

**Appeal of the Department Determination for
934, 938, & 942 Ashland Avenue**

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MEMORANDUM SUPPORTING THE RENT STABILIZATION APPEAL OF RESIDENTS OF ASHLAND APARTMENTS

Jill Ackerman, Vincent Cornell, Ehren Stemme, Kayla Simonson, Jessica Skaare, Autumn Buel, Samuel Perkins, Chloe Cable, Lillian Johnson, and Eleanor Rowen (collectively “Residents”) appeal the April 28, 2025 Department of Safety & Inspections (“Department”) determination granting their landlord an exception to the 3% rent cap.

Residents live in a group of three apartment buildings located at 934, 938, and 942 Ashland Avenue, Saint Paul, MN 55104 (collectively “Ashland” or “Ashland Apartments”).¹ The buildings are owned by Judith Day (“Landlord”), who serves as the landlord, and is also the party that applied for an exception to the rent cap.² The Department granted the Landlord approval for a property-wide 28.52% rent increase, along with an additional increase of 23.64% for Units 6 and 7.

The Landlord of Ashland Apartments is ineligible for the approved rent increase because the Landlord has allowed the properties’ rental units to fall into a dangerous state of disrepair that violates the implied warranty of habitability codified in Minn. Stat. § 504B.161. Under Saint Paul’s Rent Stabilization Ordinance, not only **must** the Landlord’s failure to substantially comply with local health and housing law be considered by the Department in its evaluation of the rent-increase application, but critically, the Landlord’s violations of section 504B.161 **prohibit** the City of Saint Paul from granting the owner’s rent-increase application. *See* St. Paul, Minn., Legislative Code (“SPLC”) § 193A.06(a), (c). Thus, the Department’s grant of a 28.52% rent increase for all units, and its grant of an additional increase of 23.64% for Units 6 and 7, must be reversed. The Residents bring this appeal on behalf of all units in Ashland Apartments.

BACKGROUND

The Ashland Apartments are a group of three buildings that house 12 rental units. Buildings 934 and 942 each have five 2-bedroom units. Building 938 has two 3-bedroom units. All three buildings were constructed in 1904.³ All three buildings are owned by Landlord.

On April 11, 2025, the Landlord applied for an exception to the rent cap, seeking an increase of greater than 8%. In her application, the Landlord identified “an increase in real property

¹ Each of these three buildings has a dual address (934/936 Ashland Ave.; 938/940 Ashland Ave.; 942/944 Ashland Ave.). As such, the mailing and service address of the Residents may differ from the address identified in the Department determination letter. For purposes of this appeal, we are using the addresses as identified by the Department.

² The Department has also been communicating with Scott Day, Ms. Day’s son. Mr. Day currently serves as the main point of contact for Residents.

³ *See*

<https://beacon.schneidercorp.com/application.aspx?AppID=959&LayerID=18852&PageTypeID=4&PageID=8471&KeyValue=022823240077> (934 Ashland);

<https://beacon.schneidercorp.com/application.aspx?AppID=959&LayerID=18852&PageTypeID=4&PageID=8471&KeyValue=022823240078> (938 Ashland);

<https://beacon.schneidercorp.com/application.aspx?AppID=959&LayerID=18852&PageTypeID=4&PageID=8471&KeyValue=022823240079> (942 Ashland).

taxes,” “an unavoidable increase in operating expenses,” and “a capital improvement project” as the justification for a rent increase.⁴

On April 23, 2025, Residents received notice that their Landlord had applied for an exception to the rent cap. Five days later, on April 28, 2025, the Department approved, through a single determination, an apartment-wide rent increase of 28.52% and an additional increase of 23.64% for Units 6 and 7. The additional increase for Units 6 and 7 was based on the rewiring of 938 Ashland’s electrical system, which was completed in early 2024.

The Residents were shocked when they received the Department’s determination letter. The Residents’ units, along with the buildings’ common areas and exterior spaces, have significant habitability problems, including, but not limited to: water intrusion, mold, broken windows, wobbly decks, floors with broken tiles, non-weather tight door gaps, bulging walls and ceilings, and rotted window and door frames. The grant of a 28.52% rent increase, if fully implemented by the Landlord, would raise Residents’ rents by an additional \$249 to \$342 more per month. For residents of Units 6 and 7, who are subject to the base 28.52% rent increase and an additional 23.64% rent increase, their additional monthly rent, if fully implemented by the Landlord, would be \$834 more per month. Absorbing these increases is unrealistic for many, meaning that some tenants may be forced to vacate their apartments and begin a new search for an affordable home. Thus, on June 12, 2025, Residents timely appealed the Department’s determination.

ARGUMENT

I. The Landlord is Prohibited from Obtaining an Exception to the Rent Cap Because She has Failed to Bring Rental Units and Common Areas into Compliance with Minn. Stat. § 504B.161

As a baseline matter, St. Paul’s Rent Stabilization Ordinance (“Ordinance”) limits rent increases to 3% annually. SPLC § 193A.04. Landlords can request an exception to the rent cap based on their right to a reasonable return on investment (“RROI”). SPLC § 193A.06(a). However, the Ordinance is unequivocal that before any application for a rent increase can be approved, a landlord **must** comply with the implied warranty of habitability: ***“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 Minnesota Statutes § 504B.161.”***⁵ SPLC § 193A.06(c).

