
4. On what basis does the City of Alameda interpret that a member of the Aeolian Yacht Club, a 501(c)(7) social club, can be shielded by your cited city ordinances from fulfilling their obligations under the rules and bylaws of the Corporation, in which they are a voluntary member?

A newsworthy issue, the City Council, staff, and constituents loudly addressed the exceptional but very limited scope of issues for floating homes at Barnhill Marina. But not a hint for any groundbreaking change to vessel berthing regulation was solicited for comment by any party in the city government. Indeed, the proceedings record shows absolutely no inference of a justification to assimilate berth agreements with liveaboard privileges for registered and/or documented vessels to be regulated in the same fashion as floating homes. As such, we had no prior opportunity to inquire on or challenge Ordinance 3317. Moreover, we are unable to find a single instance of a municipality attempting to enforce either residential rent control or eviction moratorium orders on harbor operators serving private vessels, nor has the city provided any evidence of a broad and imminent hazard to liveaboard master/owners. To the contrary, there are thousands of vacant and affordable berths across the Bay Area, between which liveaboard master/owners regularly move as part of the boating lifestyle.

The Aeolian Yacht Club has been a part of the East End Community for one hundred and sixteen years, and we highly value our liveaboard skippers as they come and go. Just as they keep a lookout for the club, we supported their individual circumstances and accommodated their hardships through the pandemic, without any government assistance (we did not qualify for PPP loans or any other emergency support program) or by being coerced to do the right thing. Our members are in framing by the IRS, somewhat analogous to a unique type of equal shareholder with duties under the bylaws and rules to remain in good-standing to enjoy privileges in advancement of the club's social and recreational purpose.

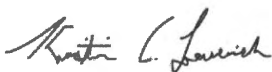
But in order for the volunteer-supported club to function within the limitations of the State of California and IRS tax codes upon which it depends, the Aeolian Yacht Club cannot engage in activities raising proceeds which are beyond the social and recreational purpose of the club as set forth in our recorded bylaws if we are to remain a 501(c)(7). Extending liveaboard privileges has never been ascribed to be participation in rental housing management, subject to such conventional housing regulation in any U.S. municipality of which we are aware. This is also a factor in most small craft harbors prohibiting the presence of floating homes. But if the City of Alameda were to assimilate liveaboard privileges for master/owners to utilize the registered and/or documented vessels which they own as accommodation to mean the club is an active rental housing market participant in novel slight-of-hand conflation with floating homes, that will immediately hazard the tax status of the club if left to stand.

The manner of conception and effect of this ordinance is very troubling, and may likely function opposite to its intended ends, both here and far beyond city limits.

As the city appears to have assimilated seafaring vessels with floating homes in an at some point after the public hearings in April of 2022, off-record, we request that you provide fully considered answers to our questions before moving ahead. As we were given only an extremely short window to evaluate this completely unforeseen interpretation and reply to your demand, we nonetheless expect an equally expeditious but legally thorough response.

Thank you for your full attention to this matter, and we await your response.

Regards,



Kris Leverich
Commodore, Aeolian Yacht Club
Lieutenant Commander, USCG (ret.)
Alameda CA 94501

From: [Diana Cababin](#)
To: messyashcraft@alamedaca.gov; [Malia Vella](#); [Tony Daysog](#); [Trish Spencer](#); [John Knox White](#); [City Clerk](#)
Cc: [diana Cababin](#)
Subject: [EXTERNAL] Item 7-C Capital Improvement Plan (CIP)
Date: Tuesday, June 21, 2022 7:26:56 PM

Mayor Marilyn Ezzy Ashcraft

Vice Mayor Malia Vella

Councilmember Tony Dasog

Councilmember Trish Herrera Spencer

Councilmember John Knox White

June 21, 2022

RE: Item 7-C on the new Capital Improvement Plan (CIP)

Dear Council Members,

When the Council approved of Rent Control a few years ago, that was one of the greatest things that you could have done to take care of Alameda renter residents, over fifty percent of your city.

I am a long-time Alameda resident and like four of you, I am also a Person of Color. I grew up in Alameda and like many other People of Color renters I see that our lives directly depend on your capacity to have empathy and an understanding for people who rent. In some cases, your decision will impact the survival of people. Race and class issues on your watch continue to challenge you in this city. Housing is key to how diverse the city of Alameda is. Some of us believe that the decision to create a new CIP plan has not been handled in a transparent, democratic way. Many renters do not fully understand what the CIP plan is anyways. There has not been sufficient public education and many fear that your decision may end to Rent Control as we know it. It doesn't matter what the Council calls a payment: "rent, surcharge or passthroughs", it is basically rent. The existing Rent Control which has protected so many of Alameda's People of Color and low-income residents during the Pandemic. There is also an existing CIP plan that does not need to be changed in order to enable 100% of costs to be passed on to renters. By the way, the Pandemic is still happening.

You have the power to enable protections of People of Color and low-income residents by enabling a 5% cumulative cap on rent increases and pass-throughs. You have the power to protect residents with a hardship program and by limiting pass-throughs to 50% instead of 100% as you already know that landlords have structural financial stability above and beyond individual renters.

I voted for those of you who made Alameda's Rent Control happen. I urge you to have clear, conscientious priorities to protect Alameda residents. Your decision has real, urgent financial impact on poor, low-income People of Color. The Cumulative Cap of 5% will save lives and

protect currently low and middle-income people from spiraling into further poverty and possibly homelessness. Please do not allow a negative spiraling of poverty to happen to renters.

Sincerely,

Diana Cabcabin

From: Trish Spencer
To: Lara Weisiger
Subject: Fwd: [EXTERNAL] File #2022-2079
Date: Tuesday, June 21, 2022 6:57:58 PM

----- Forwarded message -----

From: Christian Anderson <canderson@grandmarina.com>
Date: Jun 21, 2022 8:26 PM
Subject: [EXTERNAL] File #2022-2079
To: Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>, Malia Vella <MVella@alamedaca.gov>, Tony Daysog <TDaysog@alamedaca.gov>, Trish Spencer <tspencer@alamedaca.gov>
Cc:

Dear Mayor Ashcroft, Vice Mayor Vella, and City Councilmembers,

My name is Chris Anderson. I represent Grand Marina. A privately owned recreational marina that by choice invites a minimum of select Live-aboard applicants. This business also maintains a philosophy of working with and helping its tenants succeed.

First concern. Regarding Ordinance 3317. I don't disagree that the people of Alameda face living expense challenges. I for one moved my family off island because of the astronomical rent and home prices. Currently my commute is unbearable. But are we having this conversation because of greedy landlords, or because of the ever-increasing expenses due to government mismanagement and overreach?

During the last two years of mayhem the Grand Marina closely studied the economic conditions and concluded not to raise rates on its tenants. A calculated business decision. The Marina wishes to work with the tenants to retain tenancy rather than loose occupancy. As evidenced from the last two years, decisions that affect privately owned businesses should not be made by a disassociated government body.

Second concern. Ambiguous language in the ordinance: "other maritime residential tenancies" is used but not defined within the body of the ordinance; and misleading language used in last Friday's email (see below attached) from the City Attorney's Special Counsel to the marina community. A misleading introduction of the word "live-aboard" implying it inclusive to the ordinance. Live-aboard is not found in State Legislation nor in 3317 itself and "other maritime residential tenancies" is not defined. This language ambiguity and misleading language may have been made in error but has most certainly created unnecessary confusion amongst the marina community.

A Vessel is defined as operating in navigable waters under maritime law; conversely a Floating Home has been defined by Legislation in the California State Floating Home Residence Law as residency. Vessels and their passengers operate in maritime jurisdiction and are not subject to City jurisdictions, just as City residents operating on land should not be subject to maritime jurisdiction.

A Floating Home is considered a dwelling unit as per California Civil Code. A live-aboard vessel is not considered in the Code as a dwelling unit. The Live-aboard status is granted by way of a commercial

addendum to the marina's wharfage agreement and cannot be confused with a residential lease agreement. If marinas are subjected to this Ordinance most if not all Marinas will most likely choose to no longer offer live-aboard status thereby exacerbating the housing problem.

Please remove the noted ambiguous language from Ordinance 3317 and please never allow misleading language in any correspondence to the community.

Thank you.

Chris Anderson
President, Grand Marina, Inc.

Direct cut and paste of Mr. Roush email:

From: Michael Roush <mroush@alamedacityattorney.org>

Sent: Friday, June 17, 2022 8:59 AM

To: info@alamedamarina.net; fortmanmarina@comcast.net; Marina
<marina@grandmarina.com>; gm@oaklandyachtclub.com

Cc: Dirk Brazil <dbrazil@alamedaca.gov>; Yibin Shen <yshen@alamedacityattorney.org>; John Le
<jle@alamedacityattorney.org>

Subject: Live-Aboards

Recently, the Alameda City Council adopted ordinances that imposed the City's rent control provisions on rents for floating homes and other maritime residential tenancies, restricting those rents to the rents that were paid on or before April 14, 2022 but not to any rent paid thereafter. Our understanding is that such tenancies include "live-aboards". We also understand that you have a number of live aboards berthed at your marinas. On Tuesday, June 21, 2022, the Alameda City Council will consider an ordinance that, among other things, would permit those restricted rents to be increased by what is called the Annual General Adjustment, most recently 2.7%. Information concerning this matter is available on the City of Alameda's website under "Agendas".

Michael Roush
Special Counsel
City of Alameda

From: jan@eastbaycenterfortheblind.org
To: [Marilyn Ezzy Ashcraft](#); [Tony Daysog](#); [Malia Vella](#); [Trish Spencer](#); [John Knox White](#)
Cc: [City Clerk](#)
Subject: [EXTERNAL] Opposition to Implimentation of proposed Capital Improvements Plan.
Date: Tuesday, June 21, 2022 5:05:18 PM

Attention Mayor Ashcraft and Members of the City Council,

I am opposed to the changes in the Council's proposed Capital Improvements Plan. The current letter by Arc to the Council, which appears for the public on the ARC website gives a detailed explanation of data clearly showing why many of the proposed changes are harmful particularly to low-income tenants, seniors, people with disabilities, and people of color, who also often fit into all the other categories.

Rents were not affordable before the pandemic, and Covid has added greatly to tenant burden, with loss of jobs, illness and emotional trauma, before even mentioning the added financial complications. Now you are proposing rent increases and adding on pass-throughs which are just rent by another name.

I am a senior with a disability, and know many other seniors and disabled people through my job as director at a center for the blind, and my participation in ARC. I know first-hand the hardships of these folks, and how difficult it already is for us without any further costs to maintain a home and shelter. Please, as you cast your vote, try to put yourself in the position these renters face, including the real possibility of becoming homeless by the increased rent to stay in our homes.
Sincerely,

Jan Santos

From: [Wayne Goldman](#)
To: mayor@alamedaca.gov; [City Clerk](#); [City Attorney](#); [Manager Manager](#)
Subject: [EXTERNAL] The inclusion of liveaboard vessels in Ordinance 3317 is simply a bad idea
Date: Tuesday, June 21, 2022 4:40:37 PM
Attachments: [image001.png](#)

Dear Mayor, City Manager, City Attorney, Clerk and City Council Members;

My name is Wayne Goldman. I own Atomic Tuna Yachts here in Alameda We have offices and boats at Marina Village Yacht Harbor, Alameda Marina, and Grand Marina. I am writing this letter about Ordinance 3317.

I am a yacht broker whose clients often become live aboard on their vessels and I am a liveaboard at Ballena Isle Marina, in Alameda . The inclusion of liveaboard vessels in Ordinance 3317 is simply a bad idea. The phrase “**other maritime residential tenancies**” is undefined, was undiscussed and unsupported by the facts. It needs to be deleted from the ordinance or clarified that it only applies to floating homes and floating home marinas.

Thank you for your time.

Best;
Wayne
Chief Ahi
510-759-8481
wayne@atomictonayachts.com

ATOMIC  TUNA

From: Jeffrey Cheifetz
To: Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer; John Knox White; City Clerk
Cc: Jeffrey Cheifetz
Subject: [EXTERNAL] Capital improvement Plan (CIP) program at tonight's City Council Meeting
Date: Tuesday, June 21, 2022 4:39:54 PM

Mayor, Vice-Mayor, Councilmembers:

I am very concerned about the possible effects of adding the proposed CIP on top of the recent rent increase as well as the increases that 'banking' allows. As senior citizens on a fixed income, our ability to absorb continued substantial additions to our rent payments is limited. And, there are many residents of Alameda who will be severely affected by this same dynamic, thus threatening their ability to remain housed.

Please don't add pass-throughs onto our annual rent increase.

Sincerely,

Jeffrey Cheifetz

Jeffrey Cheifetz

PO Box 178

1501 Verdi Street Apt D

Alameda CA

94501

510-523-1015 home

415-246-5142 cell

LinkedIn: <https://www.linkedin.com/in/jeffrey-cheifetz-a48158b/>

Twitter: [JeffCh1](#)

Facebook

Friday is my sabbath day - leave a message and I will get back to you as soon as possible.

From: Kathryn Luck
To: City Clerk; cityattorney@alamedacityattorney.org; Manager Manager
Subject: [EXTERNAL] City Council Agenda Item 7C tonight
Date: Tuesday, June 21, 2022 4:36:12 PM
Attachments: We sent you safe versions of your files.msg
Scan_0009.pdf

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Please note my attached letter for the City Council records.

Kathy Luck
(626) 590-6997 *mobile*
keluck59@gmail.com
South Pasadena, CA

June 21, 2022

Alameda City Council

City Clerk's Office clerk@alamedaca.gov

Yibin Shen cityattorney@alamedacityattorney.org

Interim City Manager manager@alamedaca.gov

Dear Alameda City Council:

My name is Kathy Luck. I have worked throughout the early stages of the Marina Village mixed-use development since 1988 and have been Co-Manager, together with Steve Meckfessel, of the recreational marina since 2006. I have watched the ups and downs of the City of Alameda for nearly 35 years and in the earlier days, attended many City Council meetings where differing opinions were heard and resolved.

Throughout my time at Marina Village, I have been involved in the documentation required for the marina boats. We have been very diligent in following maritime law, by using license agreements only, never leases. License agreements do not afford the rights of being a tenant. This works both for and against us at times, but it works. It's the law.

While I can appreciate what the City Council is trying to achieve by including the floating homes within the rent control ordinance, I believe you are incorrect in trying to include the marina liveaboards in recreational Marinas. For so many reasons that have been pointed out to you not the least of which is that a liveaboard is not afforded the rights of a tenant.

I urge you to please modify this Ordinance so that it does not add ambiguous language with respect to marina liveaboards. The phrase "other maritime residential tenancies" is undefined, was undiscussed and unsupported by the facts. It needs to be deleted from the ordinance or clarified that it only intended to include what brought this whole discussion about, floating homes and floating home marinas.

Thanks,

SRM Marina Investors, LLC



Kathryn E. Luck

Co-Manager

626-590-6997 mobile

Keluck59@gmail.com

From: Philip Weiss
To: City Clerk
Cc: Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer; John Knox White
Subject: [EXTERNAL] Entering Letter on the Record Pertaining to 6-21-22 Hearing On Ordinance 3317
Date: Tuesday, June 21, 2022 4:20:27 PM
Attachments: We sent you safe versions of your files.msg
6-21-22 Weiss Letter to Alameda City Council Re Ordinance 3317.pdf
Importance: High

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Dear Mayor Ashcraft, Vice Mayor Vella, and Councilmembers Daysog, Spencer and White:

I am assisting Marina Village Yacht Harbor in connection with the referenced matter. The California Bar Association has certified me as a Specialist in Admiralty and Maritime Law, a subject I taught for about 10 of my 31 years of practicing exclusively maritime law. Please find attached my letter regarding Ordinance 3317. I would request that the Clerk make my letter part of the record relating to this evening's meeting of the City Council.

I will, of course, be happy to respond to any questions you might have. In the *interim*, I remain

Respectfully yours,

Philip E. Weiss

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Philip E. Weiss, Esq. (Certified Specialist, Admiralty and Maritime Law)
Brodsky, Micklow, Bull & Weiss, L.L.P.
955 Harbor Island Drive, Suite 130
San Diego, California 92101
Telephone: (619) 225-8884
Facsimile: (619) 225-8801

[PLEASE NOTE THIS NEW ADDRESS]



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SAN DIEGO
OAKLAND
LONG BEACH

June 21, 2022

VIA EMAIL AND LODGING PRIOR TO CITY COUNCIL MEETING

Mayor Marilyn Ezzy Ashcraft
email: mezzashcraft@alamedaca.gov

Vice Mayor Malia Vella
email: mvella@alamedaca.gov

Councilmember Tony Daysog
email: tdaysog@alamedaca.gov

Councilmember Trish Herrera Spencer
email: tspencer@alamedaca.gov

Councilmember John Knox White
email: jknoxwhite@alamedaca.gov

Re: **Concerns Regarding Alameda Ordinance No. 3317**

Dear Distinguished Members of the Alameda City Council:

We believe that Ordinance 3317 sweeps unreasonably to include marinas that have no "Floating Homes." The complaints received by the City relate specifically and solely to a single marina that provides accommodations for "Floating Homes." For the below reasons, we have concluded that this Ordinance should not and does not apply to our marina, and that it should be amended to clarify it does not apply to ordinary vessels that are not "Floating Homes" under the Floating Home Residency Law (the "FHRL"), which is embodied at Civil Code Sections 800-800.306.

