



CITY OF SAINT PAUL

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September 4, 2025

Abbie Hanson, James Poradek & Emily Curran
Housing Justice Center
275 Fourth Street East, Ste. 590
Saint Paul, MN 55101

VIA EMAIL: ahanson@hjcmn.org, jporadek@hjcmn.org & ecurran@hjcmn.org

RE: Rent Stabilization Determination Appeals for 934 Ashland Avenue – Units 1 & 2;
938 Ashland Avenue – Unit 6; and 942 Ashland Avenue – Units 8, 9, 10, 11 & 12

Dear Mr. Poradek, Ms. Hanson and Ms. Curran;

Your clients' appeals of the Department of Safety & Inspections (DSI) staff determination on requested exception to rent cap of 3% are all addressed in this letter: 934 Ashland Avenue – Units 1 & 5; 938 Ashland Avenue – Unit 6; and 942 Ashland Avenue – Units 8, 9, 10, 11 & 12. Application for the exception was made by Scott Day, who has a power of attorney to act on behalf of the owner, Judith Day, his mother. The reasons provided by Mr. Day for the exception were 1) an increase in real property taxes; 2) an unavoidable increase in operating expenses; 3) a capital improvement project; and 4) an increase in the number of tenants occupying a rental unit. DSI staff reviewed the request for this exception and determined it qualified under Section 193A of the Saint Paul Legislative Code (SPLC). They determined allowable increases for all units at 28.5% for 938 and 942 Ashland Avenue, and 52.2% for both units in 934 Ashland Avenue.

Although leases were not requested or presented in the appeal process, rent increases can be roughly estimated based on HJC submissions. The 28.5% increase would take rents for the affected units from approximately \$900-\$1,200 to approximately \$1,150 - \$1,550. If the current rent for the units with an approved increase of 52.2% is roughly the same as the others, the increases would put the rent in the range of \$1,390 to \$1,860.

Housing Justice Center (HJC) requests that the City Council determine no rent increase is justifiable. They contend the buildings do not meet the implied warranty of habitability in accordance with Minn. Stats. § 504B.161. Therefore, the rent increase application should not be approved under SPLC 193.06(c). The appeal did not contest staff review of the 4 items listed above beyond a connection to this argument.

HJC indicated that although they do not represent all tenants in the building, the result of the Council's decision on these appeals should apply to all the units in these buildings. The Council can only consider the appeal of the HJC's client tenants and not those of all residents in the building. No documentation was provided to indicate that either HJC or any of the appealing tenants are empowered to represent or act on behalf of other tenants currently in the building. In fact, HJC's certificates of representation list only the tenants named in the appeals. It should also be noted that in

the supporting documentation for the appeal that Amber Buel, 942 Ashland Avenue Unit #10 is relocating. HJC has indicated that the future tenant would be covered by the appeal of the current tenant. Again, there is no information to support a future tenant being party to the appeal of a current tenant. However, the Council's decision on the matter would apply for a period of 1 year, at which time the owner could reapply for an exception. Finally, Ehren Stemme's appeal for 938 Ashland Avenue, Unit 6 has been withdrawn. As such, I recommend the Council dismiss this appeal.

Sec. 193A.06. Reasonable return on investment.