In other words, before a landlord can obtain any exception to the 3% rent increase cap, they must first establish that the relevant rental units comply with section 504B.161. Section 504B.161 provides, in part, that a residential landlord promises:

⁴ In the application, the Landlord also identified “An increase in tenants occupying the rental unit” as a justification for a rent increase. None of the units occupied by Residents have had an increase in tenants since the start of the Residents’ respective tenancies. Residents contest this factor to the extent that it was used as a basis for the Department’s approved 28.52% increase.

⁵ Unless otherwise designated, all bolded and italicized text indicates emphasis added.

(1) that the [rental] premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises and all common areas in reasonable repair during the term of the lease or license . . . ; [and]

(4) to maintain the premises and all common areas in compliance with the applicable health and safety laws of the United States, of the state, and of the local units of government . . . where the premises are located[.]

Minn. Stat. § 504B.161, subd. 1(a). *See also* SPLC § 49.02 (“It is the obligation of the lessor to covenant to maintain leased residential premises in compliance with all applicable health and safety laws of the state and city during the term of the lease[.]”). The covenants outlined in section 504B.161 are implied in all residential leases and cannot be waived. Minn. Stat. § 504B.161, subd. 1(b).

Here, the Landlord has failed to meet the habitability standards required by section 504B.161. As described below, the Landlord’s noncompliance with section 504B.161 includes violations of local health and safety code as it relates to property maintenance, failure to keep Ashland in reasonable repair, and failure to keep the property fit for the use intended by the parties. Minn. Stat. § 504B.161, subd. 1(a)(1), (2), (4). These violations are present in exterior and common areas and have, in one way or another, impacted every unit at Ashland Apartments. Because the Landlord has failed to bring Ashland’s common areas, exteriors, and rental units into compliance with section 504B.161, the City **cannot** grant the Landlord an exception to the 3% rent cap and the Landlord’s application must be denied in its entirety. SPLC § 193A.06(c).

On behalf of Ashland Residents, Housing Justice Center retained John Trostle, a former Housing and Urban Development Certified Housing Inspector, with over 30 years of experience as a home inspector, to investigate common areas and selected apartments. He confirmed evidence of widespread habitability problems, including many of the concerns detailed below. **A report detailing Mr. Trostle’s findings is attached as Exhibit 1.**

A summary of the habitability issues present at Ashland, including highlights from Mr. Trostle’s report, follows:

Building Exteriors: Many exterior windows and doors have rot and/or visible gaps, that have led to water entry. As a result, it is likely there are mold issues in the walls and ceilings of Ashland residential units, and Mr. Trostle saw mold present in common areas and units throughout the complex. Almost all exterior windows have peeling paint and, because of the age of the buildings, there is a presumption that the peeling paint is lead-based, which poses a safety hazard for Residents and their guests.



Common areas: The shared laundry room is in the basement of the 942 building. This room is used and accessible by all Residents. The laundry room has crumbling walls. There is pervasive black mold that is extremely dangerous to tenants' health due to spores present in the air. Portions of the walls have loose stone and the foundation is settling, causing problems in tenant units like cracks in their walls and ceilings. There are large holes in both the ceiling and the walls. The floor drain is clogged and is missing a clean-out plug, thus allowing for hazardous sewer gas and smells to enter the laundry room. The window glass is broken. Of the three washing machines available to Residents, one has not worked in months.



Unit 1: Ms. Ackerman's front door does not properly lock. Her doorknob lock is nonfunctioning, and her deadlock is loose. Windows in both her living room and kitchen sag from the top. If Ms. Ackerman does not prop these windows up, the top of the windows fall down. Because Ms. Ackerman is on the first floor, there is a possibility that someone could access her apartment by taking advantage of the malfunctioning windows. The issues with both her door and windows pose significant safety concerns. Moreover, the problems with her windows have resulted in fly infestations in her kitchen. There is a mouse hole in Ms. Ackerman's bathroom and she has had a water leak above her shower.

Unit 5: Mr. Cornell's unit is in the basement. It has had serious water damage due to flooding. The back entry to his apartment, which is accessed via a stairwell, floods extensively when there is significant rainfall and has resulted in water entering his apartment. Mr. Cornell's front entry, which is also accessed via a basement room containing electrical components, floods when there is significant rain. This flooding has caused Mr. Cornell to lose over \$500 worth of personal property. But the flooding has also caused damage to the building itself. There is a large hole behind the oven that Mr. Cornell believes was caused by water damage. Moreover, Mr. Cornell has serious concerns about mold in his unit. Because of these concerns, Mr. Cornell has his two children—ages 9 and 7—sleep in the living area as opposed to their bedroom. When Mr. Cornell told Landlord about the flooding, the mold, and the property damage, the Landlord took no action to remediate any of those problems. There are gaps between the floors in Mr. Cornell's apartment and the walls, along with holes in the floor, many of which Mr. Cornell has had to cover with duct tape. These holes and gaps have allowed mice to enter his apartment. The basement room leading to Mr. Cornell's front entry has a floor drain that is clogged and missing a clean-out plug, allowing for hazardous sewer gas and smells to enter the room, a clear safety concern.