Correspondence Submitted Deals With "Floating Homes," As Defined By the Floating Home Residency Law

It appears that virtually all of the correspondence presented to the City Council in connection with its consideration of Ordinance No. 3317 pertains to floating water craft that are "Floating Homes," as this term is defined in the FHRL. All of these "Floating Homes" are located at one marina. None of the vessels at our marina are equipped with a permanent sewage connection, and hence they are not "Floating Homes." Not a single complaint expressed in the correspondence the City Council was authored by a tenant at Marina Village Yacht Harbor.

BRODSKY MICKLOW BULL & WEISS LLP

June 21, 2022

Page -2-

There Exists No Risk of Displacement of Those Living Aboard Vessels That Are Not "Floating Homes"

The Executive Summary presented at the April 28, 2022 meeting of the Alameda City Council provides that: "Adoption of the Ordinance is urgently necessary to prevent imminent displacement of dozens of residents, many of them seniors with limited means, at one of the city's marinas that has, for decades, hosted maritime residential tenancies." It seems obvious that Ordinance No. 3317 was borne of concerns relating to a single marina's handling of matters related to people living on water craft that constitute "Floating Homes" under the FHRL. Again, none of the water craft at our marina qualify as a "Floating Home." It is likewise apparent that the primary purpose of Ordinance No. 3317 is to prevent displacement of people living aboard water craft. We believe that people living aboard vessels at our marina are delighted to be at our marina, and we have not advised any of them of any intention to terminate their tenancies. We understand that another marina that accommodates "Floating Homes" recently notified owners of Floating Homes of very substantial fee increases. We are not similarly situated.

One of the principal concerns expressed by those favoring enactment of Ordinance No. 3317 is that if wharfage fees are substantially raised some owners of "Floating Homes" would be unable to pay such increased fees, and would find themselves in an untenable position due to an inability to find any other marina that are willing and/or able to provide accommodations for "Floating Homes." While this concern seems well founded in the context of "Floating Homes," since very few marinas in California are able to provide permanent sewage connections, such concern does not apply where people are living aboard ordinary vessels that are not "Floating Homes." Such vessels, unlike Floating Homes, have motive power, so they can easily move to another marina. Moreover, we understand and believe that the marina occupancy rate in Bay Area is substantially lower than in other areas in California. In fact, it is estimated that over 3,000 slips are vacant in the Bay area.

In addition, while a single marina that accommodates "Floating Homes" recently provided notices of substantial fee increases, with some tenant's fees being increased over 100% (which has been a principal driving force underlying enactment of Ordinance No. 2217), prior to a modest recent 10% increase in wharfage fees and a \$40 per month increase in live aboard fees, Marina Village Yacht Harbor last increased fee in July, 2019 – nearly three years ago. In fact, during the COVID crises Marina Village Yacht Harbor *lowered* certain fees.

Please understand that no live aboard tenant at Marina Village Yacht Harbor has indicated that he or she will or might have to move their vessels to another marina due to any increase in fees. Hence, there is no apparent risk that any of the marina's live aboard tenants will be

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“displaced.”

Every Citizen Who Spoke at the City Council Meeting in Support Of Ordinance No. 3317 Expressed Complaints About Only One Marina

The Minutes of the City Council’s April 28, 2022 meeting confirm that, without exception, every person who spoke in favor of Ordinance No. 3317 complained of matters related to one marina, the only one that provides berthing for “Floating Homes.” Not a single speaker offered any complaint pertaining to Marina Village Yacht Harbor. We are concerned that Ordinance No. 3317 is, inadvertently, overly broad, as it targets our marina and other marinas against which no complaints have been lodged.

Live Aboard Tenants Confirmed No Residential Tenancy Was Created.

People who live aboard boats at Marina Village Yacht Harbor executed a Liveaboard Addendum, which provides in relevant part: “The parties acknowledge that this is a commercial contract. The central collective purpose of the Berth License Agreement and the Liveaboard Addendum thereto is the provision of wharfage or docking services, and not to create a residential tenancy of any kind, and therefore neither the Berth License Agreement nor this Addendum thereto shall under any circumstance be deemed to create a residential tenancy.”

In admiralty, as in other contexts, “[f]reedom of contract is the norm, so that rights, duties and liability depend primarily upon the substance of the parties’ agreement.” *See, e.g., APL Co. PTE, Ltd. v. UK Aerosols, Ltd., Inc.*, 2007 A.M.C. 2519, 2522 (N.D. Cal. 2007), *aff’d* 582 F.3d 947 (9th Cir. 2009) (*citing* T. Schoenbaum, *Admiralty & Maritime Law* (4th Ed. West) (Practitioner’s Series), section 5-1 at p. 181. Many courts sitting in admiralty affirmed the importance of honoring the freedom of contract of parties to a maritime contract in various contexts. *See, e.g., Sander v. Alexander Richardson Investments*, 334 F.3d 712 2003 A.M.C. 1817 (8th Cir. 2003) (enforcing term in wharfage contract relieving marina of liability, and recognizing that “[p]ublic policy demands enforcing contracts as written and recognizing the parties’ freedom to contract”); and *California & Hawaiian Sugar Refining Corp. v. Harris County Houston Ship Channel Navigation District*, 1928 A.M.C. 1627 (S.D. Tex. 1928) (recognizing a “broad and controlling public policy of freedom of contract”). So important is this concept that terms in maritime contracts that might otherwise appear (outside admiralty) as being manifestly unreasonable are routinely enforced. Examples include: (a) enforcement of a so-called “Red Letter” clauses exonerating a party entirely from all liability (even liability caused by a party’s own negligence), no matter how occurring, [unless occasioned by gross negligence or willful misconduct]¹; and (b) the parties to a marine mortgage are free to agree to any rate of interest they chose, even rates that would, under state law, be regarded as usurious.²

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Under freedom of contract principles in admiralty, and given the consequences described in the cases cited above, there is no reason in logic or law that parties to a maritime wharfage contract cannot agree that the tenancy is not a residential one.

Even assuming for the sake of argument that a tenancy at a marina is "residential" in nature if a person is living aboard, only certain statutory rights cannot be waived. There exists no known prohibition constraining parties to a wharfage contract from agreeing that no residential tenancy is created. Sections 1942.1 and 1953 of the California Civil Code set forth the rights that a residential tenant cannot give up and include the following: (1) the right of a tenant to enjoy minimal standards of habitability (*Cal. Civ. Code § 1942.1*); (2) the right to have a security deposit returned or otherwise be accounted for after a tenant moves out you move out (*Cal. Civ. Code §§ 1953(a)(1), 1950.5*); (3) the right not to have a landlord enter a rental unit except in certain specific instances (*Cal. Civ. Code §§ 1953(a)(1)*); (4) the right to notices required by law (*Cal. Civ. Code § 1953(a)(2)*); (5) the right to sue a landlord or make a landlord appear at a hearing (*Cal. Civ. Code § 1953(a)(3)*); and (5) the right of a landlord to exercise a duty of care to prevent personal injury or personal property damage where that duty is imposed by law (*Cal. Civ. Code § 1953(a)(4)*).

Regulating Tenancies of Owners of Ordinary Vessels As If They Are "Floating Homes" Would Lack Harmony With State and Maritime Law.

To the extent that the Ordinance regulates tenancies for owners of ordinary vessels in the same manner as owners of "Floating Homes," it does so in a manner that lacks harmony with federal and state law.

The question of whether those who live aboard boats are entitled to special protections is hardly novel. In 1990, the California Legislature had occasion to consider whether it was appropriate to provide those who chose to live aboard floating water craft with protections akin to those enjoyed by residents of mobile homes. *See*, Digest to AB 3139. After presumably careful consideration of the issues, the Legislature responded in the affirmative, as evidenced by its passage of AB 3139, embodied at *Cal. Civ. Code* sections 800 *et seq.* This law is known as the "California Floating Home Residency Law" ("FHRL"). In order for a vessel to qualify as a "Floating Home" under the FHRL the floating water craft must, among other things, have a permanent sewage connection. Accordingly, owners of a floating water craft (ordinary vessels) without a permanent sewage connection are not entitled to protections under the FHRL. Only one marina in Alameda provides accommodation for "Floating Homes."

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The U.S. Supreme Court in 2012 also distinguished “floating homes” from ordinary vessels. The Court noted that the water craft at issue was not self-propelled, had no rudder or other steering mechanism, did not have a raked hull, had rooms looked like ordinary nonmaritime living quarters, and hence was not a “vessel” for admiralty law purposes. Lozman v. City of Riviera Beach, 568 U.S. 115 (2012). Since Mr. Lozman’s floating water craft was determined not to be a “vessel,” the Lozman floating water craft was immune from arrest pursuant to the federal admiralty law. All of the water craft berthed in Alameda marinas, apart from those at a *single marina* that berths “Floating Homes” as defined under the FHRL, are “vessels” and not “Floating Homes.”

Notwithstanding that the FHRL and case law clearly distinguishes between floating water craft that were built and intended for use as a residence, and vessels with motive power and other indicia of traditional vessels, the Ordinance treats ordinary vessels owned by people who have elected to live aboard and to whom live aboard privileges have been granted, as though they are the types of floating water craft entitled to protection under the FHRL or under the Lozman case and its progeny.

Another distinction is made in admiralty between the types of floating water craft found at Floating Home Marinas, and ordinary vessels. The former, which are permanently affixed to shoreside utilities, have been permanently removed from navigation, and hence are regarded not as “vessels,” but instead as “dead ships” that are not subject to admiralty jurisdiction. Stewart v. Dutra Constr. Co., 543 U.S. 481, 494, 125 S. Ct. 1118, 160 L. Ed. 2d 932 (2005) (a ship permanently withdrawn from navigation remains a “dead ship,” outside the admiralty jurisdiction of the federal courts). In contrast, vessels on which people typically live aboard (not “Floating Homes”), are unquestionably “vessels” for admiralty jurisdiction purposes.

A contract for wharfage provided to a “vessel” is a maritime contract. Ex parte Easton, 95 U.S. 68 (1877). Accordingly such contracts must be interpreted and enforced under the General Maritime Law. Under the General Maritime no special rights accrue to a person who elects to live aboard a vessel. Particularly instructive is Derfus v. Far West Villa Del Mar, Ltd., 471 F. Supp. 1082 (C.D. Cal. 1979). In Derfus, a Marina del Rey marina entered into a wharfage contract with a vessel owner who lived aboard his vessel at the marina, and the owner refused to vacate the vessel following notice of termination of his wharfage contract. The marina prevailed in its unlawful detainer action (and appeals thereon) and the vessel owner sought injunctive and declaratory relief in federal court. In denying the vessel owner’s applications for declaratory and injunctive relief and

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dismissing all causes of action, the Derfus Court held:

"The right to dock one's boat at a particular berth or marina cannot be equated with the right to decent low-cost housing, even if one chooses to live aboard the boat. The nature of the right for which Plaintiff seeks protection simply does not rise to the level entitled to constitutional protection which would override traditional landlord-tenant relationships in leases allowing, as here, for termination on thirty (30) day written notice by either party."

Another local municipality determined that its Residential Landlord and Tenant Relations Ordinance does not apply to ordinary vessels upon which people reside, since they are not residential or dwelling units. In 2017 complaints were lodged by tenants of a marina in Emeryville, after marina management elected to terminate several live aboard tenancies. The boat owners asked the City to intervene, alleging that they would be unfairly displaced. In a March 23, 2017 opinion letter the Assistant City Attorney advised that the City was not in a position to assist, noting that: "Although there are boats at the Marina used as a personal residence, a boat falls within the definition of vessel, not residential unit or dwelling unit." A copy of this letter will be provided upon request.

Federal maritime law, as well as California state law, recognize a fundamental difference between those living on floating water craft such as those found in Floating Home Marinas, and ordinary vessels that are designed and capable of putting to sea. Ordinance 3317 fails to recognize such important distinction. The complaints underpinning Ordinance 3317 pertain primarily if not exclusively to "Floating Homes," as defined by the FHRL. While it is appropriate to provide special protections for the benefit of those living on "Floating Homes," which are not designed or used for navigation on water, and which are as a practical matter permanently affixed to land, there is no reason in law or logic to extend such protections to ordinary vessels, especially since all or nearly all of the complaints lodged with the City relate to "Floating Homes." Ordinance 3317 should not attempt to fix a problem that does not exist. To my knowledge, no municipality or other governmental entity has enacted rent control laws that apply to non-Floating Home Marinas.

Request for Amendment of Ordinance 3317

The phrase in the Ordinance that "other Maritime residential tenancies" is undefined and too broad. Since without exception all of the written and verbal complaints which gave rise to the

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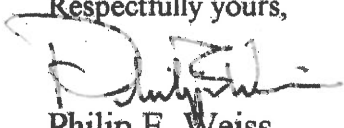
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passage of Ordinance No. 3317 relate to a single marina where "Floating Homes" are berthed, and given that we are aware of no complaints having been lodged with the City concerning other marinas, and as applying the constraints of Ordinance No. 3317 to marinas with no "Floating Homes" would not promote the health, safety and welfare of marina tenants, we would respectfully urge that the City amend Ordinance 3317 to clarify that is not intended to apply to marinas with no "Floating Homes."

Finally, please understand that imposing Ordinance No. 3317's requirements on marinas that do not provide accommodations for "Floating Homes" could have an unintended consequence. Some marina owners or operators might determine that its interests are best served by terminating vessel live aboard tenancies, in favor of providing slips for ordinary vessels, without live aboard privileges. Most or all marina contracts in California provide that either party may freely terminate a tenancy upon 30 days written notice.

I thank you in advance for your kind consideration of the above matters. We will, of course, promptly respond to any questions or comments you might have. In the *interim*, I remain

Respectfully yours,



Philip E. Weiss

¹ See, e.g., *Royal Ins. Co. of America v. Southwest Marine*, 194 F.3d 1009, 1014 (9th Cir. 1999) (observing that courts will not invalidate a Red Letter clause were the vessel owner assented without complaint to the terms of the agreement, even if objection to the term was made during negotiations. See also, *M/V AMERICAN QUEEN*, 708 F.2d 1483 (9th Cir. 1983) ("it is well settled that in admiralty law the parties to a repair contract may validly stipulate that the shipowner is to assume all liability for all damage occasioned by the negligence of the shipyard.").

² See, e.g., *Walter E. Heller & Co. v. O/S SONNY I*, 1979 A.M.C. 2822 (5th Cir. 1979) ("because application of state usury laws, absent incorporation of that law in the contract, would contravene the freedom-of-contract principle [which is recognized in the Ship Mortgage Act], usury laws have no applications in actions involving a preferred ship's mortgage"), citing *Nat. G. Harrison Overseas Corp. v. American Barge SUN COASTER*, 475 F.2d 504 (5th Cir. 1973).

From: [Steve Meckfessel](#)
To: [City Clerk](#)
Subject: [EXTERNAL] 6/21 City Council meeting -- Agenda Item 7-C -- attachments for minutes
Date: Tuesday, June 21, 2022 4:02:59 PM
Attachments: [We sent you safe versions of your files.msg](#)
[MRA Letter re AB 252 v2.pdf](#)
[Exh. 3 - Email from Chuck and Edie Herro \[liveaboards\] to City Council.pdf](#)
[Exh. 1 - Email from Alameda Mayor to Barnhill Marina residents.pdf](#)
[Exh. 2 - Letter from Deputy Attorney General.pdf](#)
[Exh. 4 - Letter from City Attorney in City of Emeryville.pdf](#)

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Dear Clerk:

Please include the attachments in the minutes to tonight's meeting relating to agenda item 7-C as it concerns "maritime residential tenancies."