- (a) The city shall establish a process by which landlords can request exceptions to the limitation on rent increases based on the right to a reasonable return on investment. Rationale for deviations from the limitation on rent increases must take into account the following factors:
 - (1) **Increases or decreases in property taxes;**
 - (2) **Unavoidable increases or any decreases in maintenance and operating expenses, including fluctuations in the Consumer Price Index (CPI);**
 - a. *Utilities.* The rental agreement shall establish whether the landlord or tenant is responsible for paying each utility.
 - 1. *Single metered multiunit residential buildings.* For single metered multiunit residential buildings, a landlord seeking to impose utility payments as a pass through expense under this chapter must follow all conditions established in Minn. Stats. § 504B.215, subdivision 2a.
 - A. If the landlord previously paid the tenant's utilities and the landlord changes the rental agreement to require the tenant to pay utilities as a pass through expense, the landlord must decrease the rent to account for the reduction of the utility operating expense.
 - 2. *Sub metered residential buildings.* For sub metered residential buildings, the lease agreement may require the tenant to contract with the utility service provider directly. If the tenant pays the utility provider directly, the payment to the utility provider shall not be considered rent.
 - A. A landlord in a sub metered residential building who pays a utility provider directly may impose utility payments as a pass through expense to tenants when the utility costs are directly attributable to the tenant.
 - B. If the landlord previously paid the tenant's utilities and the landlord changes the rental agreement to require the tenant to pay utilities directly to a provider, the landlord must decrease the rent to account for the reduction of the utility operating expense.
 - (3) **The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) including, but not limited to, capital improvements necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement;**
 - (4) **Increases or decreases in the number of tenants occupying the rental unit;**
 - (5) Increases or decreases in living space, furniture, furnishings, equipment;
 - (6) Increases or decreases in other housing services provided, or occupancy rules;
 - (7) Substantial deterioration of the rental unit other than as a result of normal wear and tear;
 - (8) Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health, and safety codes, or the rental agreement; and
 - (9) The pattern of recent rent increases or decreases;
 - a. For purposes of determining recent patterns of increases or decreases in rent in other circumstances, the city shall utilize the Consumer Price Index as the basis for determining a pattern of rent increase.
 - (b) It is the intent of this chapter that exception to limitation on rent increases be made only when the landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment.
 - (c) **The city will not grant an exception to the limitation on rent increases for any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability in accordance with Minn. Stats. § 504B.161.**
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Buildings' Conditions

DSI staff concluded in their review of the application for an exception to the rent cap that 934, 938 and 940 Ashland Avenue do not have code violations of record which would justify denying the application. They reported the following:

- 934 Ashland Avenue: Fire Certificate of Occupancy (C of O) **B Rating**. Last inspection June 15, 2023;
- 938 Ashland Avenue: Fire C of O **C Rating**. Last inspection November 2021; and
- 942 Ashland Avenue: Fire Certificate of Occupancy **A Rating**. Last inspection October 22, 2021.

Staff also reported there were no calls to DSI with complaints on these properties for investigation, and to staff's knowledge there have been no private actions in district court claiming any of the units are in violation of the warranty of habitability. Notably, documentation provided in the appeals process did show evidence that there may be code violations in the units. In the July 17, 2025, Legislative Hearing the appellants were asked if the same information provided in the appeals process was also provided to DSI for investigation. Appellants confirmed they had not shared information evidencing potential code violations with DSI. When asked if they would like these concerns forwarded to DSI, appellants indicated they would. Similarly, Mr. Day stated he had not been made aware of many building concerns until the notice of the DSI staff determination to allow an increase in rent was sent to the tenants. In follow-up documents, Mr. Day mentioned having had a locksmith at the property recently to do a repair on another unit. Mr. Day mentioned that he was not made aware of the lock issue with 934 Ashland, Unit 1 and indicated that if he had been made aware, he would have addressed both concerns at the same time.

In the July 17, 2025, Legislative Hearing, HJC presented an expert witness, John Trostle who spoke to building conditions to establish the Minnesota implied warranty of habitability. Mr. Trostle indicated that he was *"assessing the conditions of various building components in the units, regardless of whether they rise to the level of specific code violations. My focus is on whether the conditions support safe, livable and habitable housing."* Some of the property conditions evidenced in the appeal were significant in nature and clearly warranted further examination by DSI inspectors sooner than later. Examples of such items include the water infiltration in the back staircase area of 934 Ashland Avenue and stability of a deck and a balcony area. Other items were worthy of note but did not necessarily constitute a code violation. When asked about whether he concluded the units were uninhabitable, he indicated *"if habitability issues aren't addressed, I would be very concerned about my safety if I lived there and the items remain unaddressed, they would affect habitability. ...I find it difficult to say the tenants must immediately move out."* Mr. Trostle's testimony failed to show that the units were in violation of the warranty of habitability.