Unit 6: Mr. Stemme's back door does not lock properly, posing a safety hazard for both him and his two children, ages 11 and 8. Mr. Stemme's refrigerator is thirty years old and does not maintain a consistent temperature. At times his milk curdles, at times it is frozen. His freezer is held together with tape. The caulking behind his kitchen sink has deteriorated. The interior window in his bathroom has rotted wood, and the wall shows signs of water damage. The floor tiles in Mr. Stemme's kitchen are broken and loose. Because the sharp edges of the broken tiles pose a safety risk, especially to his children, he has taped down select tiles which have broken into small pieces. Mr. Stemme cannot use his bedroom window because it falls backwards if he attempts to open it. The exterior window pane in the living room window is cracked. Mr. Stemme's bedroom ceiling has water damage. The stairwell in the common area behind Mr. Stemme's unit has major cracks in the ceiling and peeling paint and/or ceiling texture. The stairway leading to a small deck behind Mr. Stemme's back entry has a broken step, loose handrail, and the deck itself is separating from the adjoining unit entry. The deck wobbles and poses a safety concern.

Unit 8: In Ms. Simonson's unit, there are significant gaps between the floor and walls, along with multiple large holes in the floors near plumbing or heating equipment. The floor has sunk so drastically in the area outside her bathroom that a half-foot "step" has been created. The walls of Ms. Simonson's bathroom bulge and she has concerns that there is mold due to water infiltration. Ceilings in multiple rooms also appear warped or bulging. Ms. Simonson's kitchen counter is held up with a single support that she has had to connect to the countertop using duct tape. The flooring tiles in her kitchen are broken. Two of her windows have broken panes. Similar to Unit 1, some of the windows in Ms. Simonson's unit sag from the top. Also similar to Unit 1, Ms. Simonson lives on the first floor, thus someone could access her home by taking advantage of the malfunctioning windows. The

fan in Ms. Simonson's living room, which is not properly connected, shakes when it is turned on, creating a safety concern.

Unit 9: The deck leading to Ms. Skaare's home is unstable. It wobbles and is separating from the adjoining unit entry. The fan in Ms. Skaare's living room, which is not properly connected, shakes when it is turned on. Like other residents, Ms. Skaare must use a wooden support to prevent her bedroom window from falling down, posing a safety concern. Anytime Ms. Skaare uses her tub, rust particles from her tub's drainage accumulate in the water. The ceiling in her bathroom leaks and she has concerns of further water intrusion as a recent "fix" was only a "temporary" solution. The hot and cold water faucets are reversed in her kitchen.

Unit 10: Multiple windows in Ms. Buel's kitchen have broken glass. Other windows throughout Ms. Buel's home have problems that make them difficult to use, including slipping issues (as also seen in Units 1, 8 and 9), and a window which slams shut. Ms. Buel has had to duct tape her windows shut during the winter, so cold air does not penetrate her home. Her windows do not have screens. Her kitchen light is broken and hangs precariously from the ceiling. Ms. Buel's bathroom sink is missing a trap and she believes there is mold growing in her bathroom.

Unit 11: Ms. Cable and Mr. Perkins' unit has multiple ungrounded outlets with 3-prongs electrical receptacles, posing a risk of electric shock or damage to electrical appliances. Their pantry light fixture hangs from the ceiling via permanent wire. They have cracked walls and ceilings throughout. A hallway is missing a smoke detector and the smoke detector in one of the rooms is expired. The water shutoff valve in their bathroom is broken.

Unit 12: Ms. Johnson and Ms. Rowen had significant water damage in their unit. They have concerns about the presence of mold in their apartment. In addition, their bathroom ceiling has water damage, likely stemming from leaks. But the problems extend beyond water infiltration. They believe their unit has improper plumbing and they can smell sewage odor in their bathroom. The caulking behind their kitchen sink has deteriorated. A blade on their living room fan is broken. There is a mouse hole in Ms. Johnson's bedroom.

The above are violations of the City's health and safety code. Chapter 34,⁶ the "Property Maintenance Code," requires building owners to, among other things:

- maintain exterior surfaces in a weather resistant and water tight manner that is "free of holes, breaks, loose or rotting boards or timbers and any other condition which might admit dampness to the interior portions of the wall or to the interior spaces of structures," SPLC § 34.09(1), (2);
- eliminate "peeling, flaking and chipped paint" on exterior surfaces, SPLC § 34.09(1);

⁶ SPLC Chapter 34 is a "local housing, health, and safety code." SPLC § 193A.03(p).

- keep every outside stair, porch, and deck “in a professional state of maintenance and repair with proper anchorage,” and with “[e]very required handrail and guard” “firmly fastened,” SPLC § 34.09(3);
- supply windows “with window panes which are without open cracks or holes,” SPLC § 34.09(4);
- maintain basements to be “reasonably free from dampness and free of any mold or mildew,” and to maintain basement hatchways in a manner that “prevent[s] the entrance of rodents, rain and surface drainage water into the structure,” SPLC §§ 34.09(4)(g), 34.10(1);
- maintain doors “in a professional state of maintenance and repair,” SPLC § 34.09(4)(i);
- maintain “[a]ll interior walls, floors, ceiling, woodwork and cabinets” “in a sound condition and in a professional state of maintenance and repair,” SPLC § 34.10(7);
- be responsible for the “control and/or elimination of insects, rodents or other pests,” SPLC § 34.10(6).