Steve Meckfessel
Boardmember, Marine Recreational Association



MRA
MARINE RECREATION ASSOCIATION

June 21, 2022

The Honorable Thomas Umberg
Chair of Senate Judiciary Committee
California State Senate
1021 O St, Room 405
Sacramento, CA 95814

RE: AB 252 (Bonta) Floating home Marinas: Rent Caps- Oppose Unless Amended

Dear Chair Umberg,

The Marine Recreation Association is writing to oppose AB 252 unless amended to explicitly exclude vessels. While the bill provides it only applies to floating homes, floating home marinas, and floating home slips only, AB 252, as currently written, may be subject to the same misinterpretation as Alameda Ordinance No. 3317 (hereinafter, No. 3317). No. 3317 was drafted with the same intent as AB 252 relating to its scope, with similar language pertaining to floating homes, which the City of Alameda is now unlawfully misinterpreting to include liveaboard privileges on vessels at recreational marinas.

The Marine Recreation Association is a non-profit association that represents marina owners, boatyards, operators, and industry professionals throughout the Western U.S., Mexico, Hawaii, and Australia. The Association's mission is to provide a united voice in representing the interests of the boating and marine industries and to help educate and inform in all areas of recreation boating. There are roughly over 600 marinas throughout California; 8 of those in Alameda are now baselessly, unjustly, and unlawfully subjected by Alameda City Council to No. 3317—an ordinance that was never meant to apply to them, but to the one floating home marina in Alameda.

Specifically, Alameda Mayor Marilyn Ashcraft represented that No. 3317 was an "Urgency Ordinance amending the City's Rent Control Ordinance, and other Rent Related Ordinances, so they also apply to *floating homes and houseboats*." (Exhibit No. 1; April 14, 2022 email from Mayor Ashcraft entitled "Barnhill Marina - Update" [italics added]). In the same email, she also indicated there was state-level endorsement of No. 3317, by Assemblymember Bonta and Senator Skinner, as well as the Legislative Counsel, to wit: "[Mayor Ashcraft] asked Senator Skinner and Assemblymember Bonta's offices to request an opinion from the Legislative Counsel, clarifying the City's ability to include *floating homes and houseboats in these [rental]*

ordinances." (*Ibid.*; italics added.) She went on to say "the Legislative Counsel gave Senator Skinner's office a preliminary oral opinion that appears encouraging and supportive of local regulation. We have also requested a written version of this Legislative Counsel opinion, in the event it is needed for potential future litigation." The special meeting, emergency ordinance, and all other communications from the Mayor make it clear that No. 3317, as AB 252, only extends rental ordinances to floating homes and houseboats.

Although No. 3317 by its own language and intent of the drafters pertains only to "**floating homes and houseboats**," Alameda Council is now bootstrapping the eight recreational marinas that do not have berths for floating homes and houseboats, into No. 3317. While AB 252 is indeed focused on rent control for floating home residences at the statewide level, No. 3317 provided the same at the local level as is now be grossly distorted to include liveaboard privileges on vessels at recreational marinas. Without exception, all of the correspondence presented to the City Council in connection with its consideration of No. 3317 pertains to "Floating Homes," as this term is defined in the Floating Home Residency Law (the "FHRL") which is codified at Civil Code Sections 800-800.306. All of these "Floating Homes" are located at Barnhill Marina. To our knowledge, none of the vessels at the eight other recreational marinas are equipped with a permanent sewage connection, and hence they are not "Floating Homes." All complaints expressed in the correspondence the City Council considered appear to be from people living aboard "Floating Homes"—or dead vessels—under the FHRL, not ordinary vessels, and all complaints are related to a floating home marina, not a recreational marina. The Executive Summary presented at the April 28, 2022 meeting of the Alameda City Council provides that: "Adoption of the Ordinance is urgently necessary to prevent imminent displacement of dozens of residents, many of them seniors with limited means, at one of the city's marinas" and makes clear No. 3317 was borne of concerns relating to a single floating home marina's handling of matters.

Since No. 3317 is consistent with AB 252 in terms of intent and language, we are concerned AB 252 would similarly be misinterpreted to encompass liveaboard privileges on vessels at recreational marinas, regulated by maritime law, as the Alameda Mayor and the City have now done.

Again, providing that AB 252 applies only to floating homes, floating home marinas and floating home slips, we do not have any issue with it. Our concern is if this extends in any way into recreational marinas, recreational vessels with or without liveaboard privileges, which are clearly covered as vessels *under federal maritime law*. Floating homes are "dead ships" and as such do not have protection under federal maritime law as we understand it and thus we have no issue with protecting such under rent control laws/ordinances.

From a policy perspective, there are approximately 500 floating home slips in the Bay Area and not a single vacancy. Since these are "grandfathered" in as floating homes are understood to violate the public trust and access to tidelands/waterways by the public (see Exhibit No. 2; Letter from Deputy Attorney General to the California State

Lands Commission) and there will be no further such slips added. Thus, there is no place for floating home owners to go if they are forced out of their slip. We understand why they need protection, as illustrated by the issue Alameda City Council intended to address.

In the case of recreational marina slips, there are approximately 17,000 slips in the Bay Area of which about 3,000 are vacant. Arguably, the Bay Area has among the highest salt water marina vacancy rates in the country and some of the lowest slip and liveaboard rates. Therefore, unlike floating homes/marinas, there is simply no policy need to "protect" recreational boaters, with or without liveaboard privileges. Furthermore, maritime law which they fall under does not accommodate such protection in any case. In addition, No. 3317 is an excessive exercise of police power, impinges on the Contracts Clause, offends maritime law, as well as state law and United States Supreme Court precedent.

Instead of advancing legitimate policy concerns, imposing rental control requirements on marinas that do not provide accommodations for "Floating Homes" offend policy considerations that benefit the public. Some marina owners or operators might determine, as many already have, that its interests are best served by terminating vessel live aboard tenancies, in favor of providing slips for ordinary vessels, without live aboard privileges. Most or all marina contracts in California provide that either party may freely terminate a tenancy upon 30 days written notice. Liveaboards want this option and have expressed that they do not want or need rental protection. (See, e.g., Exhibit no. 3; Email from Chuck and Edie Herro [liveaboards] to Alameda City Council re No. 3317.)

Additionally, liveaboard privileges at recreational marinas typically cannot exceed 10% of the slips due to environmental concerns and regulations by the Bay Conservation & Development Commission (BCDC). The issue of sneak-a-boards and out anchoring are issues recreational marinas deal with constantly, and recreational marinas need federal maritime law to ensure the protection of our environment, water, and natural resources. (See Exhibit No. 4; Letter from City Attorney in the City of Emeryville; see also Exhibit No. 2, pages 5-6 of letter from Deputy Attorney General to the California State Lands Commission.) No. 3317 is creating an environmental and safety threat to Alameda, the estuary, and our waterways. (See generally, Exhibit Nos. 3-4.)

For these reasons, we oppose AB 252 unless it is amended to explicitly state it only applies to floating homes, floating home marinas, and floating home slips only—and excludes vessels.

Respectfully,

Kate Pearson

Kate Pearson
Marine Recreation Association President

Cc:

Assemblymember Mia Bonta

Exhibit No. 1: April 14, 2022 email from Mayor Ashcraft entitled "Barnhill Marina - Update"

Exhibit No. 2: Letter from Deputy Attorney General to the California State Lands Commission

Exhibit No. 3: Email from Chuck and Edie Herro [liveaboards at Marina Village Yacht Harbor] to Alameda City Council re No. 3317

Exhibit No. 4: Letter from City Attorney in the City of Emeryville

Exhibits available upon request. Contact acs@platinumadvisors.com

Thu, Apr 14, 2022 7:57 pm

Marilyn Ezzy Ashcraft (MEzzyAshcraft@alamedaca.gov) To: you (Bcc) Details

Good Evening Barnhill Marina residents, and friends of residents,

Thank you for your e-mails alerting me of the notices of very high rent increases, effective at the end of this month, which you received from the new marina owners. I have been working with the City Attorney's office, and the offices of State Senator Nancy Skinner, Assemblymember Mia Bonta, and County Supervisor Dave Brown to protect you from these exorbitant rent increases, and possible displacement. Here's what we've done to date:

We've scheduled a special City Council meeting for Thursday, April 28 at 5 PM, to consider adopting an Urgency Ordinance amending the City's Rent Control Ordinance, and other Rent Related Ordinances, so they also apply to floating homes and houseboats. It takes 4 affirmative votes to pass urgency measures. You will find a Zoom link to the meeting on the City's website.

We asked Senator Skinner and Assemblymember Bonta's offices to request an opinion from the Legislative Counsel, clarifying the City's ability to include floating homes and houseboats in these ordinances. Today, the Legislative Counsel gave Senator Skinner's office a preliminary oral opinion that appears encouraging and supportive of local regulation. We have also requested a written version of this Legislative Counsel opinion, in the event it is needed for potential future litigation. (A written opinion takes 2-4 months to issue, whereas the oral opinion was rendered in a matter of days.)

County Supervisor Dave Brown informed us that the County's eviction moratorium may protect Barnhill Marina tenants from eviction while it's still in effect.

Today, the City Attorney's office and the Alameda County District Attorney's office issued a joint letter to the marina owners, warning them that these excessive rent increases violate State law and, if pursued, could subject the marina owners to prosecution.

As I told our State and County representatives, all of whom responded immediately to my request for assistance, Alameda's efforts to reduce and, eventually, end homelessness in our city must also include preventing residents from becoming displaced. We take this obligation very seriously and will do all that we can to protect the residents of Barnhill Marina.

Best regards,

Marilyn Ezzy Ashcraft

Mayor, City of Alameda

510-747-4745

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



JENNIFER LUCCHESI, Executive Officer
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1800
Contact Fax: (916) 574-1810

January 4, 2016

File Ref: SCH No. 2014112027

Diana O'Dell
City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063

Re: Draft Environmental Impact Report (DEIR) for the Proposed Redwood City
Inner Harbor Specific Plan

Dear Ms. O'Dell:

The California State Lands Commission (Commission) staff has reviewed the DEIR for the Redwood City Inner Harbor Specific Plan (Specific Plan), which is being prepared by the City of Redwood City (City).

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has oversight authority over tide and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code sections 6301 and 6306). All tidelands and submerged lands as well as navigable lakes and waterways, granted or ungranted, are subject to the protections of the common law Public Trust Doctrine.

A portion of the lands involved in the proposed Specific Plan, including Docktown Marina, have been legislatively granted to the City under Chapter 1359, Statutes of 1945, as amended. Although Commission authorization is not required for the Specific Plan, because day-to-day administration of these lands has been granted to the City, Commission staff has concerns about certain aspects of the proposed Specific Plan, as detailed below.

Specific Plan Description

The Specific Plan presents a vision and specific regulations to improve and develop areas along the City's waterfront, in conformance with the goals and policies of the City's General Plan. The Specific Plan contemplates development of up to 1.2

million square feet of commercial office use, 40,000 square feet of commercial retail use, 550 residences, and approximately 39.2 acres of active and passive recreation and open space uses, among other things. The Specific Plan also proposes to relocate approximately 100 watercrafts currently located in Docktown Marina in Redwood Creek, of which about 70 are used for residential purposes.

The DEIR contemplates several alternatives to the proposed development. Alternative SP-3, "Maximum Floating Home Community," would allow development similar to the proposed Specific Plan but with an expanded area for the residential watercraft.

Concerns with Alternative SP-3

Despite an acknowledgement in the DEIR that residential use within the City's granted lands is inconsistent with the City's granting statute and the common law Public Trust Doctrine, Alternative SP-3 proposes an expanded residential use on these sovereign Public Trust lands. This Alternative would allow the continued and potential enlargement of a use that is inconsistent with state law.

To assist the City in its management of its granted lands and to help clarify the Commission's concerns, the Commission has waived its privilege to maintain the confidentiality of an opinion letter from the Attorney General's office to the Commission regarding the residential use at Docktown Marina. This letter explains the legal concerns regarding residential use of sovereign lands and advises that the residential use at Docktown Marina is inconsistent with the City's granting statute and the common law Public Trust Doctrine (see attached opinion letter from the Attorney General's office).

Other Clarifications:

The DEIR states that the Commission has authority to issue permits for activities within its jurisdiction and that waterways within the City are within its jurisdiction (4.9-23). Commission staff would like to clarify that the Commission does not have leasing or permitting authority within the legislative grant to the City. The Commission, acting on behalf of the State, exercises oversight authority over all granted lands, including the City's. The Commission is not involved in the daily management of the City's granted lands and any action that the City may take regarding the Specific Plan or with respect to a lease or permit for uses within its grant does not require formal approval by the Commission.

The DEIR also states that the terms for the Public Trust lands in the Inner Harbor area were established as part of a grant agreement between the City and the Commission (pages 4.9-23) and that the original lease agreement initiated in 1945 and subsequent updates have been approved (pages 4.9-23). Commission staff would like to clarify that the lands granted under Chapter 1359, Statutes of 1945, were

granted to the City by the State Legislature, not the Commission, and granted by an act of the Legislature, not a lease agreement. The State Legislature has since proposed and enacted amendments to the City's original granting statute. The authority to grant sovereign public trust lands to municipalities resides with the State Legislature. The Commission does not have the authority to grant Public Trust lands to municipalities and does not have authority to issue leases for lands that were granted to a local jurisdiction to hold in trust for the statewide public.

The legislative grant to the City conveyed the State's legal title to the land in trust to the City. The State remains the trustor of the grant and the people of the State are the beneficiaries. Grantees have a fiduciary duty, as trustees, to manage their trust lands and assets in a manner that is consistent with their statutory trust grant, the Public Trust Doctrine, the California Constitution and case law. Public Resources Code section 6009.1 describes many of a grantee's fiduciary duties, such as the duty to administer the trust solely in the interest of the beneficiaries and to not use or deal with trust property for purposes unconnected with the trust.

Thank you for the opportunity to comment on the DEIR for the Specific Plan. If you have any questions or concerns regarding this information, please contact me or Reid Boggiano, Granted Lands Representative, at (916) 574-0450, or via email at Reid.Boggiano@slc.ca.gov.

Sincerely,



Sheri Pemberton
Chief, External Affairs Division

Enclosure

cc: Jeffrey Gee, Mayor, City of Redwood City
Aaron J. Akin, Assistant City Manager and Community Development Director,
City of Redwood City
Michele Kenyon, City Attorney, City of Redwood City
Pamela Thompson, City Attorney, City of Redwood City
Andrew Vogel, Deputy Attorney General, Department of Justice
Mark Meier, Chief Counsel, California State Lands Commission

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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Attorney-Client Privileged Communication

June 19, 2015

Jennifer Lucchesi
Executive Officer
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, California 95825-8202

Dear Ms. Lucchesi:

This letter concerns the residential houseboat community at Redwood City's Docktown Marina. The marina is located on sovereign lands legislatively granted in trust to Redwood City in Statutes of 1945, chapter 1359, as amended. On behalf of the California State Lands Commission (Commission), you have requested this office's informal advice concerning whether the private residential use of houseboats or "liveaboards" on these sovereign tidelands is legally permissible.¹

For the reasons discussed in more detail below, our opinion is that private residential use of houseboats and liveaboards at Docktown violates both the terms of the statutes by which the Legislature granted these tidelands in trust to the City and the common law public trust doctrine. Dating back to the early 1970s, this office has consistently opined and advised the Commission, and the Commission has in turn advised legislators, other agencies (including Redwood City)

¹ A houseboat is typically a watercraft principally designed and used for residential rather than transportation purposes. (See, e.g., Wat. Code, § 13901.) A liveaboard is typically an unmodified boat used for extended periods of time for residential purposes. As a matter of convenience for the purposes of the analysis below, we refer to both types of vessels collectively as "houseboats."

and private parties, that residential houseboat use is inconsistent with the public trust doctrine.² Our legal research has uncovered no authority in the intervening four decades that would cause us to change this opinion.

Initially, we begin with some background on the public trust doctrine and the law governing legislatively granted sovereign lands. California acquired title to all tidelands, submerged lands, and the beds of all inland navigable waters within its borders as an incident of its sovereignty when it was admitted to the Union on September 9, 1850. (See, e.g., *Oregon ex rel. State Board v. Corvallis Sand & Gravel Co.* (1977) 429 U.S. 363, 373-374; *Marks v. Whitney* (1971) 6 Cal.3d 251, 258; accord, *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434; *Citizens for East Shore Parks v. Cal. State Lands Com.* (2011) 202 Cal.App.4th 549, 570; Pub. Resources Code, § 6009, subd. (a).)³ The State owns these tidelands and submerged lands as a trustee for, and the public holds an easement over these lands for, statewide public purposes. (*Citizens for East Shore Parks v. Cal. State Lands Com.*, *supra*, 202 Cal.App.4th at p. 570; Pub. Resources Code, § 6009, subd. (a).)