Notably, Mr. Trostle is not credentialed as a housing inspector, mold, asbestos or lead abatement professional, structural engineer, certified fire inspector or certified building official. Because Mr. Trostle's report lacked specific findings of code violations and he lacks credentials to make those judgements, the city is left to rely on its inspections and ratings by its credentialed inspectors.

Based on the evidence presented in these appeals, DSI has proactively opened files for full Fire Certificate of Occupancy inspections. Full building inspections addressing the Minnesota Fire Code, Minnesota Building Code, Saint Paul Fire Certificate of Occupancy and Property Maintenance Codes are scheduled for September 4, 2025. If problems are identified within the chapters of the building code, corrections will be required under permit and managed by the City's Building Official. Code violations identified in the inspection report include information on whether a permit is required or

special expertise is required to further evaluate conditions. The appeal records will be updated with inspection results, and recommendations to the Council modified if deemed appropriate.

The Fire Certificate of Occupancy inspection process, including investigation of complaints is the best measure of habitability using established standards in approved codes and is reasonably used by the city as a measure of compliance with the implied warranty of habitability cited in SPLC 193A.06(c).

Recommendation to City Council

The matter under appeal is the DSI staff determination which allows for a 52.2% increase in 2 of the appealed units and 28.5%, for the other 6 units. The City Council's role is to decide if staff made the correct determination in permitting the rent increases. I find that staff correctly permitted the aforementioned rent increases using the information reasonably available to them. No effort was made by HJC or any of the building's tenants to have the city investigate concerns, and issue orders if appropriate, nor was evidence presented showing that any tenant brought a private action alleging habitability concerns in district court. The implied warrant of habitability is best determined by a comprehensive Fire Certificate of Occupancy inspection which objectively and clearly distinguishes items which constitute code violations, rather than points of interest. Code violations are the appropriate measure to determine habitability, according to widely used and recognized standards of safety. My recommendations for each of the appeals is outlined in the table below. A full inspection is scheduled for Thursday September 4, 2035, and it is expected this will provide useful additional information.

File ID	Address	HJC Appeal on Behalf of:	Appr'd Increase	LHO Recommendation
RLH RSA 25-8	934 Ashland Ave, #1	Jill Ackerman	52.2%	Deny.
RLH RSA 25-10	934 Ashland Ave, #2	Vincent Cornell	52.2%	Deny.
RLH RSA 25-12	938 Ashland Ave, #6	Ehren Stemme	28.5%	<i>Appeal withdrawn.</i> This is the only unit in 938 Ashland; therefore, all testimony and submitted materials related to this units should not be included in the Council analysis. Deny & dismiss.
RLH RSA 25-13	942 Ashland Ave, #8	Kayla Simonson	28.5%	Deny.
RLH RSA 25-14	942 Ashland Ave, #9	Jessica Skaare	28.5%	Deny.
RLH RSA 25-16	942 Ashland Ave, #10	Autumn Buel	28.5%	Deny. <i>Note tenant relocating and appeal applies only to appellant, not future lessees of the unit.</i>
RLH RSA 25-15	942 Ashland Ave, #11	Samuel Perkins & Chloe Cable	28.5%	Deny.
RLH RSA 25-17	942 Ashland Ave, #12	Lillian Johnson & Eleanor Rowen	28.5%	Deny.

As indicated previously, this matter goes before the City Council at Public Hearing on **Wednesday, September 9, 2025, at 3:30 pm. in room 300 City Hall.** If you are contesting these recommendations you may: 1) appear in person; 2) send written testimony to be added to the record to rentappeals@ci.stpaul.mn.us; or 3) by voicemail which would be transcribed and added to the record at 651-266-6805.

Sincerely,

/s/

Marcia Moermond

Legislative Hearing Officer

cc: Saint Paul City Council

Rent Stabilization Staff

Mr. Scott Day VIA EMAIL: amsterdam5839@gmail.com

William C. Griffith VIA EMAIL: wgriffith@larkinhoffman.com