Violations of local health and safety code are themselves violations of Minn. Stat. § 504B.161. *See* Minn. Stat. § 504B.161, subd. 1(a)(4) (landlords covenant to “maintain the premises and all common areas in compliance with the applicable health and safety laws of the United States, of the state, and of the local units of government . . . where the premises are located[.]”). Here, there are clearly violations of the Chapter 34 provisions noted above. Moreover, many of these violations have either been identified by the City itself, have been reported to the Landlord by Residents, or were present in the units since the inception of Residents’ tenancies. Yet, these issues remain a continuing and pervasive problem.

For example, Ms. Johnson and Ms. Rowen reached out to the Department in late September 2024 because their unit had mold. The main wall in their apartment had such significant mold issues that it was replaced. However, other problems identified by the Department remain. Ms. Johnson and Ms. Rowen’s bathroom ceiling still has water damage; their kitchen backsplash, which itself has water damage, has not yet been addressed by a repair person; and the laundry area, to which Ms. Rowen and Ms. Johnson’s apartment is connected, still has a hole in the ceiling. All of these problems, although still present, have been incorrectly marked as abated by the Department. There are also other potential code violations affecting Ms. Rowen and Ms. Johnson’s tenancy (as well as the other tenants at the property), such as large areas of black mold present in the laundry room. This violation, along with other violations impacting common and exterior spaces, appear to have been identified in prior Department inspections:

Exterior: rear stairs. SPLC 34.09 (1)(2), 34.33 (1) - Provide and maintain all exterior walls free from holes and deterioration. All wood exterior unprotected surfaces must be painted or protected from the elements and maintained in a professional manner free from chipped or peeling paint. Peeling and chipping paint exterior walls and window frames.
 Repair and replace holes and missing block caps in the rear exterior stairs. First Noted on: 08/19/2021, Notice#: 2, Severity: 6, Status: Abated

Interior: Throughout basement. SPLC 34.10 (7), 34.17 (5) - Repair and maintain the ceiling in an approved manner. Missing and area that has a mold looking substance. First Noted on: 08/19/2021, Notice#: 2, Severity: 4, Status: Abated

Yet, although these code violations are marked as “abated, they, like other health and safety code violations, still remain at the property. Thus, the lack of an open complaint with the City does not preclude the existence of active, documented code violations at the Ashland Apartments.

Nor does the existence of a fire certificate of occupancy mean that a building complies with section 504B.161. Those two standards are not equivalent. As shown above, and as explained more below, the numerous deficiencies present at Ashland constitute multiple violations of section 504B.161, subdivision 1(a)(1), (2), and (4). Furthermore, one of the properties at issue—938 Ashland—is a Class C property that was last inspected in November 2021, is now over 1.5 years past its renewal deadline. *See* SPLC § 40.05(2)(c). To the extent that the Department relied on the mere presence of a fire certificate of occupancy—especially a fire certificate of occupancy that is well past its renewal deadline—such reliance is not consistent with the plain language of the Ordinance.

But beyond being violations of local health and safety code, the concerns present in Ashland Apartments’ common areas and units are violations of section 504B.161’s other provisions, which require that a landlord keep “the premises and all common areas [] fit for the use intended by the parties” and “keep the premises and all common areas in reasonable repair during the term of the lease.” *Id.*, subd. 1(a)(1), (2). Decks that wobble, windows that won’t stay closed or slam shut, doors that don’t properly lock, floors that have holes or loose broken tiles, basements that flood, plumbing that is unsafe, rotted window and door frames, peeling paint that is presumed to contain lead, decades-old refrigerators that fail to maintain consistent temperatures, a broken washing machine, deteriorating basement walls, and visible mold are among the problems faced by Residents in Ashland. These are not minor problems. They impact Residents and impair the usage of their units and common areas. For example, Residents cannot use their windows in a regular manner, impacting temperature regulation and their energy bills. Residents have to be concerned about the presence of mold and presumed lead paint and whether that will impact their health. Residents cannot rely on their appliances to keep their groceries fresh. One resident cannot put his kids to bed at night in their own bedroom for fear that mold exposure will make them sick. The buildings are not being kept in “reasonable repair.” Instead, they have been neglected for a sustained period of time. The failure by Landlord to maintain Ashland Apartments has negatively impacted livability for Residents and is a violation of section 504B.161, subdivision 1(a)(1) and (2). As stated above, noncompliance with section 504B.161 mandates denial of the Landlord’s rent-increase application. SPLC § 193A.06(c).

II. The Landlord’s Failure to Substantially Comply with State and Local Housing Law, Along with the Significant Deterioration of Ashland Apartments, Must Be Considered in Any Grant of an Exception to the Rent Cap.

Beyond the Owner’s violations of section 504B.161, the Department’s approval of a 28.52% rent increase was erroneous because it failed to properly consider all mandatory factors identified under the Ordinance’s RROI standard. The Ordinance language requires that the City take into account nine factors when deviating from the standard 3% limitation. SPLC § 193A.06(a). In addition to the three factors on which the Owner based its RROI application (property taxes, operating expenses, and capital improvements), other factors the City “must take into account” include:

(7) Substantial deterioration of the rental unit other than as a result of normal wear and tear; [and]

(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[.]