The common law public trust doctrine traditionally defined these public trust uses as water-related commerce, navigation, and fishing. (*Marks v. Whitney*, *supra*, 6 Cal.3d at p. 259; Pub. Resources Code, § 6009, subd. (a).) However, California courts have recognized that public trust uses are “sufficiently flexible to encompass changing needs.” (*Marks v. Whitney*, *supra*, 6 Cal.3d at p. 259.) As a result, courts have also recognized bathing, swimming, boating, and other recreational purposes, as well as preservation of these lands in their natural state for scenic, scientific study, open space, and habitat values, as public trust uses. (*Marks v. Whitney*, *supra*, 6 Cal.3d at p. 259; *National Audubon Society v. Superior Court*, *supra*, 33 Cal.3d at pp. 434-435.)

² See, for example, December 20, 1971 letter from Attorney General Evelle Younger to State Sen. Jack Schrade; January 10, 1978 letter from William Northrop, Commission Executive Officer, to State Sen. Dennis E. Carpenter; November 5, 1985 letter from Robert Hight, Commission Chief Counsel, to Robert Tufts, Chairman, San Francisco Bay Conservation and Development Commission (BCDC); November 19, 1986 letter from Claire Dedrick, Commission’s Executive Officer, to Russell Smith; February 25, and August 7, 2014 letters from Sheri Pemberton, Commission’s Chief, External Affairs, to Bill Ekern, City of Redwood City. The Commission has found that small numbers of liveaboards within commercial marinas may be permissible for limited periods of time and in limited circumstances. (See, e.g., January 10, 1978, letter from William Northrop, Commission Executive Director, to State Sen. Dennis E. Carpenter, pp. 2-3.) However, the 80% of Docktown berths that houseboats currently occupy greatly exceeds any percentage the Commission has previously approved.

³ Tidelands are those lands lying between the lines of mean high tide and mean low tide. Lands seaward of the line of mean low tide are submerged lands. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 478 fn. 13.)

Administration of the public trust is a matter entrusted to the Legislature. (*County of Orange v. Heim* (1973) 30 Cal.App.3d 694, 707-708.) It is a question for the Legislature, acting within the scope of its duties as trustee, to determine whether public trust uses should be continued, modified, or extinguished. (*Marks v. Whitney, supra*, 6 Cal.3d at pp. 260-261.) The Legislature has delegated to the Commission exclusive jurisdiction over all state-owned ungranted tidelands and submerged lands as well as all jurisdiction remaining in the State as to tidelands and submerged lands to which grants, such as that to Redwood City, have been or will be made. (Pub. Resources Code, § 6301.)

A common thread running through these recognized public trust uses is that they benefit all people of the State. (*Marks v. Whitney, supra*, 6 Cal.3d at pp. 259-260; accord, *Colberg, Inc. v. State ex rel. Dept. of Public Works* (1967) 67 Cal.2d 408, 417.) Uses that provide only a local benefit are inconsistent with the public trust doctrine. (See *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 209-211.) For example, the California Supreme Court explained in *Mallon* that city storm drains, a city incinerator, libraries, hospitals, and public parks were not public trust uses because they conferred a purely local, not statewide, benefit. (*Ibid.*)

A use that is purely local in benefit or is otherwise not a recognized public trust use may still be permissible if it is incidental to a legitimate statewide public trust use. (*People v. City of Long Beach* (1959) 51 Cal.2d 875, 879-880 [proposed operation of facility in harbor providing lodging and recreation for naval personnel and merchant seamen was consistent with and supported public trust use of harbor for commerce and navigation]; *Haggerty v. City of Oakland* (1958) 161 Cal.App.2d 407, 413-414 [proposed convention, banquet, and exposition facilities in the City's port area held incidental to public trust use, as facilities would encourage associations and interested persons to learn about port facilities and exchange ideas about maritime commerce].)

The Legislature may grant tidelands and submerged lands in trust to local entities. Granted lands remain subject to state supervision. The state acts as both the trustor and the representative of the people as beneficiaries of the public trust for the granted lands, and the grantee acts as trustee. (Pub. Resources Code, § 6009.1, subds. (a), (b).) Grantees must manage granted lands in a manner "consistent with the terms and obligations of their grants and the public trust. . . ." (Pub. Resources Code, § 6009, subd. (d).) As a result, grantees may neither use state-granted lands for non-trust uses nor apply revenues generated by such lands for purely local, non-trust purposes. (*Mallon v. City of Long Beach, supra*, 44 Cal.2d at pp. 210-211; *City of Long Beach v. Morse* (1947) 31 Cal.2d 254, 257-258.) A legislative grant of sovereign lands to a municipality such as Redwood City, however, does not place the lands beyond the supervision of the State. The State has a duty to continue to protect the public trust on behalf of all of the people of California. (*Illinois Central R.R. Co. v. Illinois* (1892) 146 U.S. 387, 452-453; *City of Coronado v. San Diego Unified Port Dist.* (1964) 227 Cal.App.2d 455, 474.)

In this case, the Legislature in 1945 granted the sovereign lands where Docktown is located in trust to Redwood City for "the establishment, improvement and conduct of a harbor, including an airport or aviation facilities, and for the construction, maintenance and operation

thereon of wharves, docks, piers, slips, quays and other utilities, structures, facilities and appliances necessary or convenient for the promotion and accommodation of commerce and navigation by air as well as by water....” (Stats. 1945, chap. 1359, § 1(a), as amended.) This grant permits Redwood City to lease parts of these lands for up to 50 years but only “for purposes consistent with the trust upon which said lands are held by the State of California....” (*Ibid.*) Under the grant, these lands must “always remain available for public use for all purposes of commerce and navigation....” (*Id.*, § 1(b).) The grant reserves “in the people of the State of California the absolute right to fish in the waters of said harbor with the right of convenient access to said waters over said lands for said purposes.” (*Id.*, § 1(d).)

Redwood City’s charter mirrors these restrictions. The charter provides that the City’s legislatively-granted “Harbor Lands” are “required for use for purposes in connection with or for the promotion and accommodation of commerce, navigation or fishery. . . .” and may be leased “subject to the trusts and conditions contained in the grants of such property to the City of Redwood City.” (City Charter, § 48.)

For several reasons, our opinion is that allowing private residential houseboats on these granted tidelands is inconsistent with both the public trust doctrine and the terms of this granting statute.

First, despite the public trust doctrine’s “flexibility” as recognized in *Marks*, our legal research has uncovered no California case holding that either residential land use generally, or residential houseboat use in particular, qualifies as a public trust use. To the contrary, while the California Supreme Court has not directly addressed the issue, several justices, in dissent, have opined that residential uses of land are not public trust uses. (*City of Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 538 [Clark, J., dissenting: “...under the [public] trust tidelands may be filled and used for commercial and recreational purposes but not residential purposes.”]; *State of California v. Superior Court (Lyon)* (1981) 29 Cal.3d 210, 235 [Clark, J., concurring and dissenting: “[T]here are certain common land uses which are not included within [public] trust uses, namely, residential, agricultural, and general governmental.”])

Nor has our research uncovered out-of state case law holding otherwise. Instead, two cases from Washington held in the context of regulatory takings claims that the residential use of tidelands is inconsistent with the public trust doctrine. *Esplanade Properties, LLC v. City of Seattle* (9th Cir. 2002) 307 F.3d 978 held that the City’s decision denying plaintiff’s application to develop tidelands with residences effected no regulatory taking because the tidelands were subject to the public trust, which in turn precluded residential development that might interfere with their public recreational use. (*Id.*, at p. 985-987, applying Washington law.) *Orion Corp. v. State* (Wash. 1987) 747 P.2d 1062 held that because the public trust doctrine precluded dredging and filling of tidelands for proposed residential development, state regulations protecting these tidelands did not interfere with a landowner’s “investment-backed expectations” for regulatory takings purposes. (*Id.*, at pp. 1072-1073, 1086; accord, Eichenberg, Bothwell, and Vaughn, *Climate Change and the Public Trust Doctrine: Using an Ancient Doctrine to Adapt to Rising Sea Levels in San Francisco Bay* (2010) 3 Golden Gate U. L. Rev. 243, 259 [a property owner

"would normally not have reasonable-investment backed expectations for filling tidelands for non-trust private residential or agricultural uses under the public trust doctrine and consequently prohibiting those uses generally would not constitute a taking," citing *Orion Corp. v. State*, *supra*.)

Second, as to residential houseboat use in particular, the court in *People ex rel. San Francisco Bay Conservation and Development Com. v. Smith* (1994) 26 Cal.App.4th 113, 123, interpreting whether liveaboards in the San Francisco Bay required a permit under the McAteer-Petris Act (Government Code, §§ 66600, et seq.) observed that residential liveaboard boat use is not a public trust use. (See also BCDC, San Francisco Bay Plan, p. 77 ["A houseboat is neither a water-oriented use nor a use that furthers the public trust and does not serve a statewide public benefit."]) Though this case arose from the specific McAteer-Petris statutory scheme governing the San Francisco Bay and shoreline, we believe its analysis – grounded in the public trust doctrine – applies equally to the sovereign tidelands at Redwood City. We have found no California case law that reaches a contrary holding.

Third, that residential houseboat use violates the public trust doctrine logically follows from the nature of the public trust. Private occupancy of such boats for residential purposes confers a purely local benefit. It does not provide a benefit to citizens of California statewide. (See *Marks v. Whitney*, *Colberg, Inc. v. State ex rel. Dept. of Public Works*, *supra*.) At best, it facilitates the use of the granted tideland area by those few who occupy these boats. It is not a use tied to sovereign tidelands because private residences can be, and normally are, located on non-sovereign uplands. Private houseboat use is also not incidental to any public trust use. It does not further or encourage recognized public trust uses. We have found no case holding that private residential use of any sort is incidental to recognized public trust uses.⁴

If anything, the private use of houseboats in fact detracts from these legitimate public trust uses. For example, by restricting areas of the harbor to private residential use, houseboats deprive the public of access to the tidelands for recreational, navigation, and similar public trust purposes. The loss of such access is particularly pronounced here, where residential houseboats dominate Docktown Marina. As the City has recognized, private houseboats occupy 70 of the 87 boat berths at the Docktown Marina, or approximately 80% of these berths. (City Manager's Report to Mayor and City Council, April 27, 2015.) In the analogous context of the San Francisco Bay, BCDC has recognized that houseboats contravene the public trust by competing for vessel berths that the broader public might otherwise use for trust purposes. (BCDC, San Francisco Bay Plan, p. 77.)

⁴ This office has opined that a public agency trustee may lease a portion of filled tidelands for construction of a timeshare resort, which involves a purchaser's right to exclusive residential occupancy of a timeshare unit for a period of time. But we reached this opinion in significant part because timeshares may enhance public access to the shoreline for public trust purposes and provide visitor-serving accommodations to the public. (79 Ops.Cal.Atty.Gen. 133, 145-146 (1996).) Private residential houseboats do neither.

Fourth, houseboats detract from other public trust uses as well. As BCDC has stated, private houseboats detract from the scenic and habitat value of surrounding waters by restricting views, blocking beneficial sunlight penetration into tideland waters, and causing detrimental sedimentation by reducing wind and wave action. (BCDC, San Francisco Bay Plan, p. 77.)⁵

Environmental and public health effects of houseboat use also may negatively affect public trust uses. Houseboat use may result in discharge of raw sewage or used "grey water" into surrounding tideland waters, potentially endangering wildlife. (*People ex rel. San Francisco Bay Conservation and Development Com.*, *supra*, 26 Cal.App.4th at p. 121 n. 5 [citing Regional Water Quality Control Board data on houseboat related pollution in Richardson Bay].) In the analogous context of the San Francisco Bay, BCDC has specifically identified substandard sewage systems in houseboat areas as a source of high coliform bacteria count in the Bay. (BCDC Final Staff Report, *Water Quality Protection and Nonpoint Source Pollution Control in San Francisco Bay* (October 2003) (http://www.bcdc.ca.gov/pdf/planning/reports/water_quality_nonpoint_source.pdf), p. 30.) Similarly, a San Francisco Bay Regional Water Quality Control Board study identified houseboat marinas as "consistently the most significant sources of pollution in Richardson Bay" over the 1994-2003 period. (San Francisco Regional Water Quality Control Board, *Pathogens in Richardson Bay Total Maximum Daily Load (TMDL)* (http://www.swrcb.ca.gov/sanfranciscobay/water_issues/programs/tmdls/richardsonbaypathogens.shtml) (July 2008), p. 14.) Such environmental impacts detract from the preservation of tidelands and submerged lands for their habitat value.

For these reasons, residential houseboat use is inconsistent not just with the public trust doctrine but also with Redwood City's granting statute. The statute makes no reference to residential use generally, or houseboat use specifically, as a permitted use of the granted lands. As discussed above, houseboat use is not "necessary or convenient for the promotion and accommodation of" trust uses authorized under this statute either. It interferes with the "right of convenient access" for fishing in nearby waters that the granting statute expressly reserves to the public. And permitting continued residential houseboat use would also violate the City's fiduciary obligations as trustee to "administer the trust solely in the interest of the beneficiaries" (here, the people of the State) and not to use trust property "for any other purpose unconnected to the trust." (Pub. Resources Code, § 6009.1, subds. (c)(5), (c)(7).)

We understand that proponents of residential houseboat use in Redwood City have contended that rising housing prices in the area have left houseboats as one of few affordable housing options. We also anticipate that these proponents might argue that potential flooding at Redwood City as a result of ongoing global climate change and sea level rise might eventually make houseboats necessary to replace lost upland housing. However, our opinion is that neither

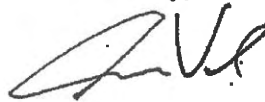
⁵ The San Francisco Bay Plan does explain that the BCDC could authorize limited houseboat use but only subject to strict conditions. These conditions include that the number of houseboats is limited, their use is part of a broader area plan, and their use is limited in duration. Based on the facts known to us, none of these conditions apply here.

Jennifer Lucchesi
June 19, 2015
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the former argument if accurate nor the latter risk if realized makes residential houseboat use consistent with the public trust doctrine or Redwood City's granting statute. The California Supreme Court in *Marks* specifically identified "population pressures" as one of the reasons why preservation of the public trust is critical. (*Marks v. Whitney, supra*, 6 Cal.3d at p. 257.) And *Marks* held that the public trust doctrine is "sufficiently flexible to encompass changing needs." (*Id.* at p. 259.) More than four decades have passed since the *Marks* decision. Over that period, no California court has held that the public trust encompasses residential use of tidelands generally or residential houseboat use specifically. Redwood City may not effectively expand the public trust on its own by allowing continued houseboat use on its granted lands here.

We appreciate the opportunity to provide this opinion to you. Please let us know if you have any questions.

Sincerely,



ANDREW M. VOGEL
Deputy Attorney General

For: KAMALA D. HARRIS
Attorney General

AMV:

From: Edie Herro <herro.edie@gmail.com>

Date: June 20, 2022 at 4:10:13 PM PDT

To: cityattorney@alamedacityattorney.org, tdaysog@alamedaca.gov, manager@alamedaca.gov, beaudin@alamedaca.gov, mvella@alamedaca.gov, mezzyashcraft@alamedaca.gov, jknoxwhite@alamedaca.gov, tspencer@alamedaca.gov, clerk@alamedaca.gov

V

Cc: Chuck Herro <ceherro@gmail.com>

Subject: Ordinance #3317

To Whom It may concern,

It has come to our attention that Marinas have been attached to your Ordinance #3317 concerning Rent Control.

While we understand your concern with unconscionable spiraling rents, Marinas have never been a part of that problem.

As a retired Live-Aboard resident of Marina Village Yacht Harbor who lives on a fixed income, I can testify that the Marinas we have had my boat connected to, have been very fair with their rental fees. They have to be because of the transitory nature of boaters. Their ability to set rent costs is self-limiting. They have to be competitive because of the limited number of boaters and the boater's ability to move on. Marina Village has done an excellent job of maintaining our marina for all its boaters while keeping rent increase to a minimum.

Furthermore, if they are required to adhere to eviction restrictions specified in your ordinance, it limits their ability to provide security provide security to their other tenants. Potentially it could cause Marinas to eliminate Liveaboard

status entirely. As a permanent liveaboard ourselves, we would have to move our boat out of Alameda.

Bottomline, if Marinas are required to be included in Ordinance 3317, you will be causing us to lose our home base in Alameda. Essentially you will be destroying our boating community in Alameda.