SPLC § 193A.06(a)(7), (8). “‘Must’ is mandatory.” Minn. Stat. § 645.44, subd. 15a; SPLC § 2.18 (adopting state definitions). *See also* SPLC § 193A.07(f) (“The department shall receive, review and process all RROI applications and complaints under this section and **shall consider all factors established in section 193A.06.**”); Minn. Stat. § 645.44, subd. 16 (“‘Shall’ is mandatory.”). As set forth below, when considering all required factors—as the City must—the Landlord does not qualify for a 28.52% rent increase.

a. “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”

The Landlord’s failure to comply substantially with Minn. Stat. § 504B.161, as well as local housing and safety codes, weighs heavily against the grant of a 28.52% rent increase. As explained above, Ashland Apartments suffers from years of neglect and deferred maintenance, that has resulted in pervasive habitability problems. Yet, it does not appear that the Landlord’s “failure . . . to comply substantially with applicable state rental housing laws” and “local housing, health, and safety codes” was considered by the Department when approving the 28.52% rent increase. The approved rent increase is taken directly from the MNOI worksheet. There are no notes or other documentation known to Counsel that demonstrate that the approved rent increase found on the MNOI worksheet was adjusted in any way because of the landlord’s noncompliance with housing and health code. And even though there were no outstanding code violations at the time of Landlord’s application because the City had closed out tenant complaints, it does not appear that the City considered the ongoing habitability problems at the property that are apparent from the property’s history of complaints and noncompliance, or simply from a cursory site visit.

The Landlord’s failure to comply substantially with state housing law and local health and safety code is a factor that must be considered. And, as detailed in Section I and the expert report of Mr. Trostle, the pervasive habitability problems weigh heavily against the grant of a 28.52% rent increase.

b. “Substantial deterioration of the rental unit other than as a result of normal wear and tear”

In addition to the Landlord’s noncompliance, the “substantial deterioration” of Ashland Apartments must be considered by the Department. Here, it is clear that Ashland’s habitability issues are not the result of normal wear and tear. Instead, these problems are the result of years of deferred maintenance, neglect, and improper repairs. *See* Exhibit 1.

However, similar to the Landlord's noncompliance with housing, health, and safety code, there is no evidence known to Counsel that the properties' substantial deterioration was considered by the Department when it approved a 28.52% rent increase. This factor **must** be considered. And, when it is considered, it weighs heavily against the grant of a 28.52% rent increase.

III. The Identified Capital Improvements Were Done in an Unsafe Manner and Cannot Form the Basis for an Exception to the Rent Cap.

The "cost of planned or completed capital improvements to the rental unit" must also be considered by the Department during its evaluation of a landlord's RROI application. SPLC § 193A.06(a)(3). Here, the Landlord sought, and received, an exception to the rent cap based on the rewiring of the 938 Ashland building, which houses Units 6 and 7.⁷ However, the manner in which this capital improvement was done created an unsafe living environment for Mr. Stemme and his young children, who were subjected to the risk of exposure to environmental hazards, including dust from lead-based paint and asbestos. On information and belief, the occupant of Unit 7 was also at risk of exposure. This constitutes a serious violation of the Landlord's covenant under section 504B.161 to "maintain the premises and all common areas in compliance with the applicable health and safety laws." Subd. 1(a)(4).

a. Because of Its Age, Ashland Apartments Are Presumed to Contain Lead-Based Paint and Select Asbestos Materials.

As noted above, Ashland Apartments were constructed in 1904. Because the apartments were built prior to 1978, their painted surfaces are presumed to be coated in lead-based paint. 15 U.S.C. § 2681(17); 40 C.F.R. § 745.82. Similarly, as a pre-1981 building, certain materials within Ashland, such as textured ceiling material, are presumed to contain asbestos. 29 C.F.R. § 1926.1101(b), (k)(1)(i). These lead and asbestos presumptions may be rebutted, but in order to do so, property owners must conduct extensive testing throughout the building using approved methods. *See* 40 C.F.R. § 745.82(a) (lead); 24 C.F.R. § 35.86 (definition for "lead-based paint free housing"); 29 C.F.R. § 1926.1101(k)(5) (asbestos); Minn. R. 5207.0035.

At this time, it is unknown whether the Landlord has conducted any of the testing necessary to rebut the lead-based-paint or asbestos presumptions.⁸ It does not appear that there was any investigation by the Department as to whether the 938 building has been tested for lead-based paint or asbestos prior to the renovations and repairs that underly the capital improvement increase. *See* SPLC 193A.07(a)(5) ("Upon receipt of a complete RROI application or complaint, the department shall conduct review of the RROI application or complaint and **conduct any necessary investigation to determine whether rent conforms to the requirements of this chapter.**").

⁷ Of note, under his current term lease, Mr. Stemme voluntarily agreed to a 6.6% rent increase that the Landlord requested precisely because of planned electrical repairs.

⁸ If the Landlord has the required testing or other documentation showing that Ashland Apartments does not contain lead-based paint or asbestos, we ask that she provide the tests and/or documentation to us and the Legislative Hearing Officer. In addition, if the Landlord and her contractors performed the rewiring work in a lead- and asbestos-safe manner, we ask that she provide the compliance documentation that is required to be kept under the relevant lead and asbestos health and safety laws. 40 C.F.R. § 745.86; 29 § 1926.1101(n).

Because there is currently no negating evidence, we assume that Ashland Apartments has lead-based paint and asbestos material throughout and, as a result, Landlord and her contractors must comply with the relevant lead and asbestos health and safety laws when conducting renovations and repairs.

b. Health and Safety Rules Govern Renovation and Repair Work at Properties which are Presumed to Contain Lead-Based Paint and Asbestos.

Among the relevant health and safety laws is the Lead-Safe Renovation, Repair, and Painting Program (“the RRP Rule”).⁹ See 15 U.S.C. §§ 2682, 2686; 40 C.F.R. § 745, subp. E. Passed in 2008, and effective in Minnesota and throughout the United States, its territories, and tribal lands, since April 22, 2010, the RRP Rule creates obligations on the entities responsible for performing work on pre-1978 buildings, so that their renovation, repair, and painting activities are done in a manner that does not expose the occupants of the buildings to toxic lead dust—a known health threat.

The RRP Rule governs residential “renovations,” defined broadly to mean “modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces,” provided that the work disturbs more than six square feet per room of interior painted surfaces and the building is “target housing,” which generally means housing built prior to 1978. 15 U.S.C. § 2681(17); 40 C.F.R. §§ 745.82, .83. Under the RRP Rule, landlords and contractors who conduct renovations in pre-1978 residences must employ workers with the proper certifications, follow lead-safe work practices that reduce and contain lead-containing dust, and provide notice to all tenants in the affected work area. 40 C.F.R. §§ 745.81(a)(2)-(3), .84, .85, .89(d), .90(a).¹⁰ Importantly, the RRP Rule also requires landlords and contractors to document compliance with these practices and retain compliance records. *Id.* § 745.86.

State and federal asbestos regulations impose similar requirements on building owners and contractors. As noted above, certain materials in pre-1981 buildings, such as ceiling texture (i.e., popcorn ceilings), are presumed to be asbestos containing. However, asbestos was widely used in the manufacture of many building materials, including sheetrock and joint compound.¹¹ Thus, in order to protect workers and residents of buildings from accidental exposure to dangerous asbestos particles, state and federal regulations require building owners to exercise due diligence in identifying legally presumed asbestos-containing materials, as well as materials they *suspect* contain asbestos. *Id.* § 1926.1101(k)(1); Minn. R. 5207.0035. Building owners and contractors

⁹ Minnesota’s Lead Poisoning Prevention Act, Minn. Stat. §§ 144.9501-.9512, imposes similar requirements on property owners.

¹⁰ <https://www.epa.gov/lead/if-i-rent-out-apartments-built-1978-order-comply-lead-renovation-repair-and-painting-rrp-rule#:~:text=Lead-.If%20I%20rent%20out%20apartments%20built%20before%201978%2C%20in%20order,that%20are%20not%20certified%20renovators.&text=Find%20a%20printable%20PDF%20copy%20of%20all%20frequent%20questions%20pertaining%20to%20lead> (RRP applicability to landlords).

¹¹ See <https://www.health.state.mn.us/communities/environment/asbestos/docs/asbbooklet.pdf> at p. 13.

must identify these materials prior to performing work any work that would result in their disturbance.

If presumed or suspect asbestos-containing materials are found, state and federal asbestos regulations require that any asbestos-related work must be done with properly certified workers who follow asbestos-safe work practices, that notice be provided to all tenants in the affected work area, and that owners or contractors maintain records of notification, training, and asbestos-exposure testing. *See* 29 C.F.R. § 1926.1101(k)(2), (5), (9), (n); Minn. Stat. § 326.76, Minn. R. §§ 4620.3567-3572.

c. The Capital Improvements Were Done in a Manner Inconsistent with Applicable Health and Safety Laws.

As noted above, counsel for Residents is currently unaware of any evidence showing that Ashland was tested for either lead or asbestos. As such, we presume that the property contains both lead-based paint and asbestos materials.

From the pictures provided by Mr. Stemme, the rewiring of the 938 building disturbed areas greater than six square feet and was thus a renovation subject to both lead and asbestos safety laws. *See* 40 C.F.R. § 745.83; 29 C.F.R. § 1926.1101(b). Permits issued by the City show that the re-wiring was completed by a contractor, McQuillan Home Services LLC. A search of both RRP-Rule certified firms and the state lead and asbestos licensure lists, show that neither Landlord nor the contractor are listed.¹²

The rewiring and subsequent patch-up work was done during a weeks-long period between mid-December 2023 and March 2024. Despite Mr. Stemme requesting that the work be done when his children were not home, the renovations occurred while Mr. Stemme and his children were living in the apartment. The contractors hired by Landlord performed the drywall cutting. Although contractors put up some plastic between the kitchen and living room, both areas were fully accessible to Mr. Stemme and his family during the renovation. And, although there was some plastic put over furniture, it was not securely fastened and dust contaminated many areas, specifically his children's rooms. Thus, to the extent that there were any containment measures, they were rudimentary and ineffective. Nor did Mr. Stemme receive any notice warning of lead- or asbestos-related work. Below are photographs Mr. Stemme took of the renovations.

¹² <https://cdxapps.epa.gov/ocspp-oppt-lead/firm-location-search/distance> (RRP); <https://www.health.state.mn.us/communities/environment/lead/leadcontrlookup.html> (MN lead contractor); <https://www.health.state.mn.us/communities/environment/lead/leadindlookup.html> (MN individual lead license); <https://www.health.state.mn.us/communities/environment/asbestos/asbcontrlookup.html> (MN asbestos contractor); <https://www.health.state.mn.us/communities/environment/asbestos/asbindlookup.html> (MN individual asbestos license).