Regards,

Chuck and Edie Herro



City of Emeryville

INCORPORATED 1896

1333 Park Avenue

Emeryville, California 94608-3517

Tel: (510) 596-4300 | Fax: (510) 596-4389

March 23, 2017

VIA EMAIL ONLY

Undisclosed Recipients

Re: Your Complaint Regarding Emeryville Marina

Dear Concerned Citizen:

Over the past few weeks, the City of Emeryville ("City") has received several complaints regarding issues at the Emeryville Marina ("Marina"). Instead of responding to each complaint individually, the City is providing one consolidated response to all complainants because the complaints raise the same issues. Overall, the complaints focus on the actions taken by the Marina operator, Safe Harbor Marina, LLC ("Safe Harbor"), which allegedly resulted in displacement of individuals from the Marina. The complaints request City assistance to intervene in the relationship between slip tenants and Safe Harbor. In addition, some complaints raise concerns about environmental conditions, public safety and fear of retaliation. As explained in further detail below, the City is not able to intervene in the actions being taken by Safe Harbor. In addition, I explain what actions are being undertaken by the City and/or Safe Harbor to address the other concerns.

I. Background

To explain why the City is not able to intervene as requested in the complaints, I will first provide background information as to the various laws that govern the Marina, as well as the relationship between the City and Safe Harbor.

State Lands Commission

The State of California granted the area known as the Emeryville Marina to the City through a series of uncodified statutes.¹ The granting statutes convey the State's legal title in the land in trust to the City, with the State remaining as the trustor of the grant, and the people of the State of California (not just the people of Emeryville) as the beneficiaries of the grant.² As trustee, the City has a fiduciary duty to manage the

¹ See Chapter 515, Statutes of 1919; Chapter 921, Statutes of 1959; and Chapter 415, Statutes of 1968. Granting statutes can be found here: <http://www.sl.c.ca.gov/Programs/Grantees/Emeryville.html>.

² Pub. Resources Code, § 6009.1(a).

Emeryville Marina in a manner that is consistent with the public trust doctrine and the Public Resources Code.³

The State, through an agency known as the State Lands Commission, continues to have jurisdiction over the granted property to ensure that the City is fulfilling its duties as trustee.⁴ In general, the State Lands Commission considers private residential use at a marina, e.g., allowing liveaboards⁵, to violate the public trust doctrine.⁶ However, there are instances when the State Lands Commission has allowed a small number of liveaboards for limited periods of times and in limited circumstances in commercial marinas.⁷

San Francisco Bay Conservation and Development Commission

In addition, the San Francisco Bay Conservation and Development Commission ("BCDC") has jurisdiction over the Marina. The City has held a BCDC permit since 1970, which authorizes that City to expand, improve, maintain and use the Emeryville Marina. The BCDC Permit was most recently amended in 2011. With respect to liveaboards at the Emeryville Marina, Special Condition II.E of the City's BCDC Permit includes the following conditions (quoted in italics below):

1. *Live-aboard boats authorized to be moored in the marina pursuant to Paragraph I.A.1.m shall be those boats designed and used for active navigation but are distinguished from other navigable boats in that they are also used as a primary place of residence. No houseboats shall be moored in the marina.*
2. *Convenient and adequate parking, showers, garbage facilities sewage pumpout stations, and a minimum of one restroom facility shall be provided and maintained for use by occupants of the live-aboard boats.*
3. *The number of live-aboard boats shall at no time exceed 10% of the total number of berths or up to 38 berths, whichever is less.*
4. *Adequate tidal circulation shall be maintained in the marina.*
5. *Except as specifically authorized in Paragraph I.A.1.m of this authorization, no vessel moored in the marina shall become a long-term place or residence. Any violation of this condition shall be grounds for immediate termination of the berthing rights of any such owner or occupant.*

³ See, e.g., *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, *State of California v. County of Orange* (1982) 134 Cal.App.3d 20; *State of California v. City of Long Beach* (2005) 125 Cal.App.4th 767.

⁴ Pub. Resources Code, § 6009.1(a).

⁵ A liveaboard refers to an individual who lives on an otherwise operable vessel berthed at a marina.

⁶ See Letter dated June 19, 2015, from Andrew M. Vogel, Deputy Attorney General for Kamala D. Harris, Attorney General to Jennifer Lucchesi, Executive Officer, California State Lands Commission re: residential houseboat community at Redwood City's Docktown Marina.

⁷ *Id.*, p. 2, fn. 2.

6. *Berths shall be rented to the general public without discrimination, and no right to use of an individual berth shall be granted or otherwise transferred that exceeds one year in duration.*

Emeryville Regulations

The City also has local regulations governing the operation, maintenance and use of the Emeryville Marina. In 2000, the Planning Commission approved a conditional use permit (UP99-16) for an Emeryville Marina Master Plan. In 2003, the Planning Commission issued a conditional use, design review and variance permits (UP03-07, DR 03-14, VAR03-02) for a project that revised the master plan, and included the repair, replacement, and addition of docks, as well as other improvements. Title 10 of the Emeryville Municipal Code, "Tidelands", also regulates the use of the Emeryville Marina. In general, Title 10 of the Emeryville Municipal Code prescribes rules of conduct to ensure compliance with the City's obligations as a trustee of the tidelands and with the BCDC permit conditions. Section 10-1.17 of the Emeryville Municipal Code provides that a person may only live on a vessel at the Marina with the written consent of the operator and in compliance with BCDC permits, rules and regulations.

Operation and Management of the Emeryville Marina: Ground Lease

In 2008, the City entered into a ground lease with Emeryville Marina, LLC to manage and operate the Marina ("Lease"). The initial term of the Lease expires on December 31, 2023.⁸ At the conclusion of the initial term, the tenant has the option to renew the Lease for up to another twenty-five years.⁹

Towards the end of 2015, Emeryville Marina, LLC, assigned its rights and obligations under the lease as tenant to Safe Harbor. The relationship between the City and Safe Harbor is governed by the Lease. Overall, the Lease affords the tenant (i.e. Safe Harbor) significant discretion in the management and operation of the Marina.¹⁰ Such discretion includes determining the terms and conditions on which to rent slips to vessel owners (referred to as "Slip Tenants"), and which includes establishing slip rent, late fees, etc.¹¹ The City is not a party to any lease between Safe Harbor and a slip tenant.

II. DISCUSSION

Complaints regarding Displacement

Several of the complaints received express concern that Safe Harbor's recent actions have the effect of displacement on individuals. These actions include increasing slip rents and enforcing the Marina's rules and regulations. Although Safe Harbor is afforded significant discretion in operating and maintaining the Marina, it must do so within the bounds of the law. The Lease between Safe Harbor and the City

⁸ Lease, § 1.03. The Lease is also available from the City Clerk. Please see Footnote 8 for contact information.

⁹ *Id.* § 6.01.

¹⁰ See, e.g., Lease, Art. 33.

¹¹ *Id.*

incorporates the requirements of the BCDC Permit into the Lease and requires Safe Harbor to operate and manage the Marina in a manner that is compliant with state law. Section 33.01 provides that liveaboards at the Marina shall not exceed either 10% of the total number of berths or 38 berths, whichever is less. In addition, to the extent that Safe Harbor is aware of unlawful uses at the Marina, under Section 19.02 of the Lease, Safe Harbor is required to take all reasonable steps to stop such unlawful use.¹² When Safe Harbor took over management of the Marina in late 2015, it discovered that there were uses at the Marina that were inconsistent with state law, including the BCDC Permit, and the Lease. Accordingly, Safe Harbor began taking reasonable steps to bring the uses at the Marina into compliance with the BCDC permit and Lease.

Unfortunately, considering state law, and the terms and conditions of the Lease, the City has no basis in which to interfere in the recent actions that Safe Harbor has undertaken. To the extent there is a dispute between Safe Harbor and a Slip Tenant arising from the rental of the slip, such a dispute is considered a private dispute, and thus, the City would not involve itself.¹³

Furthermore, the City's recently adopted "Residential Landlord and Tenant Relations" ordinance, codified as Chapter 40 of Title 5 of the Emeryville Municipal Code does not apply to the relationship between Safe Harbor and the Slip Tenants. The new ordinance, which becomes effective April 1, 2017, applies to residential housing units or dwelling units only.¹⁴ Although there are boats at the Marina used as a personal residence, a boat falls within the definition of vessel, not residential unit or dwelling unit, and thus, Chapter 40 does not apply to the relationship between Safe Harbor and a Slip Tenant.¹⁵

There are resources to assist individuals facing homelessness. Included as Attachment A is a list of agencies who may be able to assist.

Complaints regarding Environmental Conditions

Some of the complaints allege that there is unlawful dumping of human waste into the bay from the boats at the Marina. The City, Safe Harbor and the members of the Marina all have a vested interest in ensuring the quality of the bay water. Therefore, both the City and Safe Harbor take complaints of unlawful waste disposal in the bay very seriously. The current infrastructure at the Marina is designed to accommodate the small number of liveaboards allowed by the Lease and the BCDC Permit, plus the recreational use at the Marina, not the existing number of people residing on their boats. As the use of the Marina comes into compliance with the Lease terms, the burden on the existing infrastructure will be eased, lessening the unlawful disposal of waste.

¹² See also Emeryville Municipal Code, § 10-1.17 [requiring written consent and permission of Marina operator to have lawful liveaboard status].

¹³ Lease, § 33.03.

¹⁴ Emeryville Municipal Code, § 5-40.02(a).

¹⁵ Emeryville Municipal Code, § 10-1.01(g).

In addition, Safe Harbor is proactive in informing the members at the Marina on how to dispose of waste properly. There is a free pump out station available to all boats. There is also a mobile pump out station that is available for a fee. Safe Harbor informs new Slip Tenants of these options upon execution of a lease.

If you witness unlawful waste disposal at the Marina, I recommend you contact Safe Harbor immediately. They will then contact the U.S. Coast Guard, and other applicable agencies to ensure that the impacts from the disposal are mitigated as soon as possible. These agencies also have the capability to investigate who the perpetrators may be.

Complaints regarding Public Safety Concerns

Some complaints also raised concerns regarding threats to public safety. Prior to Safe Harbor taking over management, there were concerns of drug trafficking, prostitution, and other crimes at the Marina. Safe Harbor became aware of these public safety issues shortly after taking over management, and instituted a safety plan to ensure the safety of the Marina. Implementation of that safety plan takes time, and is a work in progress.

There first step was to communicate the existing rules and regulations to the members and to inform them that Safe Harbor would begin to enforce the existing rules and regulations. Members who failed to comply with those rules and regulations were warned and counseled repeatedly. If a member still could not comply, then Safe Harbor provides a 30 day notice to terminate the slip lease.

In addition to enforcing the rules and regulations, Safe Harbor has undertaken certain improvements to improve safety. There is a night time security firm patrolling the premises. A new key fob system is utilized to ensure that only members have access to the secured areas. Lighting at the Marina is in the process of being upgraded.

Finally, Safe Harbor has hosted events where members and public safety personnel from different agencies may interact. The purpose of such meetings is to ensure that members have the information they need to protect their own safety, and that both Safe Harbor and public safety personnel are aware of any public safety issues at the Marina.

Thus, if a crime has occurred, or you feel that your safety is threatened, you should contact the Emeryville Police Department directly at either at 510-596-3700 for non-emergency matters and 9-1-1 for emergency matters. You also may want to consider notifying Safe Harbor so they may take appropriate action as well.

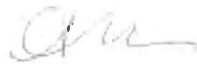
Complaints Regarding Retaliation

Finally, several complainants communicated that they did not raise their complaint with Safe Harbor because they feared retaliation from Safe Harbor. An individual is always free to raise a complaint with the City. However, as discussed above, because of the

law and the terms of the Lease, the resolution of a complaint involving the Marina typically requires the involvement of Safe Harbor. Safe Harbor mentioned that they are undertaking activities designed to foster a community at the Marina, such as the Emeryville Marina Day, scheduled on March 18, 2017, and other social activities. Nonetheless, if you feel that your rights have been violated, you may contact either the State Bar of California Lawyer Referral Service at 866-442-2529 or the Alameda County Bar Referral Service at 510-893-7160. Please note that the City Attorney's Office represents the City of Emeryville, as an entity, not any one individual or resident of the City. The City Attorney's Office cannot provide you with legal advice.

I hope that this letter addresses your concerns. Copies of the Lease, the AG opinion cited herein, and the BCDC Permit are available to review at the Reception Desk at City Hall, 1333 Park Avenue, Emeryville, CA, during normal business hours and I will provide a copy of these documents to Safe Harbors. The documents are too voluminous to include as an attachment to this emailed letter.

Very Truly Yours



Andrea Visveshwara
Assistant City Attorney

cc: City Council
Michael Guina, City Attorney
Carolyn Lehr, City Manager
Jennifer Tejada, Police Chief
Maurice Kaufman, Public Works Director
Catherine Firpo, Housing Coordinator
Safe Harbor

Suggested Community Housing Resources

City of Emeryville, Alameda County

Section 8 Housing Assistance

Vouchers or Certificates or Section 8 Moderate Rehab Program units

Alameda County Housing Authority
(510) 538-8876

Currently not accepting applications for any housing assistance programs. Wait List anticipated to be opened in early to mid 2014

www.haca.net

Emery Glen - Conventional Public Housing

6200 Doyle Street
Alameda County Housing Authority
(510) 538-8876

36 townhouse public housing units.

Tenant/Landlord and Fair Housing

ECHO Housing

1305 Franklin Street, #305, Oakland, CA 94612
<http://www.echofairhousing.org>
(510) 836-4826

East Bay Community Law Center

3130 Shattuck Avenue, Berkeley, CA 94705
www.ebclc.org
(510) 548-4040

Food Donation Programs

For information call Emeryville Community Action Program (ECAP) at (510) 652-8422
Reduce waste while you support the network of food donation programs in Alameda County.

Emergency Housing, Health and Social Services Hotline - Dial 211

Eden I & R (Information and Referral): Dial 211
Available 24 Hours per day seven days a week.
AIDS Housing Referral Number: 1-877-424-3746
www.edenir.org

Homeless Services

Berkeley Food and Housing Project

2140 Dwight Way, Berkeley, CA 94704
www.bfhp.org
(510) 649-4965

Housing Support for People with Disabilities

Housing Consortium of the East Bay

1736 Franklin Street, 6th Floor, Oakland, CA 94612
<http://www.hceb.org>
(510) 832-1315

Center for Independent Living

3075 Adeline Street, Berkeley, CA 94703
<http://www.cilberkeley.org>
(510) 841-4776
TTY: (510) 848-3101

Housing Support for People Living with HIV/AIDS

Baybridge Apartments

1034 36th Street, Emeryville, CA 94608
Owner: Resources for Community Development
Property Manager: The John Stewart Company
(415) 345-4400
6 units reserved for very low income; individuals living with HIV/AIDS

Current housing information can also be found here:

<http://www.emeryville.org/econdev>

From: Ashley Mullins
To: Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; City Clerk; Trish Spencer; Tony Daysog; Michael Roush
Subject: [EXTERNAL] Agenda Item 7C
Date: Tuesday, June 21, 2022 3:16:58 PM

Dear Mayor Ezzy Ashcraft & City Councilmembers:

I am writing to commend you for including Alameda liveboards in the city's rent program. As residents who have made Alameda their home, they deserve the same protections available to other renters.

I am aware of recreational marina owner Steve Meckfessel's objections and believe his concerns could be resolved by a thorough reading of the rent program and the proposed CIP changes on today's council agenda. In reality, including liveboards in the city's rent control ordinance will have minimal fiscal impact on recreational marinas who are already operating their marinas using fair business practices.

I trust that tonight's amendments and future adjustments the rent program will take all stakeholders' needs and rights into consideration, and I am appreciative of your decisions thus far to protect all Alameda residents.

Sincerely,
Ashley Mullins
Governmental Relations Co-Chair,
Alameda Floating Homes Association

From: [nanette lanz](#)
To: [City Clerk](#)
Subject: [EXTERNAL] Stop Capital improvement pass throughs, lower annual increase
Date: Tuesday, June 21, 2022 3:16:14 PM

Sent from my iPhone

Begin forwarded message:

From: nanette lanz <nanettelanz@gmail.com>
Date: June 21, 2022 at 3:13:25 PM PDT
To: tdaysog@alamedaca.gov
Subject: Stop Capital improvement pass throughs, lower annual increase

Sent from my iPhone

Begin forwarded message:

From: nanette lanz <nanettelanz@gmail.com>
Date: June 21, 2022 at 3:11:56 PM PDT
Subject: Stop Capital improvement pass throughs, lower annual increase

Sent from my iPhone

Begin forwarded message:

From: nanette lanz <nanettelanz@gmail.com>
Date: June 20, 2022 at 7:50:43 AM PDT
To: alamedarenterscoalition@gmail.com
Subject: Stop pass throughs, lower annual increase

Please distribute to council members emails, and if time allows, i allow my letter to be read for me on Tues.

Thankyou

From: nanette lanz
<nanettelanz@gmail.com>
Date: June 20, 2022 at 7:43:06 AM PDT
To: mvella@alamedaca.gov
Subject: Stop pass throughs, lower
annual increase

From: nanette lanz
<nanettelanz@gmail.com>
Date: June 20, 2022 at 7:42:02
AM PDT
To:
mezzyashcraft@alamedaca.gov
Subject: Stop pass throughs,
lower annual increase

To the Mayor, Alameda city
council:

Please don't add pass-
throughs onto annual rent
increase. This is a slippery
slope tactic, that has basically
evicted me in the past from my
tent controlled apartment of 20
years. It was a heartbreaking,
community destroying,
experience!

As property manager, I had
always paid my rent on time,
and maintained it well, as if it
were my own. An out of state
investor/ developer used this
tactic to harass residents to the
point of moving out. The
"improvements" were not at all
long lasting they in fact were
detrimental to the appearance,
of the once lovey, exterior and
landscaping.

Also an annual 8% rent
increase is too much an should

not be a fixed %, due to uncalculable, future economic variants.

Thank you for your careful consideration of how these issues can have a devastating effect on affordable housing.

And can add to an already disastrous homelessness crisis.

Sincerely,
Nanette Lanz

Sent from my iPhone

From: Sandra Coong
To: City Attorney; Tony Daysog; Manager Manager; beaudin@alamedaca.gov; Malia Vella; Marilyn Ezzy Ashcraft; John Knox White; Trish Spencer; City Clerk
Subject: [EXTERNAL] Ordinance No. 3317
Date: Tuesday, June 21, 2022 2:49:32 PM

Dear Mayor Ashcraft,

My name is Sandra Coong, I have been working at Marina Village Yacht Harbor since August 2006, I started out as the Office Manager and later promoted as the Marina Manager. I also reside in Alameda with my husband and two daughters for the last 17 years!

I am writing to express my concerns that the City of Alameda is harming the boating and live-aboard community by applying Alameda Ordinance No.3317 to recreational marinas. One of my duties as a marina manager is to protect the boating community, Ordinance No. 3317 is doing just the opposite.

Marina Managers face a lot of challenges with day to day operations. Applying Ordinance No. 3317 to Recreational Marinas will add another layer to our challenges. Some marinas are no longer offering liveaboard status due to the unique issues marina manager have to deal with. My fear is many recreational marinas would potentially stop offering the privilege of liveaboard status because of this unnecessary and additional burden that the ordinance No. 3317 creates for us.

Over the years, we terminated a few problematic boaters's Berth License Agreement/Live-aboard Addendum to protect the entire boating community in our marina. The recent problematic boater threaten to shoot me if I came near him or his vessel!! I would not be able to take swift action and remove this problematic boater in a timely manner, if Ordinance No. 3317 is applied to recreational marinas. Imagine, what it would be like for our boating community if we had to go through the unlawful detainer process to terminate a problematic boater's Berth License Agreement/Live-aboard addendum. This would jeopardize the security and safety of our boaters, our staff and myself, and possibly the eustuary.

Crimes in Alameda on land and water have skyrocket in the last two years!! We not only have to deal with the weekly car break-ins on our parking lots but also on the water now as well. Pirates are coming in from the water. We are in the process of installing a security cameras system on the dock and parking lot to ensure the security and safety of our boaters. This system cost over \$150,000 to install and a monthly monitoring service of \$4,000.00. Our liveaboards will gladly paid an increase of \$40 a month on their liveaboard fee to increase security on the dock and parking lot. Security cameras and monitoring of the docks and parking spaces are what the community now needs rather a cap on their liveaboard fees.

Rental protections are not needed. We have kept our live-aboard fees at a fair and affordable rate for our boaters. In fact, we lowered the live-aboard fee from \$392.00 to \$360.00 last year to help our liveaboard community, while operation cost continues to increase.

The phrase "other maritime residential tenancies" is undefined, was undiscussed and unsupported by the facts. It needs to be deleted from the ordinance or clarified that it only applies to floating homes and floating home marinas.

Thank you for your time.

Best Regards,
Sandra Coong
Marina Manager
Marina Village Yacht Harbor
1030 Marina Village Parkway
Alameda, CA. 94501
Office: 510-521-0905

From: MATTHEW Jakoy
To: City Attorney; Malla Vella; Gerry Beaudin; Manager Manager; John Knox White; Trish Spencer; Tony Daysog; City Clerk; Marilyn Ezzy Ashcraft
Subject: [EXTERNAL] Ordinance No 3317
Date: Tuesday, June 21, 2022 2:18:48 PM

Dear council members,

I'd like to speak on behalf of item number 7C that would be part of the city council meeting this evening. Barnhill Marina has been bought by a family that are developers. As you know Barnhill consists of homes built on concrete foundations that float on the bay that is the only commonality between those homes and the sailboats and power boats which make up the vast majority of marina tenancy in Yacht clubs and Marinas like mine.

I have lived on my sailboat in Marina Village for the past 7 years so I'm a boater with liveaboard privileges at Marina Village Yacht Harbor. The marina has been extremely fair with rent increases over the years, the rules that we follow created by Marina Village pertain to our particular needs enter written in such a way to protect the tenants and their guests, they're very concise, sensible and created by years of understanding of what our particular needs are.

I'm asking you the city council to please let our Marina run as itself as it sees fit, capital improvements are not only welcome but needed in a marine environment as you can well imagine. I've always been grateful the marina takes care of us and happy to contribute when asked.

The last thing I'll address is the eviction conditions that I'm hearing you want to change from our 30-day notification to some other number I'm not sure what it's going to be but anything beyond that would be a disaster for the boaters and guests of Marina Village. There's been a couple of occasions since I have been here where we all have been grateful the 30-day eviction rule that has been the guiding factor to evict a troublemaker. A particular incident affected many of us but especially the women in this marina, if this person had been allowed to stay any longer than 30 days it would have become dangerous for all of us not just the women he was harassing. So I'm asking you please consider the differences between a floating home community like Barnhill and a marina like mine and please let the status quo remain in effect to , this Marina and all marinas inclusive of Yacht clubs have similarities but also differences, they need to be allowed to run their business model in the successful manner they have always.

Thank you.

Sincerely
Matthew Muchnick

From: Rebecca Cyr
To: Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer; John Knox White; City Clerk
Subject: [EXTERNAL] Proposed Changes RE: Rent Add-Ons
Date: Tuesday, June 21, 2022 2:13:14 PM

Dear Mayor Marilyn Ezzy Ashcraft, Vice-Mayor Malia Vella, and Councilmembers Trish Herrera Spencer, Tony Daysog, and John Knox-White,

Please don't add pass-throughs onto my annual rent increase. I would not be able to afford yearly rent increases up to 8% - but more importantly, I live in a large apartment building at 2110 Santa Clara Ave, and most of my neighbors can't even afford a rent increase of any amount. Adding pass-throughs would make a barely-sustainable situation so much worse for so many people in this community.

Thank you,
Rebecca Cyr
2110 Santa Clara Ave #307, Alameda, CA 94501

From: Anne Beavers
To: Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer; John Knox White; City Clerk
Subject: [EXTERNAL] NO on rent increases for pass-throughs
Date: Tuesday, June 21, 2022 1:49:16 PM

I am a longtime resident and active VOTER and RENTER in Alameda.

Support your voters and renters.

NO! NO! On rent increases!

"Please don't add pass-throughs onto my annual rent increase."

"I CAN'T AFFORD yearly rent increases up to 8%."

There is rampant inflation and financial difficulties! Especially for seniors and families

Anne Beavers
anbeave5@yahoo.com

June 21, 2002

Subject: Regarding June 22, 2022 City Council Agenda 7C

Dear Mayor Marilyn Ezzy Ashcraft, Vice-Mayor Malia Vella, Councilmembers Trish Herrera Spencer, Tony Daysog, and John Knox-White,

Reg: Capital improvement plan for rental units in the city of Alameda.

Making it easier to add up to an additional 5% CIP burdens renters much more than it helps the

landlord. What is amazing is that you would take this action when the cost of living has not improved

due to Covid 19. People are still getting sick and missing work, people are paying a lot more for food and

gas, people are still behind on their rent and utilities. Yet you propose this increase like NOTHING is

wrong and is just another day! Wake up folks this is reality!

"THERE IS AN IMBALANCE HERE! TENANTS NEED PROTECTION AND REASONABLE FAIR INCREASES" WHAT DO WE WANT AS TENANTS A PLACE TO LIVE AND REASONABLE

YEARLY RENT INCREASES" WE DON'T WANT TO BE HOMELESS"

This is unsettling and you are talking about raising rent by an additional 5% like nothing is going on, are

you just callous about what is happening around us and don't see the pain people are going through.

You are in the seat because the people of Alameda chose you. Have a heart and help your community.

Have a heart and make reasonable changes. If it was your mother, daughter, sister, brother

Father or your friend, won't you feel good about making a REASONABLE DECISION that would help

The people you love or your community have affordable rent and feel safe and have a home to live in!

My name is Gloria Rios and I am a resident of Alameda since 1993. I rented an apartment in a four plex

in Alameda for 10 years. My apartment rent kept going up every year. My salary increases a year is less than

the rent percentage increases each year. Due to the yearly rent increases I had to move, and now I rent a

room in a house. Is this the future for all of us tenants to rent a room in the coming years because we

can't afford to pay the "HIGH RENT" increases. A lot of us don't make \$100,000 dollars a year.

It seems that the capital improvements will benefit the landlords by increasing their equity, and get a

tax break and the tenant get nothing but the bill. Please vote "NO" to these changes. More study is

needed before you make changes.

Sincerely,

A frightened Alameda resident,

Gloria Rios

From: L. Konami Chisholm
To: Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer; John Knox White
Cc: City Clerk
Subject: [EXTERNAL] Capital improvement plan - Item 7-C
Date: Tuesday, June 21, 2022 11:47:08 AM

Hello Mayor Ashcraft and members of the Alameda City Council,

I am urging you as our community representatives to please do not add pass-throughs onto my annual rent increase such as the proposed capital improvement plan which will severely impact my rent and income. Times have been very tough during these past 2.5 years and the fact I cannot buy a home leads me to renting in Alameda. I have lived and work in Alameda for over 30 years and have myself witnessed the steadily rising rents which disproportionately impact persons of color like myself and my family. I can't afford yearly 8% rent increases as my income has not been increased and it is already difficult managing high rent, utilities and gas which have already been on the rise and impacting me.

Sincerely,
Konami Chisholm

**“Hope is being able to see that there is light despite all of the darkness.” –
Desmond Tutu**

From: [Teresa Conway](#)
To: [Marilyn Ezzy Ashcraft](#)
Cc: [City Clerk](#)
Subject: [EXTERNAL] Against Rent Increases (CIP Proposal)
Date: Tuesday, June 21, 2022 11:36:01 AM
Attachments: [image001.png](#)

Dear Mayor Marilyn,

Please don't add pass-throughs onto my annual rent increase. The idea of putting the burden of cost for a Capital Improvement Plan on the shoulders of the renters is cruel. Our landlords should look to Banks and Finance Companies for financial support not the renters.

Please guide these landlords that need financial assistance to established entities instead of bringing personal hardship to their renters.

Do the right thing and represent the people, the renters and let the landlords seek out money from Financial Establishments who will not suffer like we will.

Thank you for your support.

Be Safe, Stay Well and Love Often

Teresa Conway

415-440-1116



Heffernan Insurance Brokers -- CA Insurance License # 0564249

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From: Sean Munding
To: City Clerk
Subject: [EXTERNAL] Ordinance 3317
Date: Tuesday, June 21, 2022 9:16:51 AM

Please submit for public comment.

Dear Mayor, Vice Mayor, and Councilmembers:

My name is Sean Munding. I am a business owner and homeowner in Alameda. For 10 years off and on, my wife and I were live-aboards at Marina Village Yacht Harbor in Alameda. Our son was born while we lived aboard our boat. We strongly encourage you to confirm that Ordinance 3317 DOES NOT apply to boats with live-aboard privileges in recreational marinas. There are several reasons for this:

1. Unlike Floating Home owners who have nowhere else to move and no easy means of moving their homes, there are plenty of available marina slips in nearby marinas.
2. Marina Village Yacht Harbor is a close community of recreational boaters, live-aboards and the marina team. The rate increases have been fair--both because the marina team cares about the community but also because we could simply move to another marina if the rates get too high.
3. This measure is divisive and creates an adversarial relationship between management and the boaters where there has been a collaborative relationship over the years.
4. A certain number of live-aboards are allowed by BCDC to enhance the safety and security of the marina and the waters. We are the eyes and ears to make sure that the community is safe and clean. If a live-aboard or sneak-aboard is violating rules or laws or creating waste in the Bay, we are often the ones to inform management and we want them to be able to address the situation swiftly. Under this Ordinance that would be a much lengthier and more difficult process, which would jeopardize the safety of boaters or the cleanliness of the waters.
5. There is a reason the U.S. Constitution put waters and vessels within federal maritime law and not under state or local jurisdiction—the running of harbors and marinas is a heavy responsibility and is critical for the protection of the shores and the

environment. Navigable waters are ripe for illegal activities and maritime law allows the harbors to respond swiftly and quickly.

6. I am not a lawyer, but have you checked whether the City of Alameda has the authority to overrule federal maritime law?
7. From what I know, there were no facts, no testimony that supported applying this measure to boats within recreational marinas.

You did not ask us if we wanted this "protection". Our answer is 'no, this will cause more harm than good'. Please refrain from trying to fix a problem that does not exist.

Thank you,

Sean Munding

858 Laurel Street, Alameda



Building Automation - Energy Management
Tridium Niagara Certified Installation

Google Voice: 415-250-9660
Verizon Cell: 510-340-8267

[COVID-19 HVAC Information can be found here](#)

[UV-C HVAC Technology can be found here](#)



Virus-free. www.avg.com

From: Marie Silva
To: City Clerk
Subject: [EXTERNAL] Email in opposition to Capital Improvement Plan
Date: Tuesday, June 21, 2022 6:21:03 AM

Dear Clerk,

Below is a copy of the email I sent to our Mayor and City Council Members. Thank you!

First, thank you for your service during this daunting time. I'm emailing you to ask you to oppose the city's Capital Improvement Plan. This plan would be devastating to the renters of our city. My husband and I live in a rental unit with our six-year-old daughter. To be a renter in the Bay Area is to be in a position of constant worry and precarity. My husband lost his salaried job during the pandemic, and is working in a restaurant. Our rent is at the top end of what we can afford. We worry constantly about being forced to move due to financial pressures and our daughter having to leave the school she loves (Love Elementary) and her community. To protect working families and ensure that Alameda remains diverse, it's essential to shield them from rent-increase loopholes such as this plan allows. From personal experience, my husband and I had to leave an apartment in Oakland years ago after capital improvement costs were passed on to us. Other longtime renters and city residents were also pushed out. If this plan passes, I fear it will accelerate unwanted moves and evictions of working families and elders in Alameda.

Thank you very much for reading my message. I appreciate the efforts that Alameda has made to protect renters, and I hope those will continue, especially during this time of inflation, economic pressure, and uncertainty.

Sincerely,
Marie Silva

From: Efrem Williams
To: Marilyn Ezzy Ashcraft; mvella@alamedaca.gov; tdayso@alamedaca.gov; tspencer@alamedca.gov; John Knox
Subject: [EXTERNAL] Agenda item 7-C for Council Meeting tomorrow Tuesday, June 21, 2022.
Date: Monday, June 20, 2022 11:44:45 PM
Attachments: [We sent you safe versions of your files.msg](#)
[ALAMEDA RENTERS COALITION.pdf](#)

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Greetings Mayor, Vice Mayor and Concilmembers, I hope all of you are doing well. I am not sure if there will be time for me to speak on the zoom call for tomorrow's council meeting referencing Agenda 7-C. So, I thought I would share my thoughts (see attached) in the event I would not be able to speak. Please DO NOT ADD PASS-THROUGHS ONTO ANNUAL RENT INCREASE. I am retired and cannot afford 8% annual rent increases.

Thank you so much for your time.....

Warm Regards,

Efrem R. Williams, Mediator

Manners & Thoughtfulness doesn't cost anything, but they can bring you more benefits than anything you can buy

June 20, 2022

Alameda City Council Meeting, Tuesday, June 21, 7:00 pm
(Item 7-C)

Mayor Marilyn Ezzy Ashcraft- mezzvashcraft@alamedaca.gov

Vice Mayor Malia Vella- mvella@alamedaca.gov

Councilmember Tony Daysog- tdayso@alamedaca.gov

Councilmember Trish Herrera Spencer- tspencer@alamedaca.gov

Councilmember John Knox White- jknoxwhite@alamedaca.gov

clerk@alamedaca.gov

I have been a resident in Alameda since 2008; 3 years at Shoreline Apartments and NO CAPITAL IMPROVEMENTS were ever made interior and exterior.