The contractors hired by Landlord also performed the clean-up. However, the renovation dust was not dealt with and remained in the apartment. Mr. Stemme did his best to clean up the dust that remained.

The manner in which the rewiring was performed not only left Mr. Stemme and his family at risk of exposure to harmful lead dust and asbestos, but it was also a violation of state and federal health and safety laws. There is no evidence that lead testing or asbestos identification was done prior to the renovation work. The renovation work was conducted by contractors not certified in lead- or asbestos-safe work practices. Indeed, lead- and asbestos-safe work practices were not followed. There was little to no containment of dust or use of specialized air filters. Mr. Stemme did not receive notifications required prior to conducting work which impacts lead-based paint or asbestos materials. None of the precautions required under state and federal lead and asbestos safety laws were adequately followed. The Landlord's violation of lead and asbestos laws is a violation of her covenant "to maintain the premises in compliance with the applicable health and safety laws" Minn. Stat. § 504B.161, subd. 1(a)(4). And the Ordinance makes it clear: such a

violation results in a prohibition of a rent increase exception. SPLC § 193A.06(c). Accordingly, the City cannot grant a 23.64% rent increase for Units 6 and 7—when the underlying capital improvements were done in a manner that subjected Mr. Stemme and his family to the risk of lead-dust and asbestos exposure.

In addition, Residents contest the 23.64% capital repair increase to the extent that it was also based on the gas line replacement that was completed in Units 6 and 7. On the provided MNOI worksheet, it appears that the capital improvements were just based on the electrical rewiring (“Green Sky - Rewiring of 938 Ashland”). However, both Unit 6 and Unit 7 had their gas lines replaced at approximately the same time as the rewiring occurred. The permits for the gas line work expired (twice) and thus it does not appear that the work itself was ever inspected.

20 24 054957 GSF 00 PG	940 ASHLAND AVE ST PAUL	Plumbing/Gasfitting/Inside Water Piping	2024-07-03	Expired
20 23 109264 GSF 00 PG	940 ASHLAND AVE ST PAUL	Plumbing/Gasfitting/Inside Water Piping	2023-12-26	Expired

The Department cannot approve a capital improvement rent increase for renovations where the permits were expired and where an inspection has never been conducted. *See* SPLC § 33.04(d) (“Every permit issued by the building official under the provisions of this chapter shall expire by limitation and become null and void if the building of work authorized by such permit is not commenced within one hundred eighty (180) days from the date of such permit or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of one hundred eighty (180) days.”); *see also* SPLC § 33.03(b). And, the gas-line work resulted in a pest infestation for Mr. Stemme. Shortly after the work was completed, he had an influx of mice that had never occurred before. He identified that the mice were likely coming from the old gas line, which had been left open behind his stove. It took Mr. Stemme approximately one month to get the mice infestation under control. Presumably, an inspection of the gas line work would have shown that the prior gas line exit was never capped. Thus, to the extent that the gas line work served as a basis for the capital improvement increase, the increase should be denied because such work was not done in accordance with City health and safety code.

IV. This Appeal Applies to All Units at Ashland Apartments

Residents bring this appeal on behalf of all units in Ashland Apartments. Residents are allowed to do so because two separate provisions of the Ordinance expressly allow a single tenant to appeal building-wide rent increases.

a. “The landlord or tenant shall have the right to appeal the department determination.”

Section 193A.07(g) provides that “The landlord or tenant shall have the right to appeal **the department determination.**” This language grants tenants, including Residents, the right to appeal building-wide rent-cap exceptions that have been approved through a single department determination.

On April 28, 2025, the Department released a **single** Department determination that approved rent increases for all units at Ashland Apartments. The Department’s determination approved a general 28.52% rent increase.

You applied for an exception to the 3% cap on rent increases per Chapter 193A of Saint Paul's Legislative Code. Approval for a 28.52% was granted on 4/28/2025 through the staff determination process provided by the City. Additional rent increases were allowed due to unit specific capital improvements. See the attached table for the additional increase values.

Under the plain language of the Ordinance, Residents have the right to appeal “**the** department determination.” *See Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 192-93 (Minn. Ct. App. 2010) (explaining that ordinances, like statutes, must be interpreted according to their plain language). Here, that means that Residents can appeal **the** April 28, 2025 Determination. The Ordinance does not qualify or limit Residents’ rights by stating that they can only appeal the portion of the Determination that is specific to their unit. And such limiting language cannot now be read into the Ordinance. *Harkins v. Grant Park Ass’n*, 972 N.W.2d 381, 387 (Minn. 2022) (courts “will not insert words or meanings that were intentionally or inadvertently omitted by the Legislature.” (quotation omitted)). Thus, in appealing the April 28 determination, Residents are appealing the approved 28.52% rent increase as it applies to all units.

The ability for tenants to appeal building-wide determinations is integral to the Ordinance, especially when exceptions are allowed on the basis of costs landlords incur on behalf of an entire complex. *See* MNOI Rule A(6)(b) (“Rent increases for building-wide or common area capital improvements must be allocated equally among all units[.]”); MNOI Rule A(6)(c) (“Rent increases resulting from the Net Operating Income analysis must be allocated equally among all units[.]”). The rationale underlying whether such costs qualify a landlord for a rent increase would then be the same for **all** units in a complex. And that is clearly the case for Ashland, where the rationale justifying a 28.52% rent increase is the **same** for all 12 units.¹³ Thus, Residents’ apartment-wide appeal is a challenge of a singular determination based on a singular rationale.