And 11 Years at current residence of South Shore Apartments which began in May 2011 and NO CAPITAL IMPROVEMENTS were made until last year beginning June 2021.

With that being said it appears most all rental properties beginning on Shore Line and worked its way to West line all appear to have begun capital improvements pretty much at the same time. Why is that?

From information obtained regarding Capital Improvements it is known that cost over \$7,500 per building or \$750.00 per unit, 100% of the landlord's expense plus interest could be added to your rent in addition to your allowable annual rent increase as a "pass-through". I can say this; residents at South Shore Apartments received (4) new blinds and new locks placed on the front door. This is supposed to represent the required \$750.00 or more in cost to meet the INTERIOR Capital Improvement Program.

To give you an example as to why NORMAL Capital Improvements are NOT PERFORMED TO JUSTIFY Capital Improvements:

On April 06, 22 I submitted a list of items that need to be corrected. On April 28, 2022, I met with the maintenance supervisor, and we completed a walk-through and went down the list of items and as of June 21, 22 (today) NOT 1 THING HAS BEEN COMPLETED. Any corrections made within a unit should be kept as records by the Landlords to prove Capital Improvements were made. Not simply because 4 shades and new locks were placed within each unit.

It appears that perhaps only 65-70% (if that) of units are occupied at South Shore. There is a unit above me that's been vacant for well over a year. Why, because No improvements have been performed within the unit and NO ONE WILL RENT IT for the cost they are asking. Only certain vacant units were selected to receive upgrades from flooring to counter tops to Washer / Dryer. Why is this not being done in all Units so that Capital Improvements are justifiable,

because most Landlords try to provide false records and deception that capital improvements were performed.

Lastly, when one is retired, retirees are living on a fixed income therefore there is No Way 100% of the landlord's expense plus interest could be added to rent increase as a "pass-through" over an amortization of 15 – 20 years. In addition, the bay area has Lost many renters due to the option of working from home thereby moving further away from the bay area to save money. So, those who remain in the bay-area are being expected to pay additional rent cost due to the Landlords NOT being able to rent vacant units.

Please DO NOT IMPLEMENT A NEW CAPITAL IMPROVEMENT PLAN as This type of Plan will only discourage individuals and families from becoming residents in the beautiful city of Alameda. In addition, I agree that Property Owners will continue to try and find loopholes that undermines the established Rent Control Program in the City of Alameda by utilizing wording such as, surcharge, assessment or pass-through. Bottom line additional payments is basically Rent.

Please DO NOT ADD PASS-THROUGHS ONTO MY ANNUAL RENT INCREASE, I AM RETIRED AND CANNOT AFFORD 8% ANNUAL RENT INCREASES.

Thank you very much of your time.

Respectfully,

Efrem Williams, Mediator

From: JASON PEAIVICH
To: Malia Vella; Tony Daysog
Cc: City Clerk; John Knox White; Trish Spencer
Subject: [EXTERNAL] Posted by Alameda Renters Coalition: FPPC # 1384224 CIP-7
Date: Monday, June 20, 2022 10:38:31 PM

Hello all, I hope this email finds everyone well!

I am writing to you all in reference to the above subject line that discuss CIP-7 Capital improvement plan. Those words are exactly what it says capital improvement for the OWNERS of their properties that they have purchased knowing what could be possibly wrong with property that those people own. When properties are purchased there are disclosed information for that new owner / owners to be aware of for their INVESTMENT! The owners just like any other typical purchaser they will have the chance / opportunity to say yes or no or make a deal / negotiate pricing with the seller to sell that particular property for less pending on what disclosures are involved.

Myself as an inspector for new high rise buildings or even to single family homes there will be most likely some type of work that will be needed to improve that property by she, he or the investors will need to do for the property that they have purchased.

Looking at it from a renters point of view we do not collect the capital gains that are involved if sold! Renters do not get to write off any of the items for new improvements to the properties during issuing of the yearly taxes or however the individual pays his, hers or investors property taxes.

As a owner / investors it's totally up to them to meet the required state / city of Alameda Building codes and not the renters who receives nothing or gaining anything by being a renter. If the investor chose to purchase that particular property then it's up to them to follow the codes and standards that are to be met, in order to properly have the established home or apartments up to par and be ready / prepared to adjust / fix and repair the items in questions that's why we as renters already pay plenty of monies for the investors to keep up the property or properties to the codes that have already been set in place in this case with the city of Alameda where I reside as many of us do.

The home I live in along with several other tenants the house still has galvanized piping that are not new and water from the taps are ok but the screen restrains lots of rust particles and stones that flow to the tip of faucet. There are many structural issues that should be attended to long ago but the new owners / investors that purchases the home they do nothing to improve the safety of any type of structural issues that are in the same conditions previous to the new purchasers that invest in the property.

Example : the new investor for our property cannot even install a simple storm drain line from the roof that should be placed in a way where rain water flows away from the property, instead they say it won't hurt anything to the property. When water flows directly into the ground and directly into the foundation of the property after years of this you begin to see staircase/ stairwells start to slough away from property and when you explain to them the issue we as renters are completely ignored and investors do not care and nothing is done to correct any type of issue or to improve the property. Again they have been informed in the disclosure portion of the contract that they signed with the seller / Realstate personnel.

The bottom issue here is a completely and strong NO on the Capital improvement plan!!! Those words say it all for the investors (Capital improvement plan) that's a new or the existing investor / owners responsibility to keep the property that they have bought / purchased legally up to the alameda standards and codes for there Capital improvements that they have done on their own and nobody else but themselves.

I may be repeating myself again about the same thing but (Renters do not get any type of Capital Gains or fund returns on or for CAPITAL GAINS that the investors but their monies into repairing or fixing the property that was purchased by them!

I would like to thank you all for taking the time out for reading (my objections to CIP 7) and that it should not even be thought about especially during these times in all of our lives.

I forgot to mention older house and newer houses settle over the course of years past and presence there are several cracking in walls that occurs overtime and again no investors or news purchasers do nothing about these issues because they choose not to but rather collect the thousand of dollars just in my place the new owners collect monthly

close to \$17,000 a month.

Respectfully

Jason Peavich,

And thank you to my source for letting me know about this item that lots have not heard about.

JMP

From: Michael
To: City Clerk
Subject: [EXTERNAL] Regarding Rent increases
Date: Monday, June 20, 2022 9:19:03 PM

To: Clerk Alameda CA Gov.,

The following is a copy of a letter I sent to The Mayor and Vice Mayor and other city council members.

Please don't add pass-throughs onto my annual rent increase.
I can't afford yearly 8% rent increases. I found the 5% increase painful. When 5% increases a year was passed my rent went up over 15% in three consecutive years.
Please vote against the increase.
I really appreciate it.
Thank you very much.

Sincerely,
Michael Barnes
1415 Broadway #241
Alameda, CA 94501

From: Trish Spencer
To: Lara Weisiger
Subject: Fwd: [EXTERNAL] Alameda Resident Against Capital Improvement Plan
Date: Monday, June 20, 2022 8:50:07 PM

----- Forwarded message -----

From: bryan kring <bryan@kringdesign.com>
Date: Jun 20, 2022 1:58 PM
Subject: [EXTERNAL] Alameda Resident Against Capital Improvement Plan
To: Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>, Malia Vella
<MVella@alamedaca.gov>, Tony Daysog <TDaysog@alamedaca.gov>, Trish Spencer
<tspencer@alamedaca.gov>, John Knox White <JknoxWhite@alamedaca.gov>
Cc:

Hello,

I am writing to voice my strong opposition to the Capital Improvement Plan. We are in a rent crisis and now is not the time to be adding to the burden on renters. I do not feel that renters should have to pay for improvements to a property that will increase the value of the property. Why should renters have to pay for additions that will increase the value of the property. If the idea is not for improvements that increase value but is for necessary improvements like repaving a walk way, for example. Shouldn't the costs of maintaining the property already be factored into the existing rent?

Please consider this carefully and vote against the Capital Improvement Plan.

Thank you,
Bryan Kring
1220 Park Avenue, Alameda, CA 94501

From: Marc Eisenman
To: City Clerk
Subject: [EXTERNAL] Annual Rent Increases
Date: Monday, June 20, 2022 7:58:42 PM

To the Mayor and City council:

Please vote NO on the pass throughs for annual rent increases. Rent in Alameda is already sky high and tenants are struggling. You will force more tenants into homelessness if this increase passes.

Thank you.

Marc Eisenman
A renter and business owner in Alameda

Marc Eisenman
Alamedia Group

917 Lincoln Ave
Alameda, CA
94501

310 502 3735
AlamediaGroup.com

From: Trish Spencer
To: Lara Weisiger
Subject: Fwd: [EXTERNAL] Proposed Changes Re: Rent Add-Ons / Capital Improvement Plan - Opposition To CIP
Date: Monday, June 20, 2022 6:14:13 PM

----- Forwarded message -----

From: endoverend@fastmail.fm
Date: Jun 20, 2022 5:31 PM
Subject: [EXTERNAL] Proposed Changes Re: Rent Add-Ons / Capital Improvement Plan - Opposition To CIP
To: Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>, Malia Vella <MVella@alamedaca.gov>, Tony Daysog <TDaysog@alamedaca.gov>, Trish Spencer <tspencer@alamedaca.gov>, John Knox White <JknoxWhite@alamedaca.gov>
Cc:

To: Mayor Ashcraft, Vice Mayor Vella, and City Council Members Daysog, Spencer & White

Re: Proposed Capital Improvement Plan Program - Rent Add-On's, etc. -
OPPOSITION TO CIP Program

* * *

Dear Mayor, Vice Mayor and City Council Members,

We're writing to urge you to oppose the Capital Improvement Program.

As a long-time Alameda Resident, my Wife and I have seen the changes that have happened in Alameda over the last 19 years and we've been very pleased with the overall direction of the City of Alameda.

We truly love living here and find the character of the life here is unique among many cities in the Bay Area; the charm, the small-town feel, the architecture, transportation and recreation opportunities are but a few of the many reasons to live here.

That Alameda character, however, is changing for the worse rapidly.

Housing affordability is under assault from multiple forces (Airbnb, Foreign Investment, Tech Industry Salaries, Annual Rent Increases, etc.) which are driving most of the service Industry employees (Restaurants, Services, Etc.) to leave the region as they can't afford to work and live near here, destroying the character of Alameda in the process.

Additionally, Families are forced to adapt to the ever-increasing rents by removing their children from schools and friends they've come to know in order to move to a locale with more stable costs of living, in many cases despite oppressive commutes and increased burdens on parents and children.

Rent Control in Alameda is a good thing - it slows the destruction of Alameda's character by limiting skyrocketing Housing costs. When Housing is affordable,

Families thrive and Quality of Life improves in all respects.

The Capital Improvement Plan (CIP) is an obvious step toward subverting Rent Control by allowing further costs to be transmitted to Renters already at the point of determining whether to stay in Alameda or leave for good.

* * *

We urge you to consider the character of the City of Alameda in your vote on the Capital Improvement Program, by seeing the CIP for what it is and voting NO.

Respectfully,

Chris & Karen McDowell
Alameda, CA 94501

From: [alison hart](#)
To: [Marilyn Ezzy Ashcraft](#); [Malia Vella](#); [Tony Daysog](#); [Trish Spencer](#); [John Knox White](#)
Cc: [City Clerk](#)
Subject: [EXTERNAL] No pass-throughs
Date: Monday, June 20, 2022 5:59:46 PM

As a former AUSD teacher and a small business owner an 8% yearly rent increase would price me out of Alameda. Along with inflation and the huge housing crisis, now is NOT the time to increase rent for Alamedans. Please act compassionately and think of all the people who will suffer under such increases. I urge you to vote against this measure.

Alison Hart

Writer/Music Educator

From: CARRIE H ADAMS
To: Marilyn Ezzy Ashcraft
Cc: Malia Vella; Tony Daysog; Trish Spencer; John Knox White; City Clerk
Subject: [EXTERNAL] Re: Tuesday at City Council
Date: Monday, June 20, 2022 4:29:22 PM

As an Alameda tenant,

Please don't add pass-throughs onto my annual rent increase. I can't afford yearly 8% rent increases. I currently work in healthcare as we are short-staffed and received no cost of living or merit increases to date. It's challenging even putting food on the table. Everyone in our position is experiencing a financial hardship and over-worked. Please help the renters. We urgently need this support.

Thank you.

From: Edie Herro
To: City Attorney: Tony Daysog; Manager Manager: beaudin@alamedaca.gov; Malia Vella; Marilyn Ezzy Ashcraft; John Knox White; Trish Spencer; City Clerk
Cc: Chuck Herro
Subject: [EXTERNAL] Ordinance #3317
Date: Monday, June 20, 2022 4:10:17 PM

To Whom It may concern,

It has come to our attention that Marinas have been attached to your Ordinance #3317 concerning Rent Control.

While we understand your concern with unconscionable spiraling rents, Marinas have never been a part of that problem.

As a retired Live-Aboard resident of Marina Village Yacht Harbor who lives on a fixed income, I can testify that the Marinas we have had my boat connected to, have been very fair with their rental fees. They have to be because of the transitory nature of boaters. Their ability to set rent costs is self-limiting. They have to be competitive because of the limited number of boaters and the boater's ability to move on. Marina Village has done an excellent job of maintaining our marina for all its boaters while keeping rent increase to a minimum.

Furthermore, if they are required to adhere to eviction restrictions specified in your ordinance, it limits their ability to provide security provide security to their other tenants. Potentially it could cause Marinas to eliminate Liveaboard status entirely. As a permanent liveaboard ourselves, we

would have to move our boat out of Alameda.

Bottomline, if Marinas are required to be included in Ordinance 3317, you will be causing us to lose our home base in Alameda. Essentially you will be destroying our boating community in Alameda.

Regards,

Chuck and Edie Herro

From: Nikki Kamminga
To: Marilyn Ezzy Ashcraft
Cc: Malia Vella; Tony Daysog; Trish Spencer; John Knox White; City Clerk
Subject: [EXTERNAL] No on CIP
Date: Monday, June 20, 2022 3:33:14 PM

Hello Mayor and City Council,

Please do not add pass throughs to my annual rent increase. I can barely afford the rent increases as it is. My rent has gone up yearly since 2005 and it is getting ridiculous. I keep paying more for essentially nothing every year. 8% would be a financial burden. I have lived and worked in Alameda for 23 years and love it here. It is bewildering to me that this is even up for a vote in the current crisis we are all living in.

Thank you,

Nikki

"Imagination is everything. It is the preview of life's coming attractions." -Einstein

From: Jeff Linam
To: Marilyn Ezzy Ashcraft
Cc: City Clerk
Subject: [EXTERNAL] Please don't add pass-throughs onto my annual rent increase
Date: Monday, June 20, 2022 2:56:59 PM

Dear Mayor Marilyn Ezzy Ashcraft,

I'm writing to ask you, please don't add pass-throughs onto my annual rent increase. I can't afford yearly 8% rent increases. Enacting "rent control" and then trying to enact another program that allows an additional large payment from a renter beyond the increase allowed under rent control, but not calling it a "rent increase," is just a loophole that undermines rent control.

Sincerely,
Jeff Linam
Alameda Renter & Voter

From: Michael Roush
To: Brian Linke; Lara Weisiger
Cc: Ashley Mullins; liz@collaborationzone.com; Dominique "Suzy" Savage
Subject: Re: [EXTERNAL] Barnhill Marina - Liveaboards
Date: Monday, June 20, 2022 2:06:18 PM

Lara, Please see Mr. Linke's email below that should be included in Council correspondence under item 7 C. thanks Michael

From: Brian Linke <bmlinke@gmail.com>
Sent: Monday, June 20, 2022 11:41:18 AM
To: Michael Roush
Cc: Ashley Mullins; liz@collaborationzone.com; Dominique "Suzy" Savage
Subject: Re: [EXTERNAL] Barnhill Marina - Liveaboards

Hello Michael,

I have no objection.

Thank you,

Brian

On Mon, Jun 20, 2022 at 11:24 AM Michael Roush <mroush@alamedacityattorney.org> wrote:

Mr. Linke, Unless you have an objection, I will forward your email to the City Clerk to include with City Council correspondence as to item 7 C on tomorrow night's agenda.
Michael

From: Brian Linke <bmlinke@gmail.com>
Sent: Monday, June 20, 2022 11:17:42 AM
To: Michael Roush
Cc: Ashley Mullins; liz@collaborationzone.com; Dominique "Suzy" Savage
Subject: [EXTERNAL] Barnhill Marina - Liveaboards

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Hell Michael,

My wife and I have lived at Barnhill for 22 and 13 years respectively. We have been in contact before when the property changed hands and we appreciate all the work you have done on our behalf.

I read an email recently between you and Liz Williams asking about a certain clause in our "Wharfage Agreement" relating to residential tenancy. I have attached our agreement with the Barnhill owners and I would point you to page three where it states, " **It is understood and agreed this Agreement is a commercial contract and does not create a bailment or a residential landlord-tenant relationship.**" In addition to that clause, we pay two (2) liveaboard fees, one per person, which is cited on the preceding page.

With regard to whether or not liveaboards should be included within the purview of the ordinance, I don't understand why we as renters within the City of Alameda wouldn't be? We live in and pay rent in the city limits at a business, Barnhill Marina, that is located in Alameda? How do we differ from any other renter? The attached agreement is in my wife's name as she is the registered owner of the vessel on which we live.

Thank you very much,

Brian Linke

510.206.3789

From: G Wyche
To: Marilyn Ezzy Ashcraft
Cc: Malia Vella; Tony Daysog; Trish Spencer; John Knox White; City Clerk
Subject: [EXTERNAL] Capital Improvement Plan
Date: Monday, June 20, 2022 2:03:18 PM

Dear Mayor Marilyn Ezzy Ashcraft and others,

Please do not allow the Capital Improvement Plan to go through in the City of Alameda. We are barely making it with the rent control that we have now. Inflation is severely effecting us and it's only going to get worse. Also the downturn in the economy will mean more lay offs and more people leaving Alameda especially if rents go up due to this plan.

Ultimately this Capital Improvement Plan will lower your tax base and much needed revenue for the city will be erased which will lead to layoffs of essential city services and workers.

Please say no to the Capital Improvement Plan for landlords and save the city of Alameda.

Very truly yours,

Gregory Wyche
1801 shore Line Dr, Alameda, CA 94501.

From: Jess B
To: Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; John Knox White; Trish Spencer; City Clerk
Subject: [EXTERNAL] pass-throughs on rent
Date: Monday, June 20, 2022 11:01:49 AM

Dear City Council Members,

My family and I love Alameda, and we want to stay here as long as we can afford to. Because of the many out-of-pocket expenses of raising a special needs child, we can't afford to buy a house here and must therefore rent. Given all of our extra expenses, I am begging you to not add pass-throughs onto my annual rent increase. My family cannot afford yearly 8% rent increases and still give my son the therapy and support he needs.

My family has been a part of this community for eight years; we have volunteered at various community and school events, and formed deep ties. I hope you will act to keep our Alameda truly "for everyone"--as the signs say--including middle-class people with special needs children.

Thank you for considering,
Jessica Berthold

From: Steven Zegas
To: Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer; John Knox White; City Clerk
Cc: alamedarenterscoalition@gmail.com
Subject: [EXTERNAL] About this week's City Council Meeting - Vote NO for the "Rent Control" loophole
Date: Monday, June 20, 2022 9:47:19 AM

PLEASE VOTE NO - this is a horrible idea!

Enacting "rent control" and then trying to enact another program that allows an additional large payment from a renter beyond the increase allowed under rent control, but not calling it a "rent increase," is just a loophole that undermines rent control. Any payment a renter makes to a landlord is the cost that the renter bears to be able to stay in their home. It doesn't matter if the payment is called "rent," "surcharge," "assessment," or "pass-through." The payment basically is rent.

mezzyashcraft@alamedaca.gov, mvella@alamedaca.gov,
tdaysog@alamedaca.gov, tspencer@alamedaca.gov, jknoxwhite@alamedaca.gov,
clerk@alamedaca.gov

From: Maria Acosta
To: Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer; John Knox White
Cc: City Clerk
Subject: [EXTERNAL] Re: Capital Improvement Plan
Date: Monday, June 20, 2022 9:45:54 AM

Dear Mayor Ezzy Ashcraft and City Councilmembers,

Housing in Alameda is precarious as it is; please don't add pass-throughs on annual rent increases. Me and my neighbors cannot afford it, especially now when gas and groceries are so expensive. Let's not marginalize our communities further, the average rent is high enough.

The National Low Income Housing Coalition estimates fair market rent in Alameda for the 94501 zip code as \$2050 for a one-bedroom apartment and \$2530 for a two-bedroom apartment. Any increase will not only push some tenants out of their homes but will make Alameda rents increasingly unaffordable for current and future residents.

Please do not place additional financial burdens on the community.

Sincerely,

Maria Acosta
Alameda tenant
acomaria@gmail.com

From: patricia grey
To: Marilyn Ezzy Ashcraft; Malia Vella; Tony Daysog; Trish Spencer; John Knox White; City Clerk
Subject: [EXTERNAL] Don't Add Pass Throughs
Date: Monday, June 20, 2022 9:37:56 AM

I am a 25 year resident of Alameda. My husband and I are home owners and not landlords. We moved here when our daughter was 5. I was delighted that she could move back to town after college and afford to rent an apartment with a roommate, mainly due to the rent controls that were enacted by the city 5 years ago. Tenants of all ages will be adversely affected if you allow a landlord to pass through improvements to renters. Landlords can capitalize and depreciate these expenses. The value of their properties has increased exponentially. The rental market and the home buying market is unaffordable for most at this time due to Covid and inflation. The cost of living is the highest it has been in more than twenty years.

Please DO NOT approve the pass through.

Sent from Yahoo Mail for iPhone

From: Cheryl Kettell
To: clerk@alamedaca.gov; Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; Tony Daysog; tspencer@alamedca.gov; [housing](#); Alameda Renters Coalition; editor@alamedasun.com
Cc: newstips@fox.com
Subject: [EXTERNAL] Plea against passage of pass-through rent increase in Alameda
Date: Monday, June 20, 2022 9:03:15 AM
Importance: High

To the City Council members, Interested Parties:

Imposing additional rent on Alameda tenants in this time of inflation is cruel and morally reprehensible. **Please reconsider the "rent pass-through" rent increase.** We Alameda tenants are already cutting back anxiously hoping to prepare for the July 1 rent increase you allowed despite the continuing state of emergency. Just to remind you - we tenants are the "have nots" of this city's population.

I worry about food and how I can pay my current rent and other bills. After 31 years as an Alameda resident, I may be forced out of my home by the pass-through rent increase. My current rent takes up 71% of my monthly income; as of July 1, I will be paying 73%+ of it. And, to be clear, that is before a pass-through increase.

As an elder woman with health issues, the constant worry and fear of homelessness has not been conducive to my mental health or my recovery from brain surgery.

PLEASE do not impose the pass-through rent increase on Alameda tenants. We are your neighbors and fellow human beings. We deserve every consideration you want for yourselves and your families. We do not deserve homelessness, no one does.

Sincerely,

Cheryl Kettell

From: Trish Spencer
To: Lara Weisiger
Subject: Fwd: Rent Increases
Date: Monday, June 20, 2022 8:45:00 AM

----- Forwarded message -----

From: Barbara <bgriff7885@gmail.com>
Date: Jun 20, 2022 11:41 AM
Subject: [EXTERNAL] Rent Increases
To: Trish Spencer <tspencer@alamedaca.gov>
Cc:

Dear Councilmember Herrera Spencer,

I hope you are doing well.

Please don't add pass-throughs onto my annual rent increase. I can't afford yearly 8% rent increases.

Thank you for listening.

Have a great day!

Barbara Griffith

From: Melissa Bowman
To: City Clerk
Subject: [EXTERNAL] No rent increase
Date: Monday, June 20, 2022 8:19:39 AM

Dear Clerk,

I am a 56 year-old, disabled renter in Alameda for the past 11 years. Over turning rent control by passing on property owner expenses to tenants is unconscionable and would ultimately leave me homeless. I urge you to vote "no" and give us renters a chance. Not everyone was born with the same opportunities.

Thank you,

Melissa Bowman
1014 Walnut Street. #D
Alameda

Sent from Yahoo Mail for iPad

From: Rosalind Miller
To: City Clerk
Subject: [EXTERNAL] No potential rent increase
Date: Monday, June 20, 2022 8:03:27 AM

I sent this to all council members.

Please don't add pass-throughs onto my annual rent increase."
"I can't afford yearly 8% rent increases."

From: Catherine Pauling
To: Marilyn Ezzy Ashcraft; Malia Vella; Trish Spencer; Tony Daysog; John Knox White; Lara Weisiger
Subject: [EXTERNAL] Regarding June 22, 2022 City Council Agenda 7C
Date: Sunday, June 19, 2022 10:45:25 PM

June 20, 2022

Dear Mayor Marilyn Ezzy Ashcraft, Vice-Mayor Malia Vella, Councilmembers Trish Herrera Spencer, Tony Daysog, and John Knox-White,

At a time when the City of Oakland lowered its allowable annual rent increase to 60% of CPI and San Francisco did a study of the impact of multiple CIP's on its most vulnerable tenants to recommend policy changes to keep their residents housed, ARC asks why is the City of Alameda making it easier for landlords to qualify for additional capital improvement payments from tenants?

We are still in the pandemic and renters have not had enough time to recover.

Renters will soon be facing an increased annual general adjustment (AGA) plus banking add ons for the past two and half years. A CIP requirement on top of that could be catastrophic to many renters. Whatever the different names subscribed to these additional amounts, they add up to a substantial increase completely undermining the intention of the Rent Stabilization Ordinance. Studies have shown that many people are still struggling financially to recover from the impact of pandemic shutdowns, exposure and the dramatic increase in prices for everyday items. In looking at the census bureau's most recent data from the Household Pulse Survey (HPS), the percentage of renters behind on rent statewide is beginning to rise. Based on the most current HPS data, 14.2% of California tenants are not current on their rent. For those behind on rent, over half believe they are at risk of being evicted in the next two months. This data suggests that millions of renters across the state, including many in Alameda, are still struggling financially.

<https://www.census.gov/data/tables/2022/demo/hhp/hhp45.html>

As widely accepted, housing costs should only be 30% of income in order to be sustainable. According to the Census Bureau's American Community Survey completed in 2021, City of Alameda renters have an average hourly wage of \$39.75. This is barely enough for a one bedroom apartment. The rapid escalation of rents beyond salary increases in the years just prior to COVID has placed nearly half of Alameda Renters above that sustainable mark. The ACS survey showed that 20% of current renters paid over 50% of their income on rent, another 8% paid 40-50% and 15% paid 30-40%.

<https://www.towncharts.com/California/Housing/Alameda-city-CA-Housing-data.html>

The level of rent burdened residents is further supported by a recent report released by the National Low Income Housing Coalition which estimates that in order to afford a market rate 2 bedroom rental unit in Alameda, the hourly wage required is \$48.65 in the 94501 zip code and \$60.58 in the 94502 zip code. Out of Reach (2021) <https://reports.nlihc.org/oor/zip?code=94501> and <https://reports.nlihc.org/oor/zip?code=94502>

In places where tenant protections have ended in California, the rate of unlawful detainer cases is increasing, which means many evicted tenants will end up in less stable living arrangements or may end up becoming homeless. We will likely see this happening at an

increased rate, once the limited statewide eviction protections end June 30th.

Besides our concern for the timing of the CIP revisions, we these specific recommendations regarding staff's draft proposals made in Exhibit 3.

1) A reasonable cumulative cap. We agree that a cumulative cap is necessary. A cap on all monetary payments renters are required to make in order to stay in their homes, which includes annual rent increases, banked rent, and pass-throughs, is consistent with the intention of the most recent rent ordinance, Ordinance 3250. We request the cumulative cap be lowered to the original 5%, as proposed by the Alameda City Attorney's Office during our April 28th meeting with city staff. We assert that 8% will be unsustainable for many renters, especially given that CIP passthroughs result in increases that would continue for many consecutive years.

We are also concerned about the potential impact of multiple passthroughs being applied at once. A recent study conducted by San Francisco's Budget and Legislative Analyst's Office on San Francisco's CIP program found that CIP passthroughs often resulted in rent increases well above the annual base increase allowed for all tenants subject to the City's Rent Stabilization ordinance. In cases where tenants received multiple CIP passthroughs increases, annual rent was raised by as much as 13.3%. Policy Analysis Report: Rental Passthrough Petitions https://sfbos.org/sites/default/files/BLA.Rent_Passthrough_Petitions.012720.pdf

Rent increases of this magnitude would add to renter financial instability and could very well lead to displacement of tenants from their homes. Based on the findings of the LAO study, the following recommendations were made to the the San Francisco Board of Supervisors:

1. Put a cap on CIP pass-throughs
2. Expand the eligibility for hardship applications
3. Limit banked rent increases

2) We strongly support the hardship application process for low income renters as described in the current draft recommendations.

3) A "means test" for landlords. No distinction is made between large profitable corporate landlords and small landlords. The concept that landlords should be required to prove that they need additional rent beyond the AGA in order to remain financially stable before a Hearing Officer, is already built into Ordinance 3250. The proposed CIP plan has no such guidelines, which would allow the wealthiest corporations to apply for a CIP, present no financial information, and still be approved.

4) Tenants pay less than 100% of CIP upgrades. A capital improvement is an investment in the property, so why should the tenant pay all the cost of the investment, without getting any benefit of the investment, such as an increase in equity? Why should the poorest residents pay 100% of the cost of increasing the value of buildings they only temporarily reside in? The City of Oakland allows only 70% of the cost of capital improvement to be

passed through to tenants.

5) Raise the per building and per unit threshold amounts. We assert that the threshold of \$7500 per building and \$750 per unit is too low to "materially add to the value of the property," especially considering that most rental properties in today's market in Alameda are worth more than a million dollars. These threshold amounts are so low that they could be used by landlords for minor improvements that should be covered by a landlord's expenses under the AGA. We are also concerned that this low threshold may have a chilling effect on renters requesting necessary repairs to their units (e.g. not reporting a plumbing leak or going without heat).

6) Clearly define and limit items included under capital improvements.

Some of the examples listed in subsection B of Section 6-58.77 of the current rent ordinance are not capital expenditures according to federal law. Painting a building is not adding something new to the property, but is restoring the building to its original or normal condition, unless it was never previously painted. The same holds true for repairing stucco surfaces, replacing stairs or railings. To quote the National Association of Realtors in www.houselogic.com, "Repairs, like painting a house or fixing sagging gutters, don't count. The IRS describes repairs as things that are done to maintain a home's good condition without adding value or prolonging its life." The proposed low threshold will allow these repairs to be considered as capital improvements and therefore added on to the annual Maximum Allowed Rent.

We share the Council's concern for safe habitable buildings and stable housed communities. We also recognize that some small landlords may require assistance to maintain both their buildings and receive a fair return. We do not accept that it can only be done by a minimally defined process that allows all landlords and investors to maximize profits through substantially increasing the total rent paid by tenants. Both the current CIP ordinance as well as the staff's draft ordinance need greater balance for tenants and small landlords.

Sincerely,

Catherine Pauling, Janet Santos, Toni Grimm, Laura Woodard
Steering Committee, Alameda Renters Coalition

From: Jose Cerda-Zein
To: Karen Miller
Cc: Marilyn Ezzy Ashcraft; Malia Vella; Trish Spencer; Tony Daysog; John Knox White; Lara Weisiger
Subject: [EXTERNAL] Re: Item 7C on the 6/21/22 Agenda
Date: Friday, June 17, 2022 9:10:22 PM
Attachments: image001.png
image002.png

Thank you Karen. I will work on it.

Committed to your success.

Jose Cerda-Zein
Broker · Sales Team · DRE# 01403669
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Cerda-Zein Real Estate
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Management Team Office: 2514 Santa Clara Avenue, Alameda CA 94501

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On Fri, Jun 17, 2022 at 3:33 PM, Karen Miller <karenmillercrs@gmail.com> wrote:

Dear Mayor and Councilmembers,

I am writing in support of the revised CIP for the Rent Stabilization Program. The previous one was not utilized as the thresholds could not be met even with major work such as a foundation or a roof replacement. The cap on the CPI has severely limited the housing providers to keep up with the costs of even the maintenance on their property let alone do major repairs. The current plan is a realistic way in which major work can proceed to maintain the rental housing stock which benefits the tenants as well as the property owners. Without such a plan the rental housing stock will fall into disrepair. I urge you to please approve this Capital Improvement Program. Thank you.

Regards,

Karen Miller CRS / Realtor 

DRE 01378335



WINDERMERE BAY AREA PROPERTIES ALAMEDA

1700 Park St Suite 220

Alameda CA 94501

CELL/TEXT 510 388-2501

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From: Karen Miller
To: Marilyn Ezzy Ashcraft; Malia Vella; Trish Spencer; Tony Daysog; John Knox White
Cc: Lara Weisiger
Subject: [EXTERNAL] Item 7C on the 6/21/22 Agenda
Date: Friday, June 17, 2022 3:33:11 PM
Attachments: image001.png
image002.png

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