Furthermore, in the litigation context, court-ordered injunctions allow plaintiffs to secure relief not only for themselves, but also for non-parties who are impacted by the challenged conduct. *See, e.g., Wolff v. City of Monticello*, 803 F. Supp. 1568, 1575 (D. Minn. 1992) (granting summary judgment to plaintiff store owners and preventing city from all enforcement of certain ordinances restricting adult business licensing); *Worth v. Harrington*, 666 F. Supp. 3d 902, 932 (D. Minn. 2023), *aff’d sub nom. Worth v. Jacobson*, 108 F.4th 677 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 1924 (2025) (striking down Minnesota statute imposing minimum age requirement of twenty-one to publicly carry handguns, and prohibiting enforcement of the statute “against the individual

¹³ Moreover, Mr. Stemme, a tenant subject to the additional 23.64% capital-improvement increase, is directly appealing that portion of the determination. The tenant in Unit 7 is subject to the same 23.64% capital-improvement increase, which appears to have been determined based on a singular rationale and based on an equal splitting of costs. As with the base 28.52% increase, Mr. Stemme is challenging a capital-improvement increase that was detailed in **the** determination and which is based on a rationale that is the same for both Units 6 and 7. Mr. Stemme is thus able to challenge the 23.64% rent increase on behalf of both himself and the tenant in Unit 7.

Plaintiffs **and otherwise-qualified 18–20-year-olds**") (emphasis added). Here, Residents are seeking relief comparable to an injunction: the stoppage of a building-wide rent increase.

b. “A landlord or tenant may appeal any department determination to the legislative hearing officer.”

The Ordinance also provides that “[a] landlord or tenant may appeal *any* department determination to the legislative hearing officer.” SPLC § 193A.07(a)(8). Again, the Ordinance’s language does not limit a tenant to appealing a determination specific to only their unit. Instead, the language gives a single tenant the ability to appeal *any* department determination relevant to the building in which their unit is located, just as it gives a single landlord the ability to appeal any adverse Department determination against any units in the building it operates. As such, Residents are not confined to challenging an increase only as it relates to their units. The Ordinance empowers tenants, such as Residents, to appeal *any* determination, including determinations that approve building-wide rent increases.

c. Policy Considerations Favor Appeals of Building-Wide Determinations.

Minnesota law also requires that when legislative enactments “are remedial in nature [they] are to be liberally construed in favor of protecting [tenants].” *State v. Minnesota School of Business*, 935 N.W.2d 124, 133 (Minn. 2019) (quotation omitted). Here, as the City’s Rent Stabilization Rules make clear, the fundamental purpose of the Ordinance is to “protect Tenants from substantial Rent increases which are not affordable, and which may force such Tenants to vacate their homes.” MNOI Rule A(8)(a). Challenges to building-wide determinations allow Saint Paul tenants to effectively combat and curb wrongful systemic practices that detrimentally affect their health, safety, and welfare. For example, in this appeal Residents are challenging an across-the-board 28.52% rent increase on the basis that their property shows has pervasive habitability violations in both common areas and individual units, and those violations impair the livability of Residents’ homes and pose threats to their health and safety. The grounds on which Residents are challenging the rent-increase apply to and impact all 12 units at Ashland.

But if Residents’ appeal is granted only as it relates to their units, then tenants in Ashland Apartment’s other 4 units will be subject to a massive rent increase, even though the increase was granted in violation of clear Ordinance language. Such a system would not only undermine the protections afforded by the Ordinance, but it would amplify disparities in housing by essentially guaranteeing that the Ordinance’s protections apply only to those who have the time, money, and/or legal connections to navigate the appeals process. In order for the City to truly advance the policies underlying the Ordinance, tenants must be allowed to fully challenge systemic issues when they are presented, and not be restricted to fragmented, one-off challenges that do little to address Saint Paul’s rising rents.

CONCLUSION

The City **cannot** grant an exception to the 3% rent cap 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.” SPLC § 193A.06(c). Here, Ashland Apartments is suffering from a severe lack of general maintenance and improper repairs. This has led to pervasive

violations of section 504B.161, that impact and impair the functioning and livability of Residents' units and common areas, and which also pose threats to Residents' health and safety. The City cannot now reward the Landlord with a 28.52% rent increase for years of neglect and deferred maintenance, and an additional 23.64% for capital improvement projects done in violation of lead and asbestos safety laws. The plain language of the Ordinance must be adhered to. To approve such a significant increase in the face of, among other things, flooding basements, mold, dangerous decks, improper plumbing, and broken windows, would be contrary to not only the Ordinance language, but also the spirit of the Ordinance, which was passed to **protect** tenants.

Moreover, the substantial deterioration of Ashland Apartments, along with Landlord's failure to comply substantially with health and safety laws as they relate to housing, must be evaluated in concert with her purported increase in property taxes, operating expenses, and capital improvements. *See* SPLC § 193A.06(a). And when considered—as they must be—these factors weigh heavily against the approval of a 28.52% rent increase.

We ask that the Legislative Hearing Officer grant Residents' appeal and deny Landlord's rent increase application.

Date: July 10, 2025